

ANNUAL WORKSHOP
ON
LAW AND SOCIAL ACTION

*Venue : Convention Centre, Jamia Hamdard,
New Delhi*

Dates: 6TH TO 9TH JULY 2001

Organised by :

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INTRODUCTION

This workshop was part of the national workshop series held by PLD for its partners every year. The previous year workshop held in April 2000 on – ‘Role of Law in Development’, explored strategies of transforming the substance, structures and practice of law to make it responsive and accessible to the disadvantaged and the poor. This workshop on – ‘Law and Social Action’, sought to examine and reflect on the methods and processes of using law for social justice.

Madhu Mehra opened the workshop by welcoming all the PLD partners, resource persons and other participants working with law on common issues.

She clarified that the purpose of the workshop is not to focus on the issues we work, but rather to examine and share the methods and processes that we adopt while using law for advancing social justice. This was a forum to share our work methods & values. She welcomed Owe Anderson, SIDA, who has provided valuable support to PLD from its very inception.

Owe Anderson, Counsellor, Development Co-operation, SIDA, was invited to join in the welcome address. He mentioned that an important component in the development of Sweden has been the presence of a very strong legal system and recognition of the rule of law. He informed that the Swedish government has decided to extend support to development organisations, moving away from the position taken in 1998 and was strongly advocating the principle of universality of rights and the rights of the child. He welcomed all the participants and wished the workshop success.

Thereafter Madhu presented the workshop agenda and the participants introduced themselves, mentioning the organisation and issues that they were involved with.

SESSION - I

APPROACHES TO INTEGRATION OF LAW IN SOCIAL ACTION

Using law as a tool for social action involves moving away from the traditional concept of litigation lawyering and exploring different strategies by which law can be used to facilitate social action. In the first session, shared his defining experience with law, drawing from it values and principles that have guided his work thereafter. Gagan is the founding member of Jan Vikas, a support and training organisation. He is also closely associated with the Centre for Social Justice, which engages with developing legal resources at grassroots level in Gujrat. His presentation was followed by small group discussions on strategies of integration of law in social action. The session was chaired by Madhu Mehra.

Part A : Plenary Presentation by Gagan Sethi

Gagan Sethi recollected that he had started as an activist working with the issues of dalits and land rights, inspired by Paulo Friare's politics of pedagogy. He narrated the Golana case that had occurred some 14 - 15 years ago and with which he was closely involved. In that case, 4 acres of land had been allotted to the dalits for housing. The upper castes, were using the land as a threshing ground resisted the allotment orders. One night the dalits decided to take possession of the land forcibly and in that process major violence erupted in which four colleagues were killed. This was the first time when he came into contact with the legal system. The experience made him realise the importance of a FIR and the way in which it determines the entire legal proceedings.

The next one and half years were spent in intensive interaction with the lawyers, media and even the politicians. At that time it was very important for the activists to ensure that the 36 accused did not get released on bail. They opted to use the TADA [Terrorist and Disruptive Activities (Prevention) Act, 1987], to short circuit a high court appeal, little knowing that later the same legislation would be used by the state to commit enormous human rights violations. Human Rights lawyers were reluctant to take up the case. A special public prosecutor was appointed and a lot of time and energy was spent running between the lawyers for devising an effective legal strategy. There were 146 witnesses for prosecution who according to the lawyers had to be tutored, so that all statements were consistent with the FIR. Mock courtroom sessions were held for tutoring witnesses. The public prosecutor gave three phrases to help tide the witnesses over unforeseen eventualities, these being - 'I don't remember'; 'I am not clear'; 'I don't know'. Thus whatever the eyewitnesses had actually seen or heard was irrelevant to the legal process. Instead, only the text of the FIR was to be corroborated.

Trial at the district level resulted in 14 convictions and on appeal the Supreme Court upheld 11 convictions. The trial involved an expenditure of about 25 lakhs rupees. The convictions were considered to be a major victory but Gagan resigned on the day of the

judgement. To him, if justice was available at such a huge cost when such strong state institutions existed, then India was not a free country. In his vision justice had to be made available at the level of the grassroots and not in the Capitals, and here the seeds of Centre for Social Justice were sown.

As a social activist he also realised that the, 'just – unjust' paradigm did not necessarily coincide with the 'legal – illegal' framework. To him integration of law into social action meant understanding the 'just – unjust' framework, super imposing the 'legal – illegal' framework, identifying the gaps in the 'legal – illegal' framework, articulating them and strategize for change. Social justice lawyering in this context can be defined as activist lawyering that transforms power relations and facilitates change. Thus the ambit of social justice lawyering is much wider than that of traditional legal aid and its characteristics are as follows:

- a. Social Justice Lawyering is not charity based
- b. It establishes linkages between law and community. It tries to look at simple ways to impact the lives of the people. For e.g. in Sabarkanta District of Gujarat, government schools were not functioning. Lawyers visited the schools, noted the problems and filed a case in the consumer forum. There was pressure on the local administration to appear before the forum and the case helped to bring the issue in public focus. At the end changes were introduced in the schemes of government schools. Thus a cascade of issues can result from an intense involvement of lawyers with the community.
- c. It involves close collaboration of lawyers and activists. Their relationship is based on equality and each respects and values the skills of the other. In contrast, the traditional lawyer - client relationship does not have space for a participatory involvement. Inequality is built into the legal profession and lawyers find it difficult to fit in to an organisational set-up.
- d. It recognises the need to include paralegals or non-lawyer who represents civil society. Paralegals have an important role because they understand the 'just – unjust' framework, which can be juxtaposed with the 'legal – illegal' paradigm to arrive at a certain strategy. There is a realisation that lawyers and paralegals are incomplete without the other.
- e. Social justice lawyering is not restricted to courtrooms.
- f. Social Justice lawyering does not mean getting caught in the 'win – loose' situation. The identity of a mainstream lawyer comes from the number of cases won. This is not the focus of social justice lawyering.
- g. There isn't a fixed sequence in law's relationship with social change. In many cases law follows social change. Only when groups experience injustice, mobilise against the injustice, thereby draw attention the lack of legal regulation. In such a scenario, social action & change pave the way for law to be formulated. However, social

justice lawyering is, also about leading social change. It recognises that law has the potential to lead social reform. This requires an in-depth understanding of issues, a vision and effective strategies that can usher a new social order. While changing the law seems like an attractive area, but most of the everyday challenge is in implementing rights through the existing law. CSJ handles thousands of cases relating to domestic violence, maintenance. This is more time consuming, tedious & relevant than a PIL or test case.

Social justice lawyers face many challenges in the course of their work, such as :-

- ✦ *Issue of identity:* social justice lawyering involves the lawyer moving away from the traditional practice of litigation in courtrooms to working closely with the people's movements and groups. This gives rise to a conflict of identity for the lawyer who has to grapple with the question of, 'Who am I? Where do I draw my strength from?' These questions are legitimate. The structures and content of the law schools teach the lawyer to create an aura around themselves, mystify the law so that common people don't understand it anymore. Lawyers without the professional aura are perceived as lacking in dignity, useless lawyers who have opted for human rights work because they cannot succeed in the mainstream profession. Going to the people involves breaking the aura, demystifying the law – the very things that comprised the identity and strength of the lawyer. How does one resolve this conflict? It is very hard to give one answer except that a social justice lawyer has to create a fine balance between retaining his professional skills of a lawyer and working closely with the community.
- ✦ *Choice of forums:* public interest lawyers have primarily concentrated on working in the High Courts or the Supreme Court. But one also needs to explore ways of impacting society by working at the taluka level, using forums that are within the reach of the people at the grassroots so that they can be involved and have understanding of the whole process.
- ✦ *Building teams of paralegals:* paralegals can bridge the gap between lawyers and civil society. Being part of the community they represent, paralegals are able to articulate the 'just – unjust' framework and help the lawyer to juxtapose the 'legal – illegal' framework. This collaboration is necessary for law to lead social change. The challenge of social justice lawyering is to develop an equal relationship between the paralegal and the lawyers, where each recognises and respects the skills of the other.
- ✦ Another important challenge of social justice lawyering is *promoting an understanding and knowledge of the Constitution*. Lower court lawyers are told that they don't need to know the Constitution for practice at the taluka level, when in fact every citizen of the country should know the Constitution. The identity of an Indian citizen without the knowledge of the Constitution will always be that of a caste identity. Just as one needs myths and metaphors to sustain one's identity the

constitution helps construct an identity as an Indian citizen. The strategy should be to project the Constitution as a myth and develop our identities as a citizen.

- ◆ *Issues of conflicting rights:* More and more issues of conflict between rights are surfacing, for example - the right to clean environment and the right to livelihood. The dilemma is of how to deal with such issues.

The challenges are many. To deal with some of the issues one of the strategies adopted by Centre for Social Justice was to create a team of lawyers committed to social justice. A two years human rights training course for lawyers, with a monthly stipend of 1,000 rupees was planned. Advertisements for the course was placed in the papers and out of the thousands of applications received, 14 candidates were selected. In the first session they discovered that the lawyers had little understanding of law itself, so the course on human rights had to be changed to a law appreciation course. This again reflects on the quality of education in the law schools, and as a consequence, that of the lawyers. The change is therefore not about to come from the lawyers or the legal system that they are integral to. One strategy is setting up litigant's forum as part of the judicial system, where affected people can challenge the inaccessibility of the system and the prevailing corruption. One also needs to find ways of working in the existing institutions as well. Training paralegals, to enable them to handle cases of maintenance, accident compensations, is another strategy. The legal aid system at the district level also has to be activated. Judges who are totally closed to the problems of the civil society need to be sensitised.

Discussion

Participants emphasised the need to campaign for more transparency and accountability of the legal system. Activists have faced many problems in getting information and data from the family counselling centres, crime against women cells, - institutions that are supposed to be people friendly. There is no system to make the judiciary accountable. The presence of the contempt law makes it impossible for the people to critically discuss judgements without inviting penal action. Alternate dispute resolution systems also carry cultural & class prejudices, which are reflected in their decisions. Problems of earning livelihood loom large before a social justice lawyer.

These capture the conflicts and dilemmas before us and we need to sit and work towards resolving these.

Part B :
Group Discussions on
Strategies of Integration of Law in Social Action

Action Research, Advocacy, Legal / quasi legal interventions, legal education are some of the strategies used to integrate law into social action. While using these strategies it is not only important to lay stress on the substantive content but also reflect on the process issues: the methodology adopted, the objectives, the involvement of the client community and accountability to them. The small group discussions aimed at facilitating such reflection. The participants were divided into four groups with guidelines for discussion. Their presentations are reported below.

○ **Group I**

Action Research for advancing rights through law

- Guidelines for discussion*
- What issues were involved?
 - How did you do it, in terms of methodology,
 - Accountability, ownership and representation?
 - Lessons learnt.

Participants

Nupur, Shalini, Shomona Khanna, Madhu Mehra

Presentation

● **The type of issues involved and methodology**

- ☞ Child sexual abuse and Violence against Women – There is a silence around the issue of child sexual abuse and violence against women. A research was done collecting facts of cases and statistics to feed into a campaign and present to the community and the state, to make the issue visible.
- ☞ Legal Aid – research was conducted on the lacunae of the existing legal aid system, suggestions to correct these deficiencies and finally a testing of the proposed mechanisms. The objective of the research was to activate and strengthen the existing state legal aid machinery,
- ☞ Review of laws related to women, to study the impact of the existing laws on the rights of women.
- ☞ Investigation of Human rights violation cases

● **Representation** – the language used to represent the target group is very important. The emphasis should be on highlighting stories of agency rather than victimisation

● **Accountability and Ownership** - There is usually an ownership of the findings by the researcher who monopolises the knowledge. This should not be the practice. It is the people's struggles that are the subject of research and one cannot claim ownership over its documentation.

● Lessons Learnt

- ⊖ Awareness that researchers have monopoly over knowledge and the need to minimise such monopoly.
- ⊖ The need to locate one's own interest in a campaign/work.
- ⊖ Research is irrelevant if it does not arise out of, or lead to a struggle
- ⊖ Research should be constructive.
- ⊖ One should reflect on process and practice of research.
- ⊖ The people have to be made part of the whole process of research

Inputs given in Plenary Discussion

In the context of action research, a strategic choice has to be made between qualitative and quantitative research. Quantitative research and data is not in itself important. Feminist research has dismantled existing paradigms and developed alternative visions, which are not quantitative in nature.

There needs to be a balance between highlighting stories of agency and those of victimisation, within a context of structural oppression. Both strategies have their own importance.

○ Group II

Advocacy for advancing rights through law

Guidelines for discussion

- Identification of issues and methodology
- Advocacy methods
- Level of advocacy
- Types of advocacy
- Lessons learnt

Participants

Minati, Kailash, Sudha, Singh Babu, Ajeetha, Patrick

Presentation

- **Identification of Issues and Methodology:** The issues that were identified for advocacy were violence against women, registration of marriages, tribal rights over land. These issues were identified on the basis of

- ⊖ Petitions/cases and geographical factors
- ⊖ Newspaper reports
- ⊖ Absence of national law on a particular issue

- ⊖ Prevalent prejudices and lack of perspective on an issue
- ⊖ Existing gaps between practice and law, the reality and rhetoric.
- ⊖ The need to give a voice to marginalised group such as dalits, women
- ⊖ The need to enforce existing laws
- ⊖ Need to highlight experiences of engaging with issues and push for change
- ⊖ Violation of international treaties
- ⊖ The need to highlight the existing discriminatory practices at the international level to build pressure on the government.

◆ **Level and Type of Advocacy:** Advocacy was done at local, state, national and international level. The approaches or methods were

- ⊖ Lobbying during elections to include issue(s) in manifestos
- ⊖ Raising issues in parliament
- ⊖ Campaigns, rallies, dharnas, street plays, public hearings
- ⊖ Training's for sensitisation of police, lawyers, NGO's, elected representatives, judges etc.
- ⊖ Presenting research studies and data collected to strengthen views.
- ⊖ Networking
- ⊖ Interacting with the Media so that it highlights an issue with a perspective.

◆ **Lessons learnt**

- ⊖ Advocacy should be grounded in grassroots work/level
- ⊖ It requires professional skills
- ⊖ It needs systematic planning based on facts and studies on issue
- ⊖ The advocacy team should have training
- ⊖ Support to, and timing of advocacy efforts is critical.
- ⊖ Advocacy should not be biased on basis of caste, creed etc
- ⊖ Allies in media, administration, judiciary should be identified
- ⊖ Access maximum platforms
- ⊖ Use of innovative and creative methods.

Inputs given in Plenary Discussion

Advocacy may require public debate or a dharna. A dilemma faced on these occasions is about sharing the platform with ideologically divergent groups willing to support the issue. This question needs to be resolved individually. There are times when help from a state institution is needed, and though one does not agree with its ideology one has no option but to take its help. While advocating for the rights of one group, one needs to be careful of not violating the rights of another group.

○ Group III

Legal/Quasi Legal intervention for advancing Rights

Guidelines for discussion

- Types of interventions
- The basis for choosing the interventions, such as mediation, litigation, PIL.
- How would you ensure the involvement of the affected group / beneficiaries in the forums, and in advancing their interests.
- Negotiating alternative visions within the legal framework.

Participants

Pradeep, Prashant, Tej Kumar, Jeena, Pratap, Savitri, Mr. Jaiswal

Presentation

- ◆ **Types of interventions:** The interventions identified by the group were litigation, public interest litigation, mediation and the following strategies were identified by the group:

- ⊖ Accessing the legal system
- ⊖ Approaching the special courts and tribunals (family courts)
- ⊖ Approaching the Quasi Judicial forums, like
 - a. Consumer Forums
 - b. National and State Human Rights Commissions
 - c. National and State Women's Commissions
 - d. Commissions of enquiry
 - e. Legal Service Authority
 - f. Legal aid, dispute resolution centres
 - g. Lok Adalats
 - h. Informal legal aid & counselling centres
 - i. Nyaya Panchayats formed under Panchayati Raj Institutions
 - j. Grama Sabha (at village level)
 - k. Community Adalat
 - l. Pressure Group

- ◆ **The basis for choosing the interventions identified above were**

- ⊖ The nature of violation of rights
- ⊖ Nature of agencies responsible and accountable for such violation of rights.
- ⊖ Getting speedy justice
- ⊖ Consideration of the resources & support available to the victim in the fight for justice

• **The following steps would be taken; to facilitate the Involvement of the affected group/beneficiaries in the forums and in advancing their interests :**

- ⊖ Making them aware of their statutory rights and their human rights.
- ⊖ Setting up informal counselling centres, working beyond the legal system.
- ⊖ Exerting pressure on the employer of the perpetrator to secure relief for the victim.
- ⊖ Involving the parties, their family members, community, NGO, Panchayat in the process of resolution of dispute.
- ⊖ Providing legal advice and arranging for police security wherever needed.
- ⊖ Ensuring direct involvement of social activists, social justice lawyers in the struggles of the disadvantageous group and organising people besides representing them in Court.
- ⊖ Creating leadership among/within the affected groups.

• **Negotiating alternative visions within the legal frame work :** to achieve this the strategies employed would be to

- ⊖ Build Pressure groups
- ⊖ Organise Public hearings
- ⊖ Encourage formation of trade unions, workers association, women cells
- ⊖ Lobby for application of International Standards and integrating them within the existing legal system/ provisions.

Inputs given in the Plenary Discussion

Question as to who decides on the choice of the legal intervention and the nature of relief are very important. The client should be able to take these basic decisions. If the client is unable to take a decision, she should be allowed some time to think and rethink but the ultimate decision should lie with her. If she chooses not to proceed further with a legal intervention, we have to accept it and respect her choice. In this context it is important to understand the role of the lawyer. Who gives the lawyer the legitimacy to intervene in the case? Is it the client/group, or can a lawyer derive legitimacy from a source independent of the client/ group? The lawyer is accountable to the client, who has to be involved in the decision making process. A lawyer cannot assume that the client does not know and would not be able to decide the best for her.

Often the legal framework is not sufficient to ensure rights. At times like this one needs to look beyond the legal framework and explore alternative strategies that would help the client community in securing its rights. Yet any framework that goes against the constitutional values has to be questioned.

○ Group IV

Legal literacy and education for advancing rights through law

Guidelines for discussion - Why legal literacy and awareness?
- Types of Approaches
- Underlying Principles

Participants Urmila, Aradhana, Shweta, Kalpalata, Dipta

Presentation

◆ **Need for Legal literacy and awareness:** the target groups identified for the purpose of legal literacy and awareness were - people who have power to impact on the lives of others, citizens, and disadvantaged groups. Legal literacy and awareness programmes had to be organised because

- ⊖ The target groups were not aware of their rights and entitlements yet they are governed by it.
- ⊖ To create a notion of just and unjust
- ⊖ To enable the target groups to raise questions when their rights are violated.
- ⊖ To empower the target groups identified.

◆ **Approaches:**

- ⊖ Identifying problems through legal awareness camps and interaction with the community.
- ⊖ Problematising the issues of concern raised in the 'legal – illegal' and 'just – unjust' framework.
- ⊖ Dissemination & outreach to community through deciding on a course of action, like
 - Trainings that include critical perspectives on gender, caste, tribal issues.
 - Individual counselling & case work.
 - Building public awareness through street plays, cultural programmes, "phads", songs and materials in simple language.

◆ **Underlying Principles** any programme on legal literacy and awareness :

- ⊖ Should be contextualised in the lives of the target group
- ⊖ It should enable moving towards equity and equality
- ⊖ It should be participatory in nature
- ⊖ It should be a sustained process
- ⊖ It should aim towards creating a social value for legal knowledge

Legal literacy and legal education are different from each other. Legal literacy implies limited knowledge of statutory laws, while legal education had a wider meaning of

understanding the relationship between laws, and the socio political context. One needs to understand this difference, legal education has to be promoted not as an optional strategy but as socially valuable & therefore desired by the community & individual, just as primary education.

Gagan Sethi wound up the discussions by reflecting that social work and law were complimentary to each other and had to be integrated together. Legal education would mean combining perspective building on social issues with knowledge of law and legal procedures, collapsing the wall dividing the two arenas.

CULTURAL PROGRAMME

Street Play on Family, Community & State Responses to Violence Against Women

A street play was performed by the Vanangana team in the evening of 6th July. The play titled - Mujhe Jawab Do (Give Me An Answer) dealt with the story of a young woman killed as a result of domestic violence and the general apathy of the state structures in securing justice to her. Even her own family uses her death as an opportunity for making profit. They collude with the abusive husband to close the case in exchange for money and the marriage of the younger daughter to the accused son-in-law without any dowry. The play raises powerful questions about the social worth of a daughter in the family and in the society.

The play is used by the organisation to initiate a dialogue with the community on patriarchy, gender discrimination, women's rights and the role of state / non-state actors in addressing such violence. The play is performed in the community, to help the audience identify with the victims of domestic violence and some occasions have led to increased reporting of cases from the village. It has also been strategically performed in front of the house of family known to be abusive to the daughter-in-law to exert pressure and cause social embarrassment.

For Vanangana, such plays have been a powerful medium to bring out issues of family & community complicity in domestic violence.

SESSION II LIMITS AND POSSIBILITIES IN LAW

The Constitution of India guarantees the fundamental right to equality to all its citizens. However, in practice we see a gap between the constitutional guarantees and the existing reality. The statutory laws together with the complicated and expensive legal procedures operate to maintain the status quo between the powerful and the marginalised sections of the society. Despite this, we still need to engage with the law. This session explores the need for such engagement in the struggle for social justice. The session covers the law reform campaign on Domestic Violence. It also discusses the innovative uses of law to further the rights of the disadvantaged by PLD partners and the dilemmas arising out of such engagement.

Geeta Ramaseshan, the chair introduced the guest speaker, Indira Jaisingh, a Senior Advocate of the Supreme Court and founder of the Lawyers Collective.

★ *A look at the domestic violence bill*

Resource Person – Indira Jaisingh

Many a time when people are frustrated with the legal system, they exclaim, - why bother with the law? This is a dangerous stance, for law is a very important site of struggle for the disadvantaged who have nothing else but the law to protect their rights. Law offers a rights based framework and it mandates that those in power base their decisions on norms enshrined in law. It has a promise of transparency, accountability and rule of law. It is true that dominant groups have made the law to protect their interests, and break it with impunity. On the other hand, it is the socially disadvantaged who actually honour the law, respect it and live by it. Nonetheless, law cannot be dismissed as a tool of oppression. We as activists cannot afford to surrender its terrain, because we have to hold the law to its promise of equality. There is the need to make the people who claim to live by it, honour it, and law affords the opportunity of a reasoned discourse on the basis of certain values and predetermined rules.

The limitations of the system are

- i. Law does not articulate the interests of the disadvantaged sections of the society as they hardly have any political participation. But we need to understand that laws are not made in a single day. There is a long period of gestation, lobbying and debate before it is finally enacted and it is very important to get involved in this process.
- ii. Law is not a self-actualising phenomenon. It needs systems, structures and agency of people to make it work. Who determines the kind of system? How does one put the structures in place? How does one ensure that the system works in the

interests of the affected people? As social activist we need to propose alternative mechanisms if the existing structures and systems do not facilitate access to justice.

For example, it is been thirty years since the enactment of the Dowry Prohibition Act 1961 and almost 15 years since section 498A of the Indian Penal Code was introduced. Practical experience shows that the legislations have not been able to address the issue. We need to undertake exhaustive research, collect data and initiate discussions with the state for law reform.

Lawyers Collective, while working on the bill on domestic violence started with the hypothesis that any law on domestic violence has to cut across all communities. In India in the realm of family law women are governed by many different codes. Domestic violence is an issue, faced by all women, and there is a need for a civil legislation applicable to all communities, since criminal law alone is not enough to deal with violence.

Lawyers Collective initiated countrywide consultations on the issue which concluded in the year 2000. Synthesising the knowledge and experience gained from these consultations, it formulated a draft law and initiated a campaign. Another debate, which came up from these consultations, was - whether the law should be applicable to only women or should be gender neutral. Relying upon Articles 15 and 16 of the Constitution, the predominant opinion was that it should be applicable to women alone. Women are already living in an unequal society where economic, political power is concentrated in the hands of the men, and a neutral law could be used by men against women and become a tool of backlash.

The main provisions of the Domestic Violence (Prevention) Bill are:

- **Definition of domestic violence:** there was a clear consensus that unlike the criminal law which deals with only physical abuse, the law must include mental, verbal, economic, sexual abuse. Domestic violence assumes different forms in different cultures and its important that the definition includes all these forms - like in India calling a woman childless amounts to violence, so is forcing a woman to undergo female feoticide. The Indian penal code does not recognise marital rape as an offence, but this Bill seeks to include within the scope of domestic violence.
- **Definition of domestic relationship:** the Bill defines domestic relationships widely to include co-habitation. There was a fear that this would invite opposition from the lawmakers on grounds of encouraging immorality. However, in many cases women believe that they are married when such marriages are not actually recognised by law. The question of legality of second marriages becomes very important for women trying to secure her rights. Thus the definition covers co-habitees and relationships other than ones of marriage, reinforcing that the focus of the Bill is on domestic violence and not on legality of marriages.

- **Concept of shared household replaces the concept of matrimonial home.** The Bill focuses on people living together in a shared physical space and is applicable to the elderly, daughters, mothers, and sisters. Ownership of the household property is not a relevant criteria for granting relief.
- The Bill gives the woman **a right to reside in a shared household.** Though such a right should be included in the matrimonial statutes, none of the existing ones do so. Because of the silence on this issue, this provision has been included in the Bill. This law does not create a right to property but only gives the woman the right to reside and not be evicted.
- **Remedies:** The bill enumerates a wide range of reliefs. It has also made provisions for effective implementation of a court order, such as:-
 - The court can issue a conditional warrant of arrest along with an order. This conditional warrant of arrest would come into effect if a breach of the order is committed at a later date.
 - Appointment of protection officers, who will assist the court in investigation of complaints.
 - Acknowledging the services provided by NGOs and women's rights groups by providing for their recognition as accredited service providers and placing a duty on the protection officers to inform the victim about these agencies.

Discussion

A civil law on domestic violence has certain limitations, for example, it does not provide for conviction of the perpetrator. The main objective of such civil law is to stop violence and place the victim in an equal position with the harasser. By giving her certain remedies, it seeks to strengthen the bargaining power of the woman so that she is able to negotiate through the exploitative relationship in a manner best suited to her interests. The right to reside in a shared household is one such relief in the Bill. This right should not be confused with the right to marital property, which is the subject of marriage and property laws, and not within the purview of the Bill.

The Bill recognises the fact that a survivor of domestic violence needs support. It therefore seeks to give State recognition to accredited service providers such as shelter homes, counselling, medical, financial, legal assistance. A duty is cast upon the Protection Officer to enable a woman to access these agencies.

There is a fear amongst women's groups that the Protection Officers might replicate the existing bureaucracy and create more problems. But given the existing social, political and economical inequalities & barriers for women, we need state institutions to facilitate rights & remedies for women. We therefore need to put in place certain safeguards, like criteria for appointment & qualifications of such protection officer to ensure accountability. Once the Bill is enacted, Lawyers Collective has plans to undertake

judicial training, training of the law enforcement agencies and lawyers. The Bill also stipulates that the state should put in place mechanisms for dissemination of the provisions of the Bill.

The drafting of the Bill has been a tremendous experience in the arena of consensus building, mobilising public opinion, lobbying and law making. Lawyers Collective is aware that its process of consultation might have been insufficient, but one also needs to note that in other countries such as South Africa the task of law reform is shouldered by the Law Commission which is funded by the state.

There has been a strong backlash against Section 498A of the Indian Penal Code. It has been alleged that the section is used vindictively by women against their husband and his family. In this context it is important to understand the patterns of violence in the cultural context of India. The importance of marriage and family is ingrained in women from birth and because of this socialisation women are extremely reluctant to disrupt the family structure. In case of any problem a woman first consults with the informal channels of mediation – family members, relatives and friends. Recourse to law is the last option when the marital relationship has completely broken down. In such a situation it is true that women have used section 498A, as a tool for securing property settlements in their favour. But it also needs to be recognised that there is no other space in law that allows women to negotiate a settlement from a position of equal power. Women's groups have to be prepared for a similar backlash against the Domestic Violence Bill.

✦ Panel presentations by PLD partners

PLD partner, Mariette Correa chaired the panel presentations. Mariette is a founder member of Sandarsh, a research & resource organisation in Goa.

☞ *Protecting the girl child within child rights framework* *Albertina Almeida, Legal Resource - Sandarsh*

Albertina mentioned that various groups working with women and children were experiencing frustration as law did not recognise the gravity of the offence of child sexual abuse and provide adequately for it. Also the legal provisions applied to child abuse cases were highly inappropriate and insensitive to children. Thus there is a need to draft a new law.

Initially the focus of the action research under the PLD partnership was to draft a comprehensive law encompassing substantive and procedural provisions with respect to children. But with the help of PLD's inputs she realised that this was a vast area and given the constraints of time and resources, she decided to focus on child sexual abuse.

Under this action research, the issues of concern were

- The definition of a child. There is a need to synchronise the age of a child under all laws. There are many inconsistencies in the present laws. For example, the valid age of marriage of a girl under the Hindu Marriage Act, 1955 is 18 years, while the age of valid consent for a girl under the provisions of rape in the Indian Penal Code is 16 years.
- The offence of incest. The offence is committed on a child by a person in a relationship of trust and dependency and by its very nature requires very sensitive handling.
- The offence of paedophilia. This issue involves a scrutiny of laws of extradition, the policies promoting tourism etc.
- The different forms of sexual abuse. The present law recognises only rape, but there are many other forms based on the experiences of the children that need to be included.
- The need to map the arena in which child sexual abuse can occur. For e.g. within the family, institutions, street etc.
- The existing agencies and instrumentalities such as the courts, police, public prosecutor, doctors, forensic experts, lawyers, victim assistance units, service providers and others
- The need for changes in existing procedural laws and systems so as to make it conducive for the child to tell her story.
- Budgetary allocations for the systems to work effectively.

There is no existing law on child sexual abuse. All the laws that exist are very paternalistic in nature, which assumes that the child is a weakling who needs to be protected. The fact that children are human beings who have certain rights is not taken into consideration, despite the fundamental rights enshrined in the constitution. The constitution remains a political rhetoric unless it is translated into systems and provisions of law. The Indian Penal Code addresses child abuse in the provisions of rape, kidnapping, eve teasing, violating the modesty of a woman, buying and selling of minors for the purpose of prostitution. The reality is that many times complaints are filed under these sections, but the police do not take any action. There is no punishment for police inaction, except temporary suspension. The Child Marriage Restraint Act 1929, is hardly effective, whereas The Immoral Traffic (Prevention) Act 1956, assumes that if a child is found in a brothel, she is a prostitute. There are no specific civil laws on children.

The focus of the action research was to draft a law that would remove the existing inconsistencies and gaps in substantive and procedural law.

☞ *Boundaries of Community and State support* *Madhavi Kukreja, Vanangana*

She started her presentation by recounting the experiences of engaging with the community and the state, during the Ila Pandey case in 1999. In this case, Ila Pandey

complained that her husband, Jagdish Pandey, a government Officer, was sexually abusing their daughter. She had also suffered years of domestic violence. The single objective before the organisation was to help the mother rescue her three daughters from her husband's house. Though Ila Pandey did not have any economic security yet she took the step of leaving the matrimonial house because her daughters were terrified of their father.

One morning, when Jagdish Pandey was away at his place of work, Ila Pandey with the help of social activists, left the matrimonial home together with her children. A statement was filed in the Magistrate's court stating that she was taking away her children voluntarily and not under pressure. As Jagdish Pandey was an influential person in the town of Karvi, the First Information Report (FIR) against him for sexually abusing the eldest daughter was not filed in Karvi but in Varanasi, where of Ila Pandey's parental home was located. The District Magistrate in Varanasi was requested to record the statements of the mother and the daughter. During the course of investigation, the child had to narrate her story innumerable times in front of various officials. After six weeks Jagdish Pandey was arrested. He however filed a FIR against the social activists on charges of kidnapping his children and theft. Since the offences alleged were non-bailable in nature, the activists had to file for a stay of arrest in the High Court. Facing threats to their life from Jagdish Pandey and the community, the activists had to move from one town to the other. Finally, they had to confront the question about how long could they continue to be in hiding? There was a need to confront the issue openly.

A strategy was planned. The women's groups got together and mobilised a campaign on the issue of child sexual abuse. A week-long dharna was held in Karvi, and through street plays, songs and discussions, a dialogue was initiated with the community on domestic violence and sexual abuse in families. The dharna culminated in a public hearing in Lucknow on child sexual abuse. When this case was highlighted the community had become very hostile towards the organisation, and had accused them of breaking family ties. The process of dialoguing through the media, dharna and public hearing did help reduce this hostility.

As part of the strategy, an appeal was also made to the National Commission for Women (NCW), who enquired into the incident and gave certain positive recommendations. But the accused, Jagdish Pandey filed another false case, this time, against the members of the NCW and the activist accompanying them alleging extortion & intimidation. Though the police did provide security to the organisation for six months, yet two years later all cases filed against the organisational workers are still pending. The trial of the child sexual abuse case is due to begin and the child would be forced to relive the trauma again and again while giving evidence. Also, the existing law is not designed for child sexual abuse, so one does not have much hope of getting justice through the law.

Apart from the law, Vanangana encountered another barrier from all institutions – the judiciary, police, National Commission for Women, the community in addressing this case. There was a general sense of disbelief that an upper caste government officer could commit such an act. There was tremendous polarisation within the community because of

the fact that the man was, an upper caste. The District Magistrate questioned the need for going public with the matter, as did all the stakeholders in society. For them, protecting the institution of the family and the future chances of the girl's marriage were more important. The organisation faced a tough battle tackling disbelief about child sexual abuse. To discuss the issues of patriarchy, women's rights vis a vis protection of the family and the honour of the community, a big campaign was organised.

One question that still rankles is – have they gained anything through this case and campaign. Ila Pandey is living in her parental home, but her own community still does not understand the need for taking up this case. The two elder daughters have gained admission in a residential school with the support of women's groups, but the father has filed an application for custody of the children. Vanangana suffered severe backlash by way of false criminal cases and community hostility. These legal battles will have to go on.

Madhavi shared a few other cases that Vanangana had dealt with, to highlight the position of women in the community and the ways in which law looks at women:-

- A woman had a very bad history of domestic violence. In frustration one day she jumped into a well with her four children. The children died but she lived. A case of murder was filed against her. For the past one and half years she has been languishing in jail. The community and her family does not want her back. The state does not know about her existence. The organisation is trying their best to secure bail for her, but it is a tough battle ahead.
- A woman had tried to commit sati, but with the timely intervention of women's groups she was prevented from doing so. Five days later when she was travelling in a train, she was flooded with questions as to why she did not commit sati. The community was hostile that she did not do so. She has lost their support and is confronted with the question as to what does she do now?
- An upper caste woman came with a history of domestic violence to the organisation. She had no courage to live on her own so the only alternative before her was to return to the abusive matrimonial home. After mediation there was a settlement with the husband's family and an agreement of the parties was signed on stamp paper. The social workers as part of follow up, met her every ten days. One night she died. There were lots of marks on her body indicating serious injuries. The husband got bail after one month. The defence lawyer tried to play down the injuries on the body saying that the organisation was making hue and cry about a simple death.
- A woman was shot at by her husband. She was hospitalised by her in-laws who then helped her file a FIR. Her parents did not come to visit her because then they would have to incur the medical expenses and the cost of hospitalisation. Her in-laws helped her to prevent it becoming a case of murder.

Years of experience of dealing with such cases has made Vanangana realise that:-

- A woman has no space of her own, other than the parental home, matrimonial home and a few shelter homes run by the state. The state run shelter homes are no better than jails and sometimes the women are forced into prostitution by the authorities itself. So if a woman wants to get out of an abusive domestic relationship, she has very few options before her. NGOs can offer space and jobs to some extent but can not accommodate every woman. In the last 4 years the organisation has recorded 140 deaths of woman, all because the woman had no alternative space for herself.
- Nobody believes the woman and her story nor does anybody try to understand her feelings. She has to carry the burden of honour all the time. A woman is expected to compromise in every situation. The values that are taught to her since childhood and is internalised by her, demand that she be forgiving and bear every kind of pain and humiliation silently.
- A woman who leaves her home is labelled to be of bad character and her children are deemed unworthy of good marriages. There is a general conception that something must be wrong with the woman if she had to leave her house.
- There is a big question as to whether state support structure has the capacity to respond to crisis. The number of protection homes in the state is very few, and there are no family counselling centres.
- Patriarchy governs the lives of the women. Laws, which give rights, have little value when the law implementing and enforcing agencies are dominantly patriarchal in nature.

The state and the community want to invisibilise violence against women. Except the police no other government department wants to take ownership of the issue and take effective action. They don't want to address it because then they would have to acknowledge that the family is not the safest place for the woman. Even when the community does respond one is very suspicious about the motivation behind their support – caste politics, or interest of the woman?

One strategy of raising these issues has been to engage with the community through the medium of street plays. The play – 'Give Me an Answer', does raise consciousness for a few hours but still there are many dilemmas. Sometimes to maintain support we need to show a victory to the community. But the question is at what point will the community think we have won a battle? In the Ila Pandey case, if the case of child sexual abuse is lost in the court, will the community still think we were right in raising the issue? The father /abuser has been reinstated in his government job and has applied for custody of the children. On the other hand, the mother is not accepted by her own family. These are difficult questions to resolve.

Politics of mediation

Aradhana Nanda, Friends Association for Rural Reconstruction (FARR)

Aradhana Nanda works with Friends Association for Rural Reconstruction located in the Kalahandi District of Orissa. They work with the tribal population living in the forests under very difficult conditions, practising shifting agriculture. Illegal alienation of land has left a large majority of the tribal population landless. Alienation of land is made possible because there is no proper demarcation of revenue, forests and reserved forest land. There are many cases where the tribals have been cultivating the land since generations but suddenly the forest department declares the land as reserved forests. Law prohibits the transfer of tribal land to non-tribals, but illegal transfers are common.

To discuss these issues the NGO organised a number of legal awareness camps in the area. People discussed their problems and many cases were identified and selected. In some cases the organisation helped the tribals to go to the court for enforcing their rights and in some, the tribals were organised forcibly re-occupy their land. A number of cases have been identified where the disputes have arisen because of unclear demarcation of land. These disputes were taken to court for adjudication. The courts are situated at an average distance of 60 - 70 kms away from the homes of the tribals, and in many places more than half the distance has to be commuted on foot. Following up a case is very difficult for them. Sometimes police comes, with handcuffs to arrest a tribal. Being handcuffed means a loss of prestige, so the poor tribals pay bribes to the police just to avoid this, not knowing that handcuffing is allowed in law only in very special circumstances. Some cases are settled in Lok Adalats.

Now they are encountering another grave problem – the state is acquiring land on a large scale for the purpose of development, more specifically for the purpose of bauxite mining. It is a big dilemma before the activists – how to stop the state from doing so? How to organise people against state policy?

In Kalahandi district the society is basically feudal in nature. Bigamy is a common practice. Government officers posted in the area marry local tribal women; sometimes minor girls, and abandon them when they are posted to another place. Under the influence of other areas, dowry is also emerging as a problem.

A dispute resolution forum, Shakti Cell, has been initiated from the District Collector's office. The cell members sit together every Saturday and hear the cases brought before them. The main objective of the cell is to act as a pressure group. There are around 12 members, comprising of senior advocates, women activists and public-spirited citizens. The cell has dealt with around 600 cases in the last five years, 50% of which relate to bigamy or issue of maintenance. The cell is able to resolve many cases through negotiations and mediation between the parties. But at times even when the cell is able to negotiate a settlement, one is not satisfied with the outcome. For example there was a case in which the boy and the girl belonging to different castes had eloped and got married to each other. Later when they returned to their village the communities refused to accept their marriage. The boy eventually left the girl to return to his family, but the

girl's family would still not accept her back. The girl was on the verge of starvation when she approached the cell for help. In this case, after mediation between the parties there was a settlement, according to which the boy's family agreed to give some financial support to the girl. The boy got married again but he still maintains a relationship with the girl, his first wife. Clearly, the rights of the girl have been compromised here, but there was a question of survival for the girl, with no other viable alternatives. Similarly, in bigamy cases there is no other option but to negotiate that the first wife also be taken care of and sometimes in the same home as the second wife. One recognises that such settlements do not really empower the woman but atleast are able to help her live. There is a big dilemma in such cases, because the society does not ensure security and dignity to single woman

Registration of marriages

Minati Padhi, Institute for Women's Development

Institute for Women's Development located in Behrampur, works with women and children. A baseline survey conducted by the organisation in that area, showed that women had no access to credit, health, education, and government facilities. The first step of the organisation was to bring the women together by creating self-help groups. This also helped to build a rapport with the community women. Interaction with them surfaced that bigamy, desertion were the common problems. Legal awareness camps were organised and a mediation cell was also started at the organisation centre. In the beginning it was difficult, because the men refused to be part of the mediation process and it was a huge struggle to get them involved. In this mediation centre two cases were reported which prompted the organisation to advocate for registration of births and marriages at the Panchayat level: one, in which a thirteen-year-old girl was raped by her brother-in-law and had become pregnant, another where a married woman with three children was thrown out of her matrimonial home. Neither of these women had any rights. The girl in absence of proof of age could not establish statutory rape, and the married woman in the absence of any proof of her marriage was denied the right to residence and maintenance.

The organisation engaged with the panchayat on the issue of registration. A discussion was organised on the Panchayat's power to register under section 65 of the Orissa Gram Panchayat Act, 1965. This provision prescribes registration of deaths, births and marriages occurring within the Gram Sabha. This provision had not been implemented and the organisation decided to take the initiative to enable its implementation. Lobbying was done with District Panchayat officer who requested the District Collector to look into the matter. The District Collector had to be convinced and a circular was issued to all the panchayats, directing them to register births and marriages. But instructions were not given to the Block Development Officers in this regard and the organisation had to again lobby with the required administrative officers for the issue of directions. Although, the official paper work is now complete, but the Sarpanches need adequate training to facilitate implementation of their powers. The organisation is involved in this process in a few blocks of the District without any support from the state.

In the discussion that followed a question was asked about how they were planning to handle registration of child marriages? Minati said that it was an issue that needed to be addressed because in the absence of any records there is no proof of age. For the system to work successfully, registration of births and marriages had to happen side by side. One was aware of these problems, but this was only the beginning and they were hoping to involve other groups to address such complexities.

SESSION III – POLITICS OF LAW AND SOCIAL ACTION

The rights of the disempowered sections of the society remain largely at the level of rhetoric. The challenge is to transform the formal equality guaranteed by the Constitution to substantive equality for all. This session attempts to reflect on the use of law in supporting struggles of disadvantaged groups.

Prem Kr. Sharma, an advocate in the Rajasthan High Court and member of People's Union of Civil Liberties, and Supreme Court lawyer, S. Muralidhar were the panellists in this session. Geeta Ramaseshan chaired the session.

☞ *Prem kr. Sharma*

Laws have always been used as an instrument of preserving the status quo in society and only very recently the focus has shifted to empowering the underprivileged. In using law to support struggles of disadvantaged groups, the first question that arises is how does one identify these groups? The following can be the basis;-

- Economic condition - landless, jobless, workers, women
- Social status
- Regional factor – tribals in remote parts of the country.
- Culture - as cultural differences give rise to different behavioural patterns, that can promote feelings of superiority or inferiority.

Next is to identify the laws, which cater to the interests of the disadvantaged groups and reflect whether they really address the concerned issue. Most of the existing laws are not grounded in any research and are ad hoc in nature. The Muslim Women [Protection of Rights on Divorce] Act 1986, was enacted after the case of Shah snowballed into vote politics, moving away from the focus of women's rights. Similarly an incident of sati in Rajasthan resulted in the enactment of Commission of Sati (Prevention) Act, 1987. 40 years of experience in dealing with labour cases suggest that in real terms all those years of litigation has been a complete failure, because the existing system does not ensure realisation of rights by the disempowered. The Industrial Dispute Act 1947, mandates that labour disputes should first be resolved internally at the level of the industrial organisation itself. In case of failure, the labour tribunals should be approached. An award of the tribunal can be overturned on an appeal and after that a second appeal. Till the time the appeals are heard and decided, the award cannot be implemented. A lengthy recovery process follows the final award. A worker who filed a case in 1971 died in 2001, & the case is still pending in the Supreme Court. The Supreme Court finally dismissed the appeal on the ground that the man was dead and could not be reinstated in his employment.

Given this position the task before social justice lawyers and activists was to make the system more sensitive to the needs of the disadvantaged. Thus the questions that needed examination were: how to make the law effective; what new laws need to be enacted and how are they to be implemented.

For an effective system the implementing machinery had to be strong. For eg. The mandate of the National Human Rights Commission is to protect human rights but in reality it is a toothless body. Commissions for women, children, backward classes exist but none of them are effective. These commissions have been created after years of struggle on part of the movements, and should belong to them and not be another instrumentality of the State. It is a point of concern that the proposed bill on domestic violence gives more powers to the police. Given police insensitivity, they cannot be trusted as the implementing machinery.

In India where the majority of the people are poor and weak, the need is to have systems that are rooted in their context and life experiences. The prevailing adversarial system cannot and has not worked. The traditional community based disputes resolution systems are also problematic. There is a need to research on and explore alternative structures, such that the poor who turn to the system as a last resort, are given relief and justice.

⇒ *S. Muralidhar*

Law has been seen as a tool of oppression ever since the days of the freedom struggle, in which there was large-scale mobilisation against unjust laws. The governing class tends to use law for furthering its own interests. It is very hard to imagine that a person on the street would look upon a law court to come to his assistance, because the experience of implementation of law has left strong negative impressions.

To understand the politics of law, one has to appreciate why laws are made, for whose benefit they are made? How does the law distribute power, what are the systems of control? And whom does the law empower? Law is basically used as a negative tool by the state to empower itself and dis-empower the affected people. The Land Acquisition Act, 1894 essentially empowers the state to take over the resources and simultaneously dis-empower people from controlling resources. The state justifies its authority to do this by referring to a greater law – the Constitution. Thus most issues of people's struggles involve understanding of the interconnection of the Constitution and law – be it customary law, executive order, court decisions, statutes etc.

In the last two decades, most of people's struggles have sought to be projected in the realm of law through a devise of constitutional litigation or the Public Interest Litigation [PIL]. We have inherited most of our statutes from our colonial rulers. These laws are not empowering as they are not people centred but state centred. The central theme guiding these laws is that the state is a parent who takes decisions for everyone. The question is how to challenge this network of laws, which does not empower the people? One needs to look to the basic law, the Constitution, which provides that if a statutory law does not

conform to the values enshrined in the Constitution, the court can strike it down. In Rajasthan, the law provided that at the time of famine, people employed for relief work were not to be paid minimum wages. Under the constitution every person has the fundamental right not to be exploited by being forced to work in subhuman conditions. The Supreme Court struck down the law as bad law.

This device of questioning statutory law was started by judiciary itself. The superior judiciary was aware of problems of the system, problem of access and affordability, and it designed a system to allow anybody to raise a community problem in a manner not rigidly trapped in procedure. Thus PIL system was a creation of the judiciary, not a demand of the people to which court responded. Over the last 22 years PIL has undergone great transformation, from the days it was used as a tool for securing justice for the common people, to present times when it serves as a forum for arbitrating power struggles between different classes of people. PIL is beginning to be controlled by certain judges. It has ceased to be based upon arguments presented to the court, but is more influenced by the dominating interest of the time. There is no certainty of what might be the outcome in a PIL. There have been cases where a cause is carried to the court by a certain class, and the court has used the space created by PIL to give benefit to a class opposed to the interest of the affected class. Lawyers in social action are beginning to realise these limitations of PIL aiding people's struggles.

People have to use other tools of engaging with law - campaigns, drafting alternative legislations, mobilisation of public opinion, public hearings etc. The advantages of these tools are that the people themselves can structure its design and content. Another strategy to draw attention is - by courting arrests on a mass scale. Encroachment is an effective tool to highlight the problem of shelter. In the framework of legality versus illegality, sometimes the fact of taking an illegal stand assumes more significance. At times one has to take the risk of being in contempt of court to highlight a struggle. One needs to realise that there are certain minimum, core rights that simply cannot be compromised. To assert these rights one needs to strategize. In such a struggle if there is nothing further to loose, courting arrest might be the best option. This strategy is working effectively in the Narmada Bachao Andolan.

It is true that state is pushing activists to limits of legality. The 'pani panchayats' in Rajasthan, where people are controlling their own water resources are fiercely resisting the initiatives of the state to take over. In the right to information campaign, grass roots struggles were co-opted into the legal system. In both these experiments the strategy was to get the system to approach the problem as it exists. In the public policy paradigm of the state, acquisition of land is taking place in the name of development. The reasoning is that that some people have to suffer for the larger good. Efforts have to be undertaken to re-position the law, such that development does not happen at the cost of Human Rights. State policies should also account for the cost of Human rights violations. Statistics show that the cost of development in term of violation of human rights is enormous and it is a myth that development will benefit the greater masses whose rights are being violated. The aim is to not only demystify law but all these components, redefine and develop a new language. In case of slums, the encroachments happen over a period of time. The

slums provide a tremendous workforce and a market for consumption goods. This so called illegality is important for the state. And the state needs to be told that respecting the rights of the slum dwellers should be high on its priority list.

Law is a tool to be used, but when one uses it, one finds the system defective. One needs to acknowledge the defects and then work towards removing them. If that is not done, people are prone to use extra legal methods to make it effective.

28 years of history of PIL shows that PIL has not really been a success. On reflection it seems that there is something amiss in the rulebook itself and it needs to be changed. Law is an important site of struggle and one cannot afford not to engage with the law. There is a need to understand and reflect upon the strategies of engaging with law, state systems, legislature, and ways in which these struggles are made people centred.

Another important function of law is to understand the systems of accountability. We cannot forget the essential tenets of democracy – right to dissent, protest, equality, human dignity and systems of government redressal. For example, the right to food is a basic human right. If people are starving and the food stocks are overflowing, people have the right to protest and attacking a godown is justified. In this context can food riots be called illegal? There is a need to redefine illegality and reconstruct it in terms of the Constitution. We need to redefine our own struggles to understand the different methods of dealing with the state and state structures. Similarly In advocating our rights we should not completely ignore the rights of others. It is a huge challenge before us to engage with other struggles and work to each other's mutual benefit.

SESSION IV

COMMON STRATEGIES FOR USING LAW IN SOCIAL ACTION –
LIMITS AND POTENTIAL

As activists and alternative lawyers we apply various strategies to integrate law into social action, such as legal education, training paralegals and giving legal aid. The objective of this session was to examine these common strategies, the existing models, their limits and the perspectives guiding them. The session was chaired by Shomona Khanna.

☞ **Rights Education**
D.J. Ravindran

In the early years of independence the paradigm adopted for ensuring development, was that of modernisation. Consequently the model of education was designed so that it would be complimentary to the model of development itself. But over the years this model of development was found to be wanting and was critiqued as it marginalised the disadvantaged sections of the society. The critique gave birth to an alternative model of development, which was participatory in approach and projected the people as subjects and not objects of development. Education became a tool for promoting development - a tool for mobilisation, conscientization, and empowerment. The concept was not to impose learning, but to respect the life experiences of the people and promote education that empowers them. The objective of dissemination of laws also changed from – law for social change, to law for empowerment. However in practice this ideology was translated as legal literacy programmes, or transmission of laws and procedures by lawyers. This contradicted the idea of empowerment and conscientization.

The legal literacy programmes could not but be called a success yet the people received the information on laws enthusiastically. The question was whether the design of such programmes worked towards empowering the people? There is a need to rethink this. The guidelines of rights education for advancing social change can be summarised as

- Role of a lawyer needs to change from that of a transmitter to a facilitator.
- Promote a critical, contextual understanding of law and engage in a dialogue to come up with different strategies of change.
- Equality and democracy must be the basic values behind any education model, for knowledge cannot be imposed.

Ravindran concluded by saying that the play – ' Give Me an Answer' , scripted by the Vanangana team captures the values of education as it makes people critically think, engage with the problem and come up with solutions. It raises many questions but offers no ready solutions.

➤ **Madhu Mehra**

In and of itself, legal literacy conveys the need to fill the gap in the knowledge of the target group. It suggests that the source of the problem arises out of the ignorance of the target group. This has been echoed in different stages of our work, that the problem lies in people, women, tribals, 'being unaware'. This can lead to the conclusion that information giving itself facilitates the access of the target group to the state justice delivery systems, - a process that has the capacity to solve problems, to bring them on par with the aware, civilised, privileged groups. The assumptions underlying this approach are that -

1. Deficiency lies with the target group, as they are not aware.
2. Law upholds rights of all - that it is just and it delivers.
3. It responds when activated
4. It can bring about social change.

There is this presumption that law is an autonomous body of knowledge de-linked from other disciplines. Hence, legal literacy is treated as an independent technical training to be delivered in a fixed time frame, which can be, but does not need to be tied up with different community interventions. It places a trainer in a position of superior knowledge and reproduces the hierarchy of client - lawyer relationship.

A better approach is one that and recognises laws role in upholding the status quo. Law is based on a notion of individual rights and does not easily address group concerns. Access to law is conditional upon awareness of rights, resources and mobility and often costly, long procedures negate the effects of the resolution, if any. With this awareness as the starting point, one would introduce law much later in the process of mobilisation. Here, knowledge of law would serve to deepen understanding on its politics, and how its contributes to people's dis-empowerment.

Thus before embarking upon a programme of legal education one needs to consider;

- When does law comes in?
- How does it come in: as legal literacy or as part of awareness generation on power inequalities and strategies of struggle?
- As an independent technical training or as part of a longer sustained dialogue and work?
- Can a lawyer undertake this exercise alone - or does it require multiple actors and organisational structure for effective working?
- What linkages it has to other kinds of resource development, such as documentation, setting up intervention systems, training of paralegals?

These questions have to be examined in designing a programme of legal awareness and education that would advance the rights of the people.

☛ **Paralegals** **Nupur, Centre for Social Justice**

Social justice lawyering is a process that involves lawyerization of non-lawyers and non-lawyerization of lawyers. A paralegal with skills in behavioural sciences and lawyering is essentially an interlink between the community and judicial system. Paralegals have an understanding of the community issues and can articulate them within the 'just – unjust' paradigm. They have knowledge of the legal system and know how to use law strategically, and give a legal perspective to social issues. They do not function with the myth that law alone can bring social change, but work within the limitations of what the system offers. They are also able to give information on law to the community, give inputs in dispute resolution and monitor impact of law.

Prevalent models of training of paralegals:

1. *Indian Social Institute model* – this comprises of giving information capsules, which may be issue based or generic in nature. The problem with this model is that, people go back overloaded with information but do not know how to use it in the field.
2. *Learning on hand* – This is essentially need based and by nature not systematically designed.
3. *Systematic long-term process* – this model combines application and information. This is the module followed by the Centre for Social Justice [CSJ]. The different approaches under this model are as follows:
 - Training of volunteers from the community, rather than from the organisation. The limitation of training organisational workers is that they are often caught up in the work of the organisation. The advantage of training community people is that they have community acceptance and see more relevance in what they do.
 - Training of organisational workers on special issues. The organisation sends two people to CSJ to receive training. The problem with this approach is that the organisation may send any two people for exposure, who may not have any idea how to use the training received further in their work. To overcome this one needs to effectively design a programme to ascertain whether the organisation is interested, has the capacity to work with law and the kind of leadership it has.
 - Training individuals of an organisation on an issue of their interest. The advantage with this approach is that the trainees are already at a certain level and the organisation has interest and willingness.

Learnings of CSJ from its experience of paralegal training –

1. The training has to be contextualised to the background of the participants and to their issues of interests. Otherwise it is difficult to retain the participant's interest and the training is not a success.
2. The training should include a practical or field component. Field exposure, like visits to the courts, police stations are very important. The objective is to familiarise the participants with these structures so that they are able to overcome their fear and hesitance to access them.
3. It should focus on building attitudes and skills, skills in negotiating, dealing with a case of trauma, as well as drafting documents.
4. The training should integrate the role of the lawyer in the work of the organisation. Mahila Samakhya in Banskantha district, wanted to train paralegals to resolve disputes in general. But the women trainees wanted to integrate their learnings in the course of their work and the training resulted in establishing a nari panchayat for the purpose of settling disputes and arriving at amicable solutions. The paralegal training given to some women gave them confidence and they were able to make space for themselves and gain acceptance in a community, which earlier did not support them.
5. The trainings should be need based and not generic in nature.

Centre for Social Justice has tried to address the issue of sustainability of paralegal work by being cautious in selecting paralegals. Often when a paralegal gets legitimacy from the community it helps her to see meaning in non-material benefits. But in such cases a lot of effort has to be invested in developing that person. Many times the paralegals themselves make known their inability to work at particular times of the year as in the agricultural season. One needs to recognise these concerns. Another strategy is to charge for the paralegal services rendered, wherein a percentage of it goes to the paralegal and the balance to the organisation. But it is a reality that many times paralegals trained by an organisation, in search of livelihood get employment in organisations where there is no scope to use their training. One has no choice but to accept it and look for alternative strategies to prevent it in future. Paralegals are also exposed to backlash from the powerful sections of the society, but every activist working for social change faces that risk and it is unavoidable.

⇒ **Aubrey McCutcheon, Ford Foundation**

Paralegals is a subject which intersects many issues connected with using law as a resource in social action. It stresses on the fact that law is not the prerogative of only lawyers. In the context of law serving the people, paralegals engage with the community to provide a range of services. The different roles a paralegal can perform are

- Teach – human rights education or legal literacy
- Serve – give people services
- Monitor – follow up on cases, monitor its status, feed information to organisations doing alternative lawyering.

- Document actual instances of violation of human rights, violence against women, deprivation of rights. This documentation can be used by a lawyer.
- Give evidence in courts
- Organise, mobilise social movements

To facilitate the performance of these roles, paralegals need to be supported by an active movement, community involvement and social justice lawyering. A paralegal can work either as paid staff in NGOs or as volunteers living in the community. The advantage of a community background is that there is a better understanding and appreciation of issues.

He shared examples of paralegal structures in different countries. In Detroit USA, while he was in school, paralegal work was part of the school programme, called equal justice programme. Students were assigned as paralegals to monitor rights violations in the courtroom. The information gathered was passed on to lawyers. In the United Kingdom, paralegal services are part of a state programme under which community law centres are set up. In South Africa, under the street law programme, law is carried to the villages and discussed in very informal settings. During the period of racial discrimination, paralegals helped trade union and people's groups to organise the anti – apartheid movement. They created awareness about how to resist the police and documented police atrocities for the civil liberties movement. In the post apartheid period the paralegals are attempting to carve out a new role for themselves in partnership with the government, university law clinics and legal aid NGOs. At present times vast areas of the country have no legal services and paralegals are focussing on filling this gap. One of their functions is to help in accessing papers and files from the administration with regard to the services the client groups are entitled to. In Kenya, the Legal Resource Foundation group, uses the radio to give legal information. This service is managed by paralegals. In Namibia, audiovisual media is used to disseminate information since not everyone is literate.

Women's groups work together with the government department of social justice in China. Paralegals give advice and assistance to the government officials. The Philippines organisation SALIGAN, has paralegals who identify cases for legal intervention by lawyers. This is facilitated by specific, indepth, sustained training of paralegals. In Chile paralegals act as organisers and file petitions, gather and present evidence and give a range of supporting services. In Bangladesh, paralegal groups are involved in dispute resolution and mediation is conducted on the basis of human rights rather than traditional values.

At present paralegal institutes are working on setting standards of paralegal training and issue certificates to skilled paralegals. But a lot of work remains to be done in this area and the training modules and methodologies need to address the questions – as to what it means to teach a disadvantaged person about rights? Does mere knowledge help in empowerment? Does legal literacy facilitate access? It is only when we address these questions would we be able to visualise the role a paralegal can perform in facilitating access to justice.

➤ **Legal aid and counselling** **Prem Kr. Sharma**

Under the Rajasthan free legal services scheme, a person seeking free legal aid can apply to the committees that have been set up in the different courts. However, because of scarcity of resources the large demand for free legal aid services remains unsatisfied. Out of the budget allocated to the scheme, a large amount is spent on organising meetings and seminars, while expenditure on actual legal aid is very little.

Legal aid and counselling is a comprehensive concept which includes engaging with an individual or the community till the stage they are equipped to assert their rights themselves. Thus whenever there is a dispute or violation of rights, the affected person(s) have to be made aware of their rights, motivated and mobilised so that they can assert their rights. At the same time they must also be made aware of the limitations of the law and the legal system, and the complicated procedures involved. One should not lead them to have any unrealistic expectations.

It is always not necessary to access the courts for realisation of a right. Going to the court for remedy should be the last resort. First, attempts should be made to get relief from the place where the right originates – administrative departments or a law enforcement agency. Non lawyerization of lawyers is then a necessary part of the process. For example there was a case where construction workers gathered everyday in the morning to sell their day's labour. They were employed by contractors, who did not pay them fair wages. The workers organised themselves into a union and raised awareness about the right to minimum wages. Enforcing this right through the courts would be a lengthy process with an uncertain outcome. So the union first approached the employer and demanded their right. This approach worked and so far they have not had to go to the courts, though there is always a risk of use of force and a legal way has to be eventually found. Thus the ultimate aim should not be that the client group gets relief, but to enhance their capacity such that they are able to seek redress themselves, the next time their rights are violated.

It cannot be expected that a lawyer will engage in legal aid and legal counselling at the same time because personal experience reflects that relationship of a lawyer and a client is very different. It is the work of social institutions and activists to provide counselling. The issue of resources to engage in such work has to be given due thought. A lawyer can ask for a fee, but legal counsellors, paralegals don't have the legitimacy to do so and in such a situation the question of sustainability of such interventions arises. In China a new model of legal aid has developed, where lawyers practising in firms work alongside non-lawyers who help them with the pre litigation processes. The fees are charged by the firm, thus ensuring the sustainability of legal aid services.

It has to be remembered that justice is a social and not a legal phenomenon. Nor is it the field of lawyers only.

The legal aid movement in Tamil Nadu has been stronger than as compared to other states. The State Legal Aid Board was registered as a society in 1980s. It received funds from the state government and was modelled along the lines of the Legal Services Act, with the Governor acting as a patron and the Chief Justice of the High Court as an advisor. It was a time when activist judges took interest in legal aid activities. At every district, a legal aid board was created and strategic devices like letterheads with District Judge's name as patron/advisor was printed. The police and the prison authorities responded positively to this system.

Under the system a duty counsel was present in every prison and two lawyers in rotation met the undertrials, collected information and presented it to the court. The impact was that overcrowding in the prisons decreased. Information about prison standards could be collected, PILs and complaints filed. The prison authorities responded to this increased accountability by denying access to the prisons beyond a certain point. This was a setback to the movement, but because access to prisoners and undertrials were important, compromises were made. A similar kind of system was adopted in the juvenile courts, and whenever there was detention without supporting records, lawyers would intervene. PILs were filed pertaining to environment, bonded labourers, victims of rape and other issues of public interest.

When the legal aid movement become strong it started facing resistance from the other lawyers and even the judges. This was manifested in dismissal of bail petition in legal aid matters. The lawyers felt threatened because the usual practice followed by them in motor accidents cases was, to receive directly the compensation cheques from the insurance companies and then remit a fixed percentage to the client or the victim. This practice was stopped after it was brought to the notice of the court, directing instead the payment of compensation cheques in favour of the Legal Aid Board. Such resistance culminated in the government's refusal to give funds. However it resumed funding after two years under an order of the court. After the Legal Services Act was notified in Tamil Nadu, the system has been brought directly under the control of the state government. Since appointments to the State Legal Aid Board are made by the government, it has affected its freedom to challenge the government's policies in the courts of law.

The existing legal aid system operates within the structures of the court and judiciary – and there is scope of making it more innovative. Some schemes like the Lok Adalats are very successful in settling accident claims, but nonetheless limited for accidents involving government vehicles, which are not insured. These do not fall within its purview. Lok Adalats also offer the formal space for negotiating settlements. This has helped to ease the pressure of lawyers who are expected by their clients to adopt a very combative opposing role in the courts. To explain, a client is usually very hostile to the suggestion of an advocate that the dispute be settled out of court through mediation. But strategies such as Lok Adalats gain easy acceptance. There was a case where a cow had strayed into upper caste land. The upper caste man refused to release it and the owner applied to the Legal Aid Board. The Board requested the District Judge to visit the house

of the upper caste man. The man was so grateful about this visit that he released the cow immediately. The other side of the story is that women have complained about the Legal Aid Board's stress on mediation – in which process the women are often coerced into reconciliation with their abusers.

The legal aid movement is now at cross roads. Under the new Act all issues of public interest are to be handled by the central authority. The state boards do not have the powers to confront the government. But the movement is hoping to use different strategies to challenge existing inequalities in the society.

Counselling **Urmila, Vanangana**

The word counselling is often used synonymously with mediation, but they are inherently different processes. Counselling refers to the engagement of the counsellor with a client on a one to one basis. Their interaction is confidential and the process does not involve any third party. On the other hand mediation involves carrying the story of the woman to her community and family. A counsellor enables a woman to, narrate her story, listens to her needs and gives her suitable suggestions. The counsellor needs to pay attention to the seating arrangement, the language and the nature of interaction. A counsellor should not be judgmental, or impose personal opinions and values on the client, but help her to explore the various alternatives before her and come to a decision of her own.

In their counselling process Vanangana tries to make the women aware of the patriarchal framework within which the structures of family, community and law operate. In the alternatives posed, the option of resisting patriarchal structures is also included. There is also the need to tell the client about the gender bias within the legal system and what one can realistically expect from the system. This becomes necessary when a victim of rape approaches the legal system, which forces her to relive the trauma of sexual assault again and again. One has to make the woman aware of the fact that there is no space for her self respect and dignity otherwise the disillusionment with the system has a very negative effect on the personality of the victim.

Points to note:

- Counsellors should behave in the woman's story & affirm her experience to help her.
- Counsellor should keep women's security and empowerment as a central concern, rather than protection of family and honour.
- Counsellors should have a gender perspective, and be able to think from the women's point of view. Otherwise, they would be no different from the various structures of the state whose objective is only to protect the home and myth of the family.
- Many counsellors negate the women's experiences by encouraging her to return
- The counselling process should include at some stage, the counselling of the family.

- Counselling should have a follow up component and if possible, linkages with other support/ empowerment programmes for holistically helping the client.

It is difficult for a lawyer to understand all these complexities, and paralegals can play a useful role here. Side by side, one also needs to interact with the community, initiate a dialogue and mobilise it on issues of violence against women.

Discussion

Social justice lawyering and legal aid are different from each other in as much lawyering for social justice extends much beyond assistance in courts. A question that needs to be explored is whether the definition of legal aid can be expanded to include the support services, such as medical assistance. Further, can paralegals represent women in the family courts? The Family Courts Act does not expressly mention lawyers but only specifies experts. Thus rules that are framed by the state governments can include paralegals.

SESSION V

SUSTAINING THE INTEGRATION OF LAW FOR SOCIAL ACTION –
PROBLEMS AND PROSPECTS

The past days discussions on law as a resource for social action reflects that integrating the two seemingly different fields is not a simple task. The challenge is to understand how law can be used to strengthen of people's struggles. This involves developing new forms of lawyering that involves unlearning of traditional skills of courtroom lawyering and working together with the community that one represents. The PLD partners have engaged in this process and the objective of this session was to share and learn from the challenges and problems faced by lawyers when they seek to move away from their traditional roles and engage in development action. The session was chaired by D.J. Ravindran.

☞ Shomona Khanna

Trying to break out of a traditional role is a big challenge as there is a huge resistance to the idea that there is a role for lawyers outside the courtroom. The community also does not perceive the role of an alternative lawyer as that of a 'lawyer' and one ends up feeling like a 'mufatiya' or charity lawyer doing things that are meaningful to only oneself. But one needs to constantly engage in a dialogue about what alternate lawyering is all about.

While working with Navrachna in Himachal Pradesh on forest laws, she realised that her lawyering skills were insufficient to deal with community issues. She had to do extensive reading of statutes, rules, regulations, learning a complete new area of work. Working with the community requires different kind of communication skills. In courts a lawyer needs to talk in a crisp, concise, forceful language but with community one needs to speak simply and sometimes in a language one is not very familiar with – like Hindi for her. In courtrooms a lawyer adopts a reductionist approach – reducing the people's lives to what law is. But social justice lawyering involves looking at the entirety of lived experiences.

The question of identity has remained a difficult issue to resolve. The black robes lend an aura of mystique and power. Without it one becomes a little lost and the question remains – If not a lawyer, then who am I? An activist? But at the same time one does not want to loose the identity of a person with special skills and get embroiled in the nitty gritty of organisational functioning. One needs to realise that the role of an alternate lawyer lies somewhere in between and one has to find a balance and locate an identity for oneself. She tried to resolve this conflict by creating a separate space for herself – setting up a Legal Resource Centre which helped her resolve her role and identity as being with, yet being distant from the local movements.

As professionals, lawyers tend to be very individualistic and are used to taking quick decisions, but in social justice lawyering processes have to be participatory in nature.

Information has to be shared and decision making democratised. A matter as simple as finalisation of a report can be done only after giving everybody a certain time to give views and suggestions. Research in the context of social justice lawyering does not remain an individualistic piece of work. It comes out of and belongs to the movement, and is accountable to the community it represents.

As lawyers we learn that law is neutral and gives justice and we project ourselves as being impartial and objective. But in social action, one has to have an ideology, and one needs to take sides without feeling apologetic about it, even if it means having to disagree with the law. On 15/8/2000 a satyagrah was planned when the community decided to trespass into reserved forest area and collect herbs and traditional roots. She was asked to give the legal position of such action. Her advise was to break the law and assert their traditional rights. But at the same time to be cautious and not violate any other law by poaching or destroying property which could implicate them in more trouble and shift the focus from the act of satyagrah. That was a personal milestone for her.

⇒ Prasant Kr. Jena

Even after years of professional practice one is still confused as to what the law is all about. The remote pockets of Orissa witness starvation deaths every year. Interacting with the affected people one gets the feeling that they have calmly accepted the suffering due to lack of food and resources as their fate. As a student he took active part in the protests against the demolition of slums. The agitation could not prevent the demolition of slums but the matter was brought to the notice of the High Court through a letter accepted as a PIL. No senior lawyer was ready to argue the case, and he was forced to handle it himself, though he had very little experience and confidence in dealing with such matters. Since then it has been a continuous learning process for him.

Today when social activists and groups come to him with problems, he is able to help them devise legal strategies. But he still derives his inspiration and strength from interacting with the community, which gives him greater satisfaction than courtroom lawyering.

After the super cyclone in Orissa, he together with a group of lawyers organised legal counselling for the victims and helped them to secure their entitlements under the government schemes. He has also been lobbying with the National Human Rights Commission to take action against custodial deaths.

Summing up he has been involved in activism, litigating in courts, fact finding and organising groups of lawyers - and he feels that all that one needs for doing these are the three Hs - a heart, a head to think and a hand to extend.

☞ Minati Padhi

As a citizen of India and as a social activist, one feels that one has certain social responsibilities and so is committed to issues. In the beginning one did not think that law had a role to play in social action and development. But while dealing with issues of hunger, illiteracy due to lack of schools, one felt the need to use law to enforce the basic human rights, though engaging with the law and courts has not been an easy process. Experience of dealing with the legal system suggests that it is not necessary that justice coincide with the 'legal – illegal' framework. Securing justice is the long-term goal but one also needs to analyse whether the law recognises the rights that we seek.

Negotiating these issues with a mainstream lawyer is a challenging job. It involves questions of attitude, commitment to the people and above all resources. As activists one is usually engaged with issues independent of resources, but the question is how long can the interest of a lawyer be sustained.

These issues are not very easy to resolve, but we need to find ways of integrating law in social action. Institute for Women's Development (IWD) has been able to train six women as paralegals. These paralegals are not literate but they have a good understanding of issues. Being part of the community they do not face as many barriers in reaching out to the community, as an 'outsider' would have.

☞ K. Savitri

Though trained as a lawyer, she feels more confident about introducing herself as an activist. Since 1987 she has been involved with the legal aid counselling cell of Anweshi and has conducted legal literacy classes for women in rural, and urban slum areas. Though Kerala has a high literacy rate the incidence of domestic violence, sexual harassment at workplace is very high. Recognising that law upholds values of patriarchy, law is innovatively used as a tool for securing the rights of women. Law is always accompanied by social action.

☞ Kailash Kumbkhair

A background of village life has given him a good insight of the social realities of the common man, who is not even empowered to process a bank loan. Law is very distant to the person from the village but as an alternative lawyer he has the belief that its knowledge empowers a person. However, law comes into the picture at a very late stage. First one has to interact with the community, understand their problems and then use law to lobby for their rights. Many welfare laws such as the Minimum Wages Act 1948, Family Courts Act 1984, exist but one has to know how to use the law. And to use it effectively one needs to understand the problem well. Giving an example he said that while working in the community it was found that many names were not entered on the

muster rolls of employers. Further enquiries revealed the extent of corruption and the people realised the significance of the right to information. Involvement of the people at the grassroots helped to mobilise a very strong campaign.

He does not consider himself to be a lawyer. Other colleagues don't give him respect as a lawyer because he confines himself only to arguments based on truth and does not charge any fees. But the people and the community have faith in him and that is the most important thing for him.

☞ Jeena Jose

While giving legal aid to women, she came across many cases where men entered into second marriage during the pendency of the first marriage and deserted the first wife. Also there were many cases where marriages took place but the ceremonies conducted did not conform to the requirements of law. She started legal awareness classes with women and realised that women had little faith in the legal system, as it did not give them any rights. A victim of rape is traumatised again and again in the name of evidence. Again, a maintenance decree is just a piece of paper, which does not give women any rights. As a lawyer she realised that her role was very limited in such cases.

☞ Albertina Almeida

One needs to create acceptability for oneself within mainstream lawyering. One should recognise that there are sympathetic lawyers even in mainstream practice and one should not isolate oneself from them.

☞ Geeta Ramaseshan

There cannot be just one strategy for integration of law in social action. A woman lawyer also has to face the problem of acceptability by the mainstream. She has to deal with a patronising attitude that she can afford to do social justice lawyering because there is no pressure of earning livelihood on women. The mainstream cannot be ignored but depending on the issue one has to take a stand of confrontation, constructive dialogue or conciliation if necessary. In the bar one also comes in contact with another group of professional lawyers who are sympathetic to the cause but have a charitable approach. And it is much more difficult working with them because they don't have any perspective or understanding of issues.

Ravi concluded the session by summing up the difficulties and dilemmas of sustaining integration of law into social action. The narrow ambit of legal professional sphere generates a problem of identity. The lawyers and social activists have to grapple with the problem of defining their roles in furthering each other's initiatives. Lawyers especially women, have to contend with ridicule, patronising attitudes and resistance from the larger

lawyer community. Lawyers have to unlearn and learn new skills of interacting with the community and attempt to make the law relevant to their lives. The actors need to shed their self-righteous attitudes and learn participatory approaches, respecting each other's positions, limitations and ideology. This process of collaboration is not easy. It depends upon one's commitment, ideals and sometimes availability of resources.

Last but not the least, it involves reflecting on the relevance of law, its limitations and how it can be combined with people's movements to bring about social change.

SESSION VI

ROLE OF PLD IN ADVANCING THE NOTION OF USING LAW AS A
RESOURCE

The aim of the last session was to give an introduction to the PLD programme and revisit PLD's objectives based on the previous three days discussions. Kalpalata gave a short introduction to the programme followed by feedback from the partners.

◆ Introduction to the PLD programme

PLD started with its first batch of partners in October 1998. Since then it has worked with 15 NGO and lawyer partners in the different states of the country. The partners have been involved with a wide range of issues such as - advocating for a tree policy in Chennai, violence against women in Chitrakoot district of Uttar Pradesh, land and tribal rights in Udaipur, natural resource management and Panchayati Raj initiatives in Himachal, advocacy on the registration of births and marriages, women's rights, rights of fisher folk, in Orissa, women's rights in Kerela, Bihar and Delhi, rights of marginalised groups in Jaipur and research on child sexual abuse and exploitation in Goa. At present it is working with six partners.

Initially PLD had started out with the idea that the support for the partnership would be limited to a period of one year. But subsequently, a need was felt for sustaining the initiatives of the local partners beyond a year. Thus in some cases the support was extended. PLD has maintained contact with its network of partners through field visits, facilitated their participation in meetings and workshops for capacity building and has held discussions on issues of common interest. In its first workshop held in Bhubaneshwar, PLD had invited only the lawyers / legal resources. The NGO partners questioned the prioritisation of law and legal resource. Since then, PLD has consciously included both the NGOs and lawyers in all its forums, to reflect its collaboration with both sets of partners.

PLD aims to critically examine law in context. It is the people and their problems, which is the focus of the programme. The challenge is to locate their struggle within the legal framework and if law does not provide any remedy or relief, to search for alternative approaches, look to values of what is just / unjust and to make the legal system accountable to its promise of egalitarian values.

Use of law as a tool for social action involves certain processes like understanding the basis of choosing a particular issue, the reasons for using a particular strategy, people's participation and accountability to the people. The process is important and involves combining of lawyering skills and skills of a social activist. This collaboration necessarily gives rise to several conflicts. For a professional lawyer it means grappling

with the questions of identity and for a NGO it means dealing with the aura that surrounds a lawyer. In PLD's experience this collaboration is a struggle. Here PLD assumes the role of a facilitator and provides a forum for learning from shared experiences and resolving conflicts that necessarily arise.

PLD has tried to experiment with different formats of reporting, sometimes laying stress on substantive issues and sometimes on process – but is yet to come up with answers as to what works best. But experience shows that quality of reporting differs depending on what the partner perceives PLD's role to be – that of a distant donor which would be happy with bullet point presentation of work, or that of a facilitator with whom one can critically reflect on processes and issues. Whenever PLD has felt that the partners are getting lost in their struggles and strategies used, it has helped them to review their initiatives and give critical feedback.

◇ Feedback of partners

Minati started the dialogue by suggesting that PLD could concentrate on building capacities of paralegals. Singh Babu said that in the process of organising tribals to fight for their rights, they realised that law did have a role to play in furthering the struggle. Consequently a lot of time and energy was given to orienting lawyers and engaging with them. At times they have had positive help from them and at times the lawyers have withdrawn themselves. They find it very difficult to bring a change in the professional attitude of lawyers. Support for one year is a short a time for understanding the issue, as well as plan ahead. After the period of one year, the lawyer may detach himself but the NGOs continue to work.

Kailash said that his work with disadvantaged groups has shown that law has a role outside the courtrooms. Knowledge and awareness of the politics of law has a value. Mobilisation of the people, campaigning for change is important in itself, whether or not it leads to reform in law. The campaign on the right to information was an important exercise as it brought together people on issues of collective concern. One can use law to study rights violations, file a PIL, but in isolation it has no value. Litigation in courts have become a business for lawyers and judges. To bring in changes in that system, the actors in that system also have to be mobilised.

Pratap felt that law and social action, were both inter-dependant. Without one the other is meaningless and so integration is important. But only those lawyers should be considered who have a prior activist background.

Jeena expressed the concern that sometimes the whole burden of integrating law into social action falls on the lawyer. The NGO, not having much knowledge of law is unable to help. It takes time for the lawyer to get involved by which time the formal period of partnership comes to an end. PLD could help constructively in giving inputs and shaping the partnership.

Shomona said the PLD gives a sense of community and direction to what otherwise would be a struggle in isolation. Support from PLD has been at a conceptual level - and has even helped to perceive negative experiences in a positive light. It is very fluid in allowing people to have their own ideology, agenda and space, which is very valuable for developmental lawyers. Alternative lawyering is new to the people on the field. Though one has received support from PLD but getting feedback from the partner NGO, passing on information about PLD to them has been one's burden. Perhaps PLD could be firm and make the NGO participate more.

Urmila felt that earlier she did not think that she could use law, but now has learnt to use it in a limited way. She has been able to internalise it, develop an understanding and engage with lawyers. But sometimes the lawyers think that her demands are unrealistic and a need is felt for further interaction with them. A good thing about PLD is that it does not thrust any work plan on the partner.

Madhavi said that PLD had given training to the paralegal teams of Vanangana in two batches. It helped them to develop their thinking about law. In 2 years there has been a change in the way law was earlier being used. But there is a need to create an understanding amongst the local lawyers with whom one has to interact in many cases. They work with each other relying on friendship and goodwill but they need to understand the possibilities of law in social action and this can be done if they get to meet with other alternative lawyers.

Prashant suggested that in the partnership there should be a proper balance between the roles of the legal resources and NGO partners. PLD must focus its efforts on lawyers with an orientation of social issues as there are very few activist lawyers. NGOs provide a field to the lawyers. Further, integration of law in social action requires the participation of judges, public prosecutors, politicians, not just lawyers and NGOs. In the process of advocating for change, people who are part of the law implementing and law making agencies must be included.

Albertina felt that non-interference of PLD in terms of achieving the work plan is appreciated, though a deadline did help to consolidate work. PLD can help in accessing material. There can be an advocacy role for PLD on the issue of integration of law in social action and in lobbying with the government to make their reports accessible in very state.

Mariette appreciated the flexibility given by PLD, but was concerned that if PLD adopted a more proactive role in the future, it could develop rigid programme structures.

Dipta observed that the partners were appreciating the flexibility of PLD, and felt themselves to be a part of a community. But the question was that if partners were to challenge state institutions, then there was a need to network in a more structured way. There needed to be a three-way partnership: between the LR - NGO, PLD, as well as amongst each other in the larger network of partners. PLD also needed to differentiate between a legal aid project and a partnership, as a partnership involved a much closer

association. Also PLD's partners had a substantive experience on issues and there were lots of resources within the group. One could think of starting legal education programmes with lawyers and help them develop a critical understanding of the law. If a need was felt to orient lawyers then one could think of a training package that involved the partners – like Vanangana doing sessions on women, and so on. Then the lawyer would become the legal resource in that area. This would also give a role to the lawyer partners and helps to build a community, making a network of resources on an issue.

Aradhana said that extensive experience in organising people for asserting their rights and using law in social action, showed that even though there was collaboration of the lawyer and the NGO to a great extent, there were possibilities of a mismatch. The question that comes up repeatedly is – who is the focus? The NGOs give exposure to the lawyers to issues and the community but lawyers did not seem to recognise its value. A suggestion to PLD was to link the community together through a newsletter, popularising the ideas of the workshop and the work of the partners.

Sudha said that with the help of PLD, their organisation has been able to create a core group of lawyers, Mr. Jaiswal suggested that PLD could facilitate exchanges of LRs between similarly placed organisations.

◆ Issues for PLD to reflect upon

In its past three years of functioning, PLD through its partnership programmes had experimented with various strategies of integrating law into development action. Aubrey McCutcheon, Ford Foundation, was invited to comment on, contextualise and give inputs to help develop PLD's programme. Based on the discussions of the past days, Aubrey raised certain issues, which he felt PLD should consider while developing its programme. These were:

- What is the distinguishing feature of PLD? Is it the values with which it works, the nature of the partnerships, impact on society or the type of issues it works on? Is there something that PLD considers its niche? Does PLD want to be part of a larger movement or does it want to work in the same way as other legal resource groups such as Lawyer's Collective or Human Rights Law Network? This should be a subject of deliberation.
- Is there a planning process? Where does PLD want to be five years from now? This planning would be part of the deliberations on what is PLD's distinguishing factor.
- Is one year of partnership sufficient? If PLD strengthens the work of local organisations, then this period is important. Is the number of partnerships important?

- PLD is talking about strengthening paralegals as well as lawyers. Is it also trying to build the capacity of the NGO, or help in organisational building? This would require different skills.
- Lawyers have raised the issue of resources because regardless of commitment to the issue, livelihood is important. There are different models of legal aid. Legal Resource Centres in South Africa involves full time lawyers. PLD can consider a model where it takes up cases of its partners to the Supreme Court. It can train paralegals to identify cases and be a speciality group that takes up litigation work. Another model would be to maintain a central litigation fund. PLD through its expertise can help partners identify cases and through its fund hire lawyers to take up those litigations in court. There is a need to challenge the Bar to take up social justice work in a more sustained manner. In China every lawyer has to do public interest cases, and it is a criteria for renewing their practice license.
- Geographical spread – Does PLD want to have an impact in some states where there is a cluster of lawyers and then concentrate energy in that cluster? Another model could be one based on issues. If PLD intends to emulate projects then there needs to be criteria and indicators for selection. Is PLD looking for quality or quantity? There should be conscious decision taken on this.
- Does PLD intend to give a range of support and services? Not many groups are working on economic development issues. Is there any model on how law can be used for economic and development issues? VAW is another issue, which needs sustained engagement.
- Does PLD central office want to hire an experienced person to raise funds on behalf of every one?
- Is PLD planning to train lawyers in alternative law strategies?
- PLD needs to emphasise the idea of a three-way partnership. It needs to have more than one workshop in a year. Apart from meeting the other partners at the workshops the different partners should visit each other's field areas and share their strategies and approaches. This is an essence of a partnership. Having a PLD newsletter can be another strategy of building a close community.
- India has ratified certain treaties. PLD partners could gather data from the field which can be fed into the alternative reports.
- PLD needs to develop certain benchmarks, which would help it to evaluate the programme from time to time, because its goals are very big, and can be achieved only after years of sustained work.

SECTION VII CLOSING AND EVALUATION

Madhu closed the workshop, thanking the partners and the resource persons for the participation, interest and ideas given. PLD had already incorporated some of these ideas, like organising exchange visits and extending the partnership beyond of one year. It would bear in mind the suggestions received while planning for the future. She thanked Aradhana, Ravindran, Malesu and Pooni, Paulomi and Kishore for the help and support extended by them in conducting the workshop.

The evaluation with respect to the specific questions has been summarised below. In cases where more than one partner expressed the same point, the number of partners endorsing the same view has been mentioned in brackets.

◆ Positive aspects of the workshop

- Participatory approach [6]
- Good substantive discussions [7]
- Open discussion on the partnership and its sustainability
- Conceptual analysis of alternative lawyering
- Selection of issues for discussion
- Good structure of the workshop
- Good inaugural and winding up
- Discussion on the ways in which law can be integrated in development.
- Provided a common platform for people from diverse groups to come together on the issue of law in development.

◆ Negative aspects of the workshop

- Participation of the new group of partners not satisfactory
- Absence of a concrete action plan
- Non – involvement of other actors in law, like judges
- Too many panel discussions
- Difficult nature of some of the discussions
- Absence of presentation of work by the present PLD partners
- Absence of strategising.
- Platitude making presentations could be avoided

◇ Ways in which the discussions helped to understand law and social action

- The idea that law can be used as a resource in social action [2]
- Experience sharing of the partners on how law has been used
- Limitations of law and the concept of redefining 'illegalities'
- The fact that activists and lawyers can collaborate with each other for bringing social change
- More clarity on social justice lawyering[2]
- Helped to reflect and evaluate one's work in terms of methodology and issue
- Concept of social action lawyering – its limits and possibilities
- The concept of paralegal activity, action research, advocacy [2]
- That law in social action is an ongoing process and problems / issues inherent in the process will continue
- Increased understanding of the bill on domestic violence
- The session on politics of law
- Clarity on the distinction between 'just – unjust', 'legal – illegal' framework
- Role of paralegals and sustainability of social action lawyering at the community level.
- The concept of lawyerisation of non lawyers and non-lawyerisation of lawyers
- The concept of conflict of rights

◇ Ideas that were unclear and require further discussion and clarification

- Support that a non- partner can expect from PLD
- How to effectively use law in social action
- Whether need of lawyers is essential for social work and how to integrate them in the development process and its sustainability
- The ways in which lawyers working on the issue can be supported
- Paralegals - their role, legitimacy, training and evaluation. [2]
- Dilemmas of how to use laws and dealing with its frustrating limitations
- Role of counselling in legal education
- Sustainability of law in social action
- Promotion of rights education – the possible strategies
- The balance between law and social action
- Role of counselling and mediation
- Redefining legality
- Relationship with state institutions – how far can we strengthen them when they remain part of the institutional set up

◆ Suggestions to PLD

- PLD should publish newsletters
- Increased use of audio – visuals [2]
- More group discussions [7]
- Sitting arrangement should have been in a circle instead of as in a classroom
- More sharing of experiences [2]
- Work plan presentation of LR should have been included
- More discussions on the 'legality – illegality' framework
- Distribute the work profile of PLD partners at or before the workshop
- More than one workshop in a year
- The workshop should be organised outside Delhi
- Summarising the crux of the sessions in Hindi
- Resource Materials in Hindi
- Organising regional workshops

◆ Other Comments

- Good design of programme agenda
- The weather in Delhi in the month of July not very conducive for a workshop
- The trip to Dilli Hat in the evening was very relaxing and nice
- Street play performance was good
- Hospitality and lodging arrangements were good.