

# NATIONAL CONFERENCE ON WOMEN & ACCESS TO JUSTICE

## A REPORT

DECEMBER 10-11, 2006

INDIA HABITAT CENTRE  
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NEW DELHI 110 003

ORGANISED BY  
PARTNERS FOR LAW IN DEVELOPMENT, NEW DELHI







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## SESSION II

# GROUNDING THE CONCERNS IN EXPERIENCES

**THIS** SESSION WAS designed to give an insight into the journey that many women had to undergo in their search for justice through the legal system. These women chose to assert their rights with the help and experience of women's organisations. The presentation of the findings of the study conducted by PLD, involving 30 cases handled by 3 partner organisations, helped consolidate the insights on women's engagement with the legal system.

In this session, two women, Sudha and Jyoti, both from Jaipur, shared their experiences of physical and mental abuse within their marriage on account of dowry demands. They decided to fight back to assert their rights, and with the help of women's groups, took recourse to the law to get justice. These testimonies show that women who invoke the law to assert their rights gain in confidence and personal strength. These testimonies highlight:

- ~ the crucial role played by women's groups in enabling such women to use the law for fighting injustice
- ~ the obstacles that need to be surmounted to even access the legal system, and the hardships that are encountered during this process and poor outcomes in terms of judicial remedies.
- ~ Despite poor outcomes the reason why women continue to pursue legal remedies and expand their understanding of justice.



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## TESTIMONIES

**Sudha and Jyoti**, from Jaipur

Sudha is now 30 years old and was married in 1994 at the age of 18. She has one son now aged 7 years. After her marriage she was persistently harassed for dowry even though her parents had given enough. She was beaten, insulted on a regular basis and finally thrown out of her matrimonial home. Although she was a graduate with BA degree, she had no clue about her rights, legal remedies or the judiciary and did not know how to file a case. She looked to the police for help. The police however, did not help her and said that she would have to eventually stay with her husband. In her desperation to seek help from the legal system, she just walked into a magistrate's courtroom one day, who turned her away asking her to first file an FIR with the police. Following this first disappointing brush with the law, she returned to her matrimonial home. On June 20, 2000 she was mercilessly beaten and as a result, the police had to intervene to admit her to the hospital. They told her that unless an FIR was lodged, they could not begin a case, and asked her to sign blank papers. Her natal family did not support her till then – in fact, they had tried to bring about conciliation for six years. Her father finally agreed to pick her up from the hospital. Following this, she lodged a complaint with the help of a woman's organisation. She did not hope to get her 'streedhan' back, did not have money for a lawyer and had a child to take care of.

In September 2000 Sudha instituted proceedings before the Family Court, Jaipur, claiming maintenance under Section 125, CrPC. The case was decided on February 17 2002 and an amount of Rs. 2000 for her and Rs. 1500 for her son was awarded. During the court's proceedings, her son, who suffers from a chronic disease, was sent to live with his father. Sudha, who was staying with her parents, preferred this arrangement as she was not financially capable of coping with the medical expenses. She then, as required by law, filed an application for executing the order granting maintenance. The husband managed to avoid service of the court notice requiring his presence for six months. Sudha, then, took 'dasti' notice (where the notice is served personally by the person concerned instead of by the court's process server) and went to her husband's house along with the police to ensure that the service of the court's notice could be completed, thereby compelling him to appear in court. Her husband finally paid her the maintenance amount, although only for a few months. A case under Sections 498A, 406 and 323, IPC was instituted in June 2000 before the Sessions Court, Jaipur, which is still pending.

Sudha shared that she learnt about the law only through her struggle with the law and the cases she filed. Even her natal family became tired of her persistence to fight and refusal to reconcile

with her husband or return to his home. They were not comfortable with keeping her in the natal home indefinitely and tried to throw her out. But by then she knew enough about her rights, had become a fighter and got legal intervention to stop them from evicting her. She has been fighting now for six years and still gets dates (adjournments) but no relief or justice from the Court. To her, justice means gaining personal strength and empowerment. She has struggled on her own to achieve this through higher studies and is now studying law. The organisation supported her efforts by offering her a job in their organisation and by providing her with legal advice, guidance and moral support. She does not want a divorce as she does not want to set her husband free to marry again. This, she feels, is the least she can subject him to, considering the trauma that has been inflicted on her.

Jyoti, who is now 26 years old, shared that most of her married life has been a struggle. Two days after her marriage in 2001, she was harassed for dowry and subjected to physical and mental abuse. She was made to do all house work in the joint matrimonial family alone, as a form of punishment. She faced persistent demands for more dowry - such as a television, a CD player etc. even though her father had given a substantial dowry of one lakh rupees. When she realised what was happening she decided to openly resist. She declared to her in-laws that no matter how difficult they made her life, she would not ask her parents for more dowry. As a result she faced endless torture - even medicines were mixed in her food to slowly poison her. During this period she was under grave stress and even tried committing suicide twice but did not succeed. Her husband used to leave her at her parents place frequently. Her parents were worried about her health. Her husband, one day, sent a divorce notice to her alleging that she was mentally ill, sterile and that she suffered from epileptic fits. She felt extremely humiliated and asked her parents to talk to her in-laws, which they did, as an attempt to preserve the marriage. Her husband responded by filing a case in the Family Court, Bharatpur, seeking annulment of the marriage on the grounds of insanity and epilepsy. She then, at her brother's suggestion, approached a woman's organisation for help. Initially she wanted to save her marriage and wanted the organisation to pressurise her husband to mend his ways and take her back. When her husband did not cooperate with counselling, she gradually realised that he did not want her back. Only then did she, with the organisation's help, file an FIR and a case under Section 498A was instituted before the Sessions Court, Jaipur in March 2002, which is still pending. She also filed a case in April 2002, under Section 125, CrPC, claiming maintenance in the Family Court, Jaipur. This was decided on February 22 2003 and an amount of Rs. 1200 per month was awarded. As per the procedure, she filed an execution application in March 2003. She is yet to get the maintenance amount from her husband! In the meanwhile, she, with help from the organisation, filed a writ petition in the High Court seek-

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ing transfer of the divorce case to Jaipur which was allowed. She decided to fight this case as she wanted her husband to at least make financial reparation as the minimum compensation for the trauma undergone by her. This case has, however, been dismissed on the grounds of non-appearance of her husband.

While struggling to assert her rights and get relief from the legal system, Jyoti enrolled for nurse's training to gain strength and purpose in life. She also enrolled for higher studies just to prove that she is mentally fit and is a post graduate now. She thanked her parents and the women's groups for the support they have given her, to help her gain strength, study and use her skills to help others. She is now working as a nurse in a private hospital and earns Rs. 1400 a month. She is living with her parents, who are not very well off financially. To her justice means to gain inner strength, to find a purpose to live and a calling that allows one to help others in need. She has no use for her husband's money; for her the case of maintenance is a moral battle not a financial one. She clarified that if she ever got maintenance she would happily give it to her husband's sisters and had no interest in keeping it. Now that she is strong, her husband approached her for reconciliation - but for her life now lies beyond marriage.

## FINDINGS OF PLD'S STUDY ON WOMEN AND ACCESS TO JUSTICE

SPEAKER **Madhu Mehra**

PLD's action research on women and access to justice examines 30 cases of poor, marginalised and ordinary women whose access to the legal system was facilitated by three partner organisations: Academy for Socio Legal Studies (ASLS) and Mahila Salah Evam Suraksha Kendra (MSSK) in Jaipur, Anweshi in Kozhikode and Vanangana in Chitrakoot. These cases concern women who would not have had the capacity to access the legal system but for the support of these organisations. These women, from small towns and villages, were not aware of their rights under the law, and lacked the social mobility and economic capacity to independently engage with the law. The legal option was their last resort. The study brings to light several issues in relation to women's access to the law, notions of justice, remedies most and least pursued in the course of seeking justice and finally, outcomes of their legal struggle. In light of the hardships involved in engaging with the legal process and the poor outcomes in terms of legal remedies, this study also explores reasons why these women pursue the legal process despite obvious hardships and obstacles. This study is not concluded and therefore these issues were briefly highlighted for discussion.



Talking briefly about the partner organisations involved in the study (detailed presentations follow in the subsequent session), Madhu Mehra said that these organisations working on women's issues have many programmes and crisis intervention is just one of them. Legal intervention is sought in a small percentage of cases only, while majority cases are sought to be resolved through counselling and mediation. As part of crisis intervention, the organisations offer a wide range of support to the women, including shelter, skill training, jobs, counselling, legal aid, medical treatment and child care. They also engage in raising public awareness within the community by running community programmes and engaging with local administration on violence against women. The main issues in relation to access to the law and justice are as follows:

1. Community groups such as these three organisations play an invaluable role in facilitating access to law and in helping to overcome the structural barriers of the legal system in ways that none of the formal institutional mechanisms do. The personalised support and coordinated services offered despite frugal resources is commendable and has significant impact on the process of fighting for justice.
2. The majority of cases in which community groups intervene concern 'matrimonial matters'. Of the 30 cases that were part of the study, 27 pertained to this category. Although referred to loosely as 'matrimonial', this category in fact is better described as 'intimate relationships' since formal marriages may not have occurred in all cases, or that an adulterous involvement may be part of the problem. For instance, about a third of the 27 cases reported a second woman in the relationship.
3. The most commonly reported reason for breakdown of marriage is violence and the most commonly pursued remedies are those of Cruelty under section 498A IPC and Maintenance under section 125 CrPC. Of the 27 'matrimonial' cases, cruelty was registered in 20 and maintenance proceedings were initiated in 17. In a few of the cruelty cases, the woman is now deceased.
4. Although maintenance is sought in more than half the cases, and orders too are obtained in some, there is hardly any case where the order has been successfully executed.
5. The least pursued remedy seems to be divorce even where marriage has completely broken down. Of the 27 matrimonial cases, divorce has been sought in 12 cases: 4 filed by husbands and 8 by wives. Of these 8 women, 5 opted for divorce as their husbands were living with another woman or had remarried. Women do not see divorce as a means to justice; for them it is sought only under cer-

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tain circumstances such as where the woman has faced sexual assault by the father-in-law, sexual exploitation by the husband for gain, or where the husband is co-habiting with another woman. There are two cases of women seeking divorce which do not fall within this category – both these women secured professional/vocational qualifications and a job, gaining personal empowerment and financial independence. This points to the value of empowerment, livelihood and vocational opportunities for women as an essential part of the journey to justice.

6. Sexual assault/rape is rarely reported and even more reluctantly registered. Of the 30 cases, sexual assault is mentioned (not registered) in 6 cases: 4 were by persons known within the matrimonial home and 2 of rape by a stranger. Only in the latter 2 cases – one involving a child and another a dalit woman – were criminal cases registered, that too under pressure from the supporting NGO. In one of the sexual assault cases within the family, the woman was keen to register a case against her father-in-law, but was dissuaded due to the reluctance of the police and legal advice that cautioned her that she risked losing her maintenance claim if she pursued the case.
7. Attitudes of functionaries within the system – the executive, lawyers and Family Courts – separately and systematically diminish the woman's claims and assertions. The public prosecutor is one of the weakest links in the criminal justice system, often reported to be openly playing into the defendant's case.
8. Despite all the attendant hardships, women in crisis situations continue to approach the courts for relief and justice when their families and community fail them. The law, despite its inequitable and poor outcome, provides notional equality and recognition to women as human beings, allowing her the space to put her side of the story and making it mandatory for the husband/in-laws to respond to her complaint. To many, this was the first time when the husband took notice of what women had to say and was compelled to respond under pressure of the law. This notional equality offered by the legal procedure, however insubstantial, helps restore the sense of self worth and dignity to the woman, especially when it operates in conjunction with the support services of the supporting NGO. Women's organisations report that taking cases to court over the years, does gain 'allies' within the system, educates the system and gradually results in some changes. They feel that engagement with the court process is not an option but a necessity, like engagements with the family and society.

## SHARING BY THE PARTNER ORGANISATIONS IN THE STUDY

The study conducted by PLD, which has culminated in this conference, involved three organisations – Anweshi, Kozhikode, Kerala; Academy for Socio Legal Studies (ASLS) and Mahila Salah Evam Suraksha Kendra (MSSK), Jaipur and Vanangana, Chitrakoot, Uttar Pradesh. All these organisations extend a range of services to women in crises situations and have resorted to legal intervention to enable their clients to get justice. The speakers in this session spoke about the range of activities undertaken by their respective organisations and the compelling reasons that led the organisation to also provide legal support as part of its programme. The presentations highlighted the complexity and tediousness of the journey through the legal system and how critical this support by these organisations is for women to cope with their violent situations. Each of them emphasised that access to the legal system did not necessarily ensure justice! They highlighted important concerns arising from each of their encounters with the law.

### **Ajitha, Anweshi**

Anweshi strives for the empowerment of women and aspires for development that improves not only the woman's status but also enhances her participation in the development process. To achieve this long-term goal they address violence against women and mobilise public opinion on gender equality. Their work covers support to battered and abused women, enhancing skill development of the victims of violence, introducing legal literacy programmes for women in the community, advocacy on gender issues and provision of a resource centre to make available and disseminate information on gender issues.

The main activities of Anweshi are:

- ~ Counselling Centre
- ~ Legal Aid Cell and literacy classes
- ~ Community work
- ~ Seminars and workshops
- ~ Library and documentation centre
- ~ Short-stay home

Anweshi resorts to counselling in matrimonial cases only after physical violence stops. The procedure involves building confidence of the woman and entering into dialogue with the accused as a first step to resolving the problem without going to court. A Women's Police Cell is approached if talks fail. Ajitha said that the police is inherently not gender sensitive and behaves properly only if the woman has support from an organisation. The Family Court is approached if everything else fails and only if the woman

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concerned wants to do so, as this process is tiring and strenuous. Counselling is not resorted to in cases of rape and child sexual abuse. In cases of rape, especially child rape, there is no dialogue or settlement, only legal proceedings are initiated. During the course of the trial, if the victim and the accused agree to compromise on the matter on payment of compensation, the organisation refuses to be a party to it. She cited a recent case dealt with by her organisation in which a 13 year old girl had been raped by her uncle. The parents under societal pressure wanted to compromise. Anweshi, however, refused to participate. In their experience, initial enthusiasm to fight can give way to the victim/victim's family wanting to reconcile with the accused.

Their experience shows that campaigning for law reform is a long struggle but once there is a law, getting justice under it still remains an arduous battle. Few women can undertake this journey alone or successfully. Despite laws, women's groups have to consistently protest on issues, violations and cases to attract public attention and state action. Anweshi campaigns to mobilise public opinion on issues relating to women and to protest against violations by those in power such as the Kozhikode ice-cream parlour sex-racket case which involved prominent politicians. In this case Anweshi fought the legal battle in the High Court for more than 8 years and has now taken it up in the Supreme Court. It has campaigned on issues like sexual harassment faced by women using public transport systems and at the workplace. She said that the Domestic Violence Act is an important legislation. However, the state government has not made any effort towards implementation of the Act and there is no awareness of the law amongst people. Laws set important standards but they do not automatically ensure women's access to the legal system or judicial remedies. The same obstacles have to be surmounted afresh in each case that is filed.

**Renuka Pamecha and Kailash Khumbhker**, Academy for Socio Legal Studies (ASLS) and Mahila Salah Evam Suraksha Kendra (MSSK)

Renuka Pamecha belongs to Rajasthan University Women's Association (RUWA) and Kailash was representing ASLS, both of which are part of MSSK. MSSK is the result of 9 women's organisations collaborating with the Rajasthan police for providing support services to women in crisis. ASLS and RUWA, along with other groups, extend their services to women in MSSK. Their understanding of justice primarily includes complete rehabilitation of women who are in crisis. This is initially facilitated by providing them with shelter and later by building upon skills to enable them to become economically independent. Efforts are also made to develop their self confidence to help them in dealing with their problems themselves.



MSSK offers institutionalised crisis intervention to women in distress and is located within a police station. The office, staff, multiple support services and alliance with the police makes this service accessible to a wide range of women and assures sustainable support. Being situated in a police station attaches to the Kendra a high degree of authority even as it remains independent of the police. Its interventions include mediation, counselling, healing and capacity building in women, which is beyond the scope of the police and yet critical to holistic crisis intervention. Women often do not come to a police station to register a 'criminal case' but seek intervention to stop violence, to restore their status in the family, to negotiate with the matrimonial family and to recover their eroded dignity and confidence. The Kendra provides the space and support to enable women to rebuild their lives.

Renuka Pamecha, a lecturer in a women's college in Jaipur, said that in the 31 years that she has worked, it is evident that women from weaker sections have no access to justice. Documentation is a major part of RUWA's work and this helps them to understand the functioning of the system and how it affects the victim's access to justice. It also enables them to study the larger social and cultural context in which violence against women takes place and to seek ways of challenging this patriarchal system. Their experiences show that women cannot expect to get any justice within the structure of the family as the existing family, caste system and education system only work to reinforce patriarchy. Justice in this context means the right to live as a human being with dignity. It is necessary to reflect on what is the notion of justice for the Indian woman, in a social milieu where killings for protecting honour by caste based panchayats still prevail.

The police and judiciary do not address the issue of how to reduce violence against women. RUWA believes that constant dialogue with the police is crucial for making them more responsive, as they are otherwise preoccupied solely with trying to reduce the number of cases they have to handle! The notions, 'misuse of law' in the context of Section 498A and 'Aurat aurat ki dushman hai' (women are women's worst enemies) need to be resisted as these only deflect attention from patriarchal ideology and structures, and further undermine women and their struggle in asserting their rights as a citizen to lead a dignified life.

ASLS is a legal resource group established by lawyers and activists engaged with social justice issues in Jaipur. It was registered as a society in 1995 with the aim of making the legal system respond to marginalised sections of society and their own particular concerns. It provides legal support to victims of human rights violations, such as dalits, women, workers and victims of police torture; imparts trainings to lawyers and social workers; and publishes law materials such as manuals and posters to provide information to the common man. ASLS also supports mass based

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organisations through legal support. Since 1997, ASLS has been part of the campaigns around women's issues in Rajasthan, especially on cases of violence against women.

Sharing his experiences, Kailash said that one of the difficulties that a woman in distress faces is the insensitivity shown by functionaries at all levels, namely, the police, judges and public prosecutor. The courts have the feeling that Section 498A is abused by women. Reconciliation is the preferred option of judges, who are often blind to the pain and suffering undergone by a woman in a violent situation. Procedural rigmarole ensures that maintenance orders are obtained with great difficulty and further, often remain unexecuted. In cases of violence, women are represented by the public prosecutor who is perhaps the weakest link in gender justice. The public prosecutor has no time or sensitivity for such cases and sometimes allows the defense version to go uncontested. Despite all these hardships, women in crisis do not have any other option but to resort to the law as the legal system offers a ray of hope in a patriarchal society where inhumane practices like domestic violence, dowry death and female foeticide are still commonplace.

**Pushpa, Vananagana**

Vanangana was founded in 1994 in Karvi, Chitrakoot to empower women from marginalised communities mainly the Kol tribals, the dalit and the local poor. It aimed to empower women through training in non traditional and technical skills. As part of this approach, they provided literacy, trained women as hand-pump mechanics, ran catering units and through these activities indirectly challenged traditional gender and caste roles. In her narration Pushpa mentioned that for women of this region violence is a daily feature and control over the land lies solely with the upper classes. Violence against women needs to be seen in this context, where women face multiple handicaps. The high rate of violence against women in the region led them to gradually develop a crisis intervention programme.

Vanangana aims its activities at two levels: social and legal. At the social level it seeks to mobilise public opinion on issues related to women through songs, phads, street plays, distribution of hand-outs and reading materials. At the legal level their activities include counselling, legal aid, investigation into cases of violence against women, follow up of these cases and mobilisation of public opinion around the cases. Other support services provided by the organisation to victims include a short-stay home, financial support and training for building upon skills.

Pushpa felt that the law is useful in helping women to assert their rights. Even though the law very often does not give financial re-

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lief, it empowers women by giving them confidence. It also helps women to negotiate within the legal framework. She further said that the organisation was able to make some progress in half the cases with the help of legal intervention.

She identified some challenges for women in accessing justice through the legal system that include:

- ~ Patriarchal mindset of authorities
- ~ Emphasis only on conciliation and family unity
- ~ No provision for residence – short-stay
- ~ No provision for addressing emotional trauma that women go through

## DISCUSSION

Participants shared their experience they gained while working on providing justice to women in cases of violence. Difficulties in accessing the legal system and the delay in proceedings were cited as the most common concerns. The limited remedies available under Personal Laws was another serious concern. Most women saw the legal system as being patriarchal and male-centric. The frequency of domestic violence cases was cited as a problem requiring new strategies including how to combat corruption and the lack of police accountability and insensitivity in dealing with such cases. Apart from legal reform, the shared concern amongst the participants of the conference was that justice must be demanded as a matter of right. It is note-worthy that despite these difficulties women still approach courts.

The predominant concern lay in the difficulty and delays in obtaining maintenance orders and executing them. One view was that a recovery warrant should be issued within a month of the decree for which procedural reforms are required. The need for introspection on the part of NGOs on their role and stance on legal issues was also stressed. It was felt that a greater number of professionals were needed to use the law. One participant spoke about barefoot lawyers and how juniors could be prepared to take up women's issues. Legal education should include 'law clinics' to ensure that students play a more participatory role in the social justice sector. It was also stressed that we need to share experiences regarding the application of the Domestic Violence Act. Apart from procedural reforms, substantive changes in certain laws are also required, such as laws relating to guardianship.