

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.