SOME LEARNINGS DRAWN
OUT OF USING

LAW AS A
TOOL FOR
SOCIAL
ENGINEERING

TAKing JUSTICE TO THE
PEOPLE
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INTRODUCTION

In the past, there were very few efforts at using law in the field of development. Off late, lot of groups have started using law in different ways as part of their work.

Centre For Social Justice has been actively working in this field for past six years. From the initial exploratory phase when there was no clarity as to how a fully legal intervention could be designed to having a well established network of law centres in 8 districts of Gujarat has been a tremendous movement. This process has helped us evolve an understanding, build conceptual base and develop competencies in applying different strategies in using law.

One of the learnings has been that there are limits of having an intervention with a hundred percent focus on law and lawyers. This model has limited replicability. Therefore what is needed is a wider approach which promotes a symbiotic relation between the legal fraternity and other disciplines.

This book is an effort to share the learnings out of operationalizing CSJ as an institutional intervention in the field of law. It is meant to help groups who are serious about using law as a tool in their struggle but are apprehensive to make a beginning.

This book is a result of collective effort of CSJ team and several actors who have been involved in the CSJ processes directly or indirectly. Special mention has to be made of the efforts of Mr. Gagan Sethi and Mr. Martin Macvan whose intensive involvement and constant guidance and support through out the process of writing made this possible.

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1 USING LAW: UNDERSTANDING THE BASICS

INTRODUCTION

There is no aspect of life, especially public life of the communities that most of us work with in the areas of social change that is not touched by some law or the other. And yet, when one looks at the percentage utilisation of law in the field of development, the instances and extent are negligible. It is sad that agencies that are involved in social change processes ignore such an important tool and there by lessen their effectiveness to that extent.

Law by itself is surrounded with myths and aura that seem impenetrable. The state in its own quiet way contributes to it both by abstention (in not making law available to the common person in easy digestible capsules) as well as by action (by choosing a legislative parlance which is comprehensible only to the jurists). The law implementing agencies like the police and the judiciary, with all their flaws, still evoke a feeling of awe in the hearts of people. It is for this reason that democratic governance and civil society are still a distant dream.

People are largely ignorant about laws, its possible impact, its limitations and strategies for using it.

While on the one hand, lack of information about available laws and methods for accessing law implementing agencies acts as a deterrent, on the other hand, people who try using law get lost in the labyrinth of fleecing lawyers, reeking judiciary and series of adjournments. Thus, the inclination to use law gets further reduced. The situation
with the voluntary agencies is no different. By and large, optimum utilization of law is not the rule.

In this backdrop, it becomes important to have a basic understanding about the legal system and how to use it effectively.

**APPROACHES FOR USING LAW**

For any one wanting to use law in development work, it is important to understand the different ways it can be used. Each method in isolation has its strengths and limitations. An organization can choose one or all of the strategies depending on the over all frame work in which it is operating. The efforts in the area of using law for development can broadly be classified in the following categories.

1. **THE LEGAL AID APPROACH** where by the individual problems of people are addressed on a one to one basis. The questions one can ask is about the viability of such a system, its over all impact and its replicability. The over all out reach is often limited by factors like how many lawyers can an organization hire or individual constraints like how many cases can an individual lawyer handle over sensitive he may be can handle.

2. **THE LEGAL AWARENESS APPROACH** where the focus is on spreading information about legal rights. This often would lead to a situation where assuming the awareness camps really achieved their objective, one would be left with a situation where a person who has become aware of her rights is left with a no redressal situation in the absence of an effective legal aid system. The training into strategic use of law and availability of a team to provide legal services is critical for effectivity of this approach.

3. **THE ALTERNATIVE DISPUTE RESOLUTION MECHANISM** approach where by agencies other than the courts are used for settling disputes. It could mean activating state mechanisms like the permanent conciliation boards and family counseling centers or setting up parallel set ups within the organization. It could also involve strengthening community based mechanisms like caste panchayats and inculcating a rights perspective in their functioning.

4. **THE LAW REFORM APPROACH** where the existing laws are challenged for not being sensitive to the needs of the underprivileged, based on extensive research and a clear vision of expected outcome.

5. Some city based approaches are also observed like the "NEWS PAPER LAWYERING APPROACH" the "UN-SUSTAINED INTERVENTION FOR IMMEDIATE RELIEF APPROACH" etc., which are basically efforts at "conquering an issue" before any one else, with negligible preparation and follow up action.

**SOME COMMON MYTHS PEOPLE HOLD ABOUT USE OF LAW**

1. "TAKing RECOURSE TO LAW WILL GUARANTEE JUSTICE". In reality, law alone may not be able to achieve justice. It has to be used as one of the tools in an overall strategy of any movement / organization. One has to be aware of the limitations of using law as a strategy. Some key limitations can be listed as follows:

   - Not everything that is unjust is illegal. In order to make your case strong, injustices have to be proved to be illegal.
1. **CHOSE YOUR FORUM** : For the same case different legal remedies may be available. For instance, the same case may be filed in a lower court as well as the High Court. Each has its own advantages and disadvantages. It has become a tendency to directly approach the High court without having tried any local remedies. The choosing of forum depends on a lot of factors. The intensity of the problem, the type of relief being claimed, the extent to which the issue needs to be visualized in a public forum, the overall strategy involved in the case etc.

2. **CASE** : In a small study undertaken by the Kanumi Salah Kendra, Khedbrahma on the status of primary education in two talukas of Sabarkantha district, the results were shocking. Most of the schools ran only on paper with no staff, no rooms and no facilities. The group which undertook the study discussed the possibility of filing a writ in the High Court on the issue. How ever they felt the study was too small to approach the High Court for a directive. Also, the possibility of non implementation of the direction of the High Court not happening was quite strong and the efforts would have been wasted. Instead of going to the High Court, the group decided to file a
complaint in the consumer forum. They used the receipt of an education cess paid to the panchayat to bring primary education within the purview of the Consumer Protection Act. Within a month's time, teachers were appointed in the schools in the taluka.

2. **DO YOUR RESEARCH WELL**: A systematically done research helps one not only to focus and sharpen the demands but also to make out a strong case. It has become a tendency to file public interest litigation based on newspaper reports of violations of human rights. However, in the long run, this proves harmful to the issue. In contrast to this, a well-researched case has better chances of getting a positive judgement.

**CASE**: Under the Environment Protection Act, it is mandatory to have a public hearing before the establishment of an industry. However, these public hearings were mere farces and did not serve any purpose. The Enviro-Legal Group attended 21 such public hearings and did an indepth study of the flaws that were prevalent. Unfortunately, no guidelines were laid down on the manner in which the public hearing should be conducted. Based on the understanding developed through the participation in the public hearings, when a writ was filed in the High Court, the Group was able to point out the flaws in the system the impact it had and the possible system that must be followed. The Court was very appreciative of the suggestions and incorporated them verbatim in its judgement.

3. **DO YOUR OWN INVESTIGATIONS**: Quite often the State system for investigation does not play its role well. The case becomes weak because of lack of evidence. It is always better to join as parties with the prosecution and submit your own evidence.

**CASE**: In 1993, a case of atrocities was filed against some members of the upper caste. The accused were granted bail on the condition that they will not enter the village premises. Despite this, the accused continued to reside in the village and harass the complainants. An application was filed for cancellation of the bail for violation of the conditions. The accused denied that they have been violating the conditions and have been residing in the village. The police supported the accused. In this case the Navsarjan, an organization working on dalit issues, was able to produce the minutes of a panchayat meeting which indicated the presence of the accused in the village as proof that the accused had violated the condition.

4. **USE ALTERNATE FORUMS**: It is worth exploring the possibility of using other quasi-judicial forums like the Human Rights Commission and the Commission for Women, Commission for minorities etc.

**CASE**: A case of custodial rape of a tribal girl was reported to the social workers of Samajik Nyaya Kendra Bharuch. Despite their repeated efforts, no action was being taken by the police against the accused. A complaint was filed by them with the National Human Rights Commission. The NHRC issued directions to the State to investigate and report the findings to the NHRC. This acted as pressure on the system and investigations were initiated.

5. **CHOOSE YOUR BENCH**: Each judge has his/her own mind set. Some times, it is strategically better to wait till a judge with a favorable mindset takes charge. This option is available only in the case of High Court and Supreme Court.

6. **COMBINE LEGAL REMEDIES WITH SOCIAL ACTION**: Quite often, in addition to using the judiciary, a well
timed media coverage, other forms of protest and mass action etc. can be used to strengthen the case.

7. **CONVERT A CASE INTO AN ISSUE**: While looking at redressal for a single person directly affected in a case could be one way of dealing with a case, another option could be to use that one instance to raise a larger issue.

**CASE**: Due to the construction of a Dam on the river Koliyari, several villages were being affected, and many families were being displaced. The compensation package being doled out to them by the State was much lesser than the one that was given to the others affected by the Sardar Sarovar Project. Unlike other state which have specific Act/Policy on displacement and rehabilitation of project affected persons, Gujarat did not have common guidelines on the matter. A writ was filed by the Koliyari Dam Suchit Hak Rakshak Samiti in the High Court. Apart from demanding rehabilitation for the affected people, a demand was also made to direct the State to adopt a uniform policy for the rehabilitation of the project affected people.

8. **PLAN YOUR ACTION**: Judicial action must be integrated with the overall strategy of the organization. It is important to assess the over all capacity to deal with not only the case but also the requisite follow up. The timing of the case is also important. For instance, a public interest litigation filed for implementation of minimum wages after the season for employment is over will have limited impact. Similarly, if you have the information that the State is becoming active on a particular issue, a well placed case may become a tool for influencing the public policy.

9. **WINNING IS NOT ESSENTIAL**: Most lawyers advice on whether a case should be filed or not is based on the "winnability" of a case. How ever, for an organization, winning is important but may not be the sole objective for which a case may be filed. A judicial intervention may be used to bring an issue in to light or to initiate a public issue on it. It may be also used as a tool for sensitization of the judiciary. Some times, it is better to get a negative judgement in the lower court on a given case because it builds the ground for getting an over all policy guideline from the Higher Court on the issue it self.

**EXAMPLE**: In several States, the upper limit for the maximum amount payable to a woman under S. 125 of Cr. P. C. has been increased to more than Rs.500/. However Gujarat had not increased this limit. As a strategy, Lawyers in 8 districts where CSJ had its presence, started filing maintenance asking for more than Rs 500/ as the maintenance amount. The idea was that based on earlier decisions of other High Courts, the rejection orders of the lower courts are challenged in the High Court and a demand is made in the High Court to strike down the Provision as being violative of the right to life. This would have had an impact on all the women who can not claim more than Rs 500 under the present law. Fortunately, the State legislature itself increased the upper limit to Rs.2000/.

Similarly, the district level judiciary remained immune to the Supreme Court directive that a person may be released on personal bond. With the result, a large number of undertrial prisoners accused of bailable offences were languishing in the jails in the absence of surity. CSJ initiated a campaign on releasing of undertrial prisoners on personal bond. Initially, there was stiff resistance by the judiciary and it was very
difficult to get a favourable order but the lawyers were persistent in their efforts. This raised a debate on the issue in the lower judiciary. While arguing, the lawyers produced Supreme Court judgements on the issue there by establishing at the lower judiciary level, an acceptance of the concept of release of undertrials on personal bond- a practice highly uncommon in the Gujarat lower judiciary. Today undertrials are released on a regular basis from the Jails and several non-CSJ linked lawyers are also involved in the process.

LEARNINGS FROM EXPERIENCES: SOME CASE STUDIES

CASE STUDY ONE

THE KOLIYARI DAM CASE

In the year 1984, the construction of Koliyari dam was initiated near Mojri Village of Godhra Taluka, of Panchmahals district. Because of the said project two villages of Limkheda Taluka and one village of Devgadh Baria taluka were affected as the land of these villages was being acquired. Apart from the Agricultural land, certain Forest land was also affected because of Koliyari Dam Irrigation Project. There was no communication either to the Gram Panchayat or the local residents about the said project. Sometime in the year 1994, the villagers came to know about some Irrigation Project likely to come up in the region because of the movements of the Officers of the Irrigation Department in the Government Guest Houses, and commencement of the construction of certain Guest Houses for its officers near the river Koliyari. Hence the local Sarpanch on behalf of the Koliyari Dam Suchit Asar Grant Samitis, addressed a letter dated 29.12.1994 to the Executive Engineer, Hadaf main dam division at Godhra, who responded by his letters dated 8.2.1995.

Some time in April 1995, the Executive Engineer and other officers of the Land Acquisition Department started coming to the Navagam Village and assured people that every farmer will be given minimum 5 acres, of land and also adequate compensation in terms of money. Other benefits were also promised by them to the villagers and they were told not to run to the Politicians and Lawyers.

In the year 1995, a local Member of Parliament from Dahod constituency, Mr. Samjibhai Damor also visited the villages of the Koliyari Dam Suchit Asar Grant Samitis and assured from time to time, inter-alia stating that don't have any apprehensions with regard to proper rehabilitation because you will be rehabilitated within Panchmahals district, in such villages which are also benefited by the project. He also told the Koliyari Dam Suchit Asar Grant Samitis that he has himself written several letters to State Government to ensure that proper and uniform rehabilitation scheme is implemented. On 14.12.1995 some of the Koliyari Dam Suchit Asar Grant Samitis along with the M.P Mr. Samjibhai Damor went to Gandhinagar and made a representation to Purshottam Rupala the then Minister for Water Resources Development to the effect that they should make proper uniform rehabilitation policy and ensure that it is implemented properly, because even the ousters of the earlier projects have not yet been properly rehabilitated, the Minister also said that because the earlier rehabilitation was done by the other Ministry they were not done properly, but this Ministry would ensure that it is done properly. With regard to the present Koliyari Dam Project, it was insisted by the Koliyari Dam Suchit Asar Grant Samitis and the above named M.P, that proper rehabilitation must be ensured before taking any further action with regard to the acquisition of land. The Minister assured that unless and until alternative land is provided to them the construction of the Dam will not commence.
To the utter shock and surprise of the Kolliyari Dam Suchit Asar Grast Samitis [KDSAS] on 1.1.1996 the construction of the Dam was supposed to have commenced as per the release of the local daily Gujarati newspaper, Sandesh.

The KDSAHs therefore, gave a memorandum on 30.12.1995 to the Deputy Executive Engineer, Mr. H.N. Patel, who told Kolliyari Dam Suchit Asar Grast Samitis that alternative land will be provided in Savi taluka of Vadodara district, so the affected people asked for the particulars of the land and copies of entry no. 7/12, 8-A, etc.

They were then told that there are no 7/12 and 8-A entries and the land is Gauchar land. The Kolliyari Dam Suchit Asar Grast Samitis were also assured that the Minister is going to accept the request of the Kolliyari Dam Suchit Asar Grast Samitis and that they should in fact welcome the Minister because he is going to give them the land, but since the land was not from Panchmahals district and the Kolliyari Dam Suchit Asar Grast Samitis were not sure about the quantity and quality of the land available they could not respond.

On 1.1.1996, about three representatives of the affected people went to participate in the Ceremony of commencement of Dam construction, but since they were not allowed to speak to the dignitaries, they gave the memorandum, proceedings against the Project. Before leaving the site the Minister assured that every thing necessary will be done for rehabilitation of the affected people. On 8.10.1996, other representations were made to the Chief Minister, the Irrigation Minister, the Additional [Rehabilitation] Collector, District collector, Executive Engineer, however, none of them were responded to by the respondents and others. Thereafter various representations were made to the concerned authority on 7.1.1997, 12.1.1997, 17.2.1997, 18.2.1997, 23.2.1997 and 25.2.1997. On 27.2.1997, the Kolliyari Dam Suchit Asar Grast Samitis represented to the site Engineer and Supervisor, Mr. Desai, at the dam site and proposed by the memorandum that the construction work will have to be stopped, if there is no adequate and proper rehabilitation scheme made by the Government. The women of the village also collectively protested against the construction of the dam and physically prevented work on 4.3.1997.

On 10.6.1997, police and S.R.P. were posted on the dam site. The Kolliyari Dam Suchit Asar Grast Samitis were told on 12.5.1997, that they are posted for the protection of the property and not against the people, but they started threatening and intimidating local villagers and told them that they cannot enter this area, because this river and the water is of prohibited area and they cannot use this water, but there is no other source of water except the river water. Another representation was made on 19.8.97 to the Deputy Collector and land acquisition officer, Godhra.

The Kolliyari Dam Suchit Asar Grast Samitis therefore, approached the High Court. The construction of the Dam has been stalled. The State has said in the open Court that the Uniform policy has been made and it just needs the final approval of the State.

NOTABLE POINTS IN THE CASE

1. While all this was going on, several simultaneous things were happening. The KDSAHs was actively involved in mobilizing the people. Several village meetings and Rallies were held at different points of time. It also tried seeking support of other local and external groups on the issue.

INOLVE OTHER GROUPS ON THE ISSUE. GENERATE THE SUPPORT OF THE MASSES. LET THE LOCUS OF CONTROL REMAIN WITH THOSE AFFECTED.
2. An intensive survey was undertaken by the Samiti to find out the number of families being affected, the extent to which the Land Acquisition Act provisions were followed, the number of members from the vulnerable groups being affected etc. These were used in the High Court to challenge the claims of the State that their action was legal.

BUILD YOUR OWN DATA BASE, FIND WAYS OF CONVERTING INJUSTICES INTO ILLEGALITIES

3. The key strategy in this case was negotiation. Even when the case was filed in the High Court, the negotiations continued. Several meetings were held with various officials at different levels on the matter.

4. Instead of framing their issue as “rehabilitation of the people affected by Koliyari Dam”, it was formulated as “Adopting Uniform Rehabilitation Policy In Gujarat”. This way, instead of settling the immediate issue of rehabilitation of a limited number of people, the larger question of a common policy on rehabilitation was settled.

MAKE AN ISSUE OUT OF A PROBLEM, CONVERT A SMALLER ISSUE INTO A LARGER ISSUE WHERE REQUIRED.

5. A study was also made of the laws and policies on the matter in other States. This was used not only in sharpening the demands regarding the rehabilitation of the affected people in this case but also in demanding the uniform policy for Gujarat. The argument was that the absence of it is violative of the right to equality.

BE AWARE OF THE LATEST POSITION OF LAW ON THE ISSUE AT NATIONAL LEVEL AS WELL AS IN OTHER STATES.

CASE STUDY TWO

DEVALIA SOCIAL BOYCOTT CASE

Devalia is a small village in Amreli. Caste biases are very strong in the village, Navsaran, an organization working on rights of the dalits started work in the village and started challenging the existing casteist regime.

One of the Navsaran workers was elected as the chairman of Samajik Nyay Samiti under the Gram Panchayat and the local Dalits, for the first time, had a say in the affairs of the village and thus had little representation and a bit of participation in the mainstream activities of the village. Before about a year’s time, some Dalits also got actual physical possession of the land by the Dalits, the Dalits also started educating themselves and became aware of their fundamental rights. They also started questioning certain traditions which were inhuman and which they had been forced to accept for generations. The majority of Dalits in the village are landless agricultural workers who are forced to seek employment on the lands of the patels, [the caste owns most of the land in the village. Some of the Dalits are victims of the “Sathi” System which is a form of bonded labour still being practiced in that part of the state] The younger generation of Dalits also started seeking the right of mobility in employment and thereby questioned the bonded labour system. In order to suppress this tendency amongst some of the Dalit youths, the dominant caste [mainly Patels] formed a new organisation before about a year called “Shiv Shakti Yuvak Mandal”. It has a membership of about 200 and it is the organisation which is believed to be primarily responsible for countering dalit uprisal.

On 23-4-1998 the patels of the Devalia Chakkrargadh Village of Amreli cut off the main pipe line supplying water to the Vankarvas of the same village at about 12.00
midnight. The Vankarvas is a ghetto outside the main village where only Dalits are residing. The Dalit vas is divided into two parts and is located on the banks with the river Honkdo passing in between. The only approach road to the Vankarvas is through the main Village Devalia [Chakkargadh]. On 23rd of April 1998 by cutting the main pipeline supplying water to the Vankarvas, the Patels diverted the water to their respective houses in the village to ensure additional supply of water to themselves and more particularly ensuring that there is no water supply in the Vankarvas. Hence since 24-4-1998, there was no water supply in the Vankarvas and they started approaching different possible sources for water.

However, Since the water supply was not restored even after waiting for two days, on 26-4-1998 at about 10.00 P.M. three boys from the Vankarvas took empty cans to fill water in a riksha [chhaqda]. On the way, they were accosted by President of Shiv Shakti Yuvak Mandal, beaten and forced to return to vankarvas without water.

Therefore a huge crowd of Dalits went to the Jaisingpura Police Station of Amreli [Rural] to lodge a complaint. At that time only the Head Constable and a Constable were present at the Police Station who refused to register the complaint. Upon insistence of the complainants, the complaint was registered for violence but not of disconnection of water supply.

As a reaction to the complaint lodged by the Dalits in the police Station, an informal meeting was held by the non-Dalits in which Shiv Shakti Yuvak Mandal played a prominent role. From 29-4-1998 a complete and total boycott of the Dalit started. Those who were having some relations with the Dalits were approached and they were told not to supply anything to the Dalits. Landowners were told to discontinue Dalit workers on their farms. The non-Dalits who continued relating with the dalits were identified, threatened and fined.

A representation dt. 30-4-1998 was, therefore, made to the collector in this regard. Some of the Dalits went to the Police Station to lodge complaint under that Prevention of Atrocities Act 1989 but the police did not register the complaint and said that we are under political pressure and, therefore, we cannot take this complaint. Some applications were also made to the District Superintendent of Police. The District-Supdt. of police telephoned Jaisingpura Police Station to register the Complaint and hence another complaint was registered by the police on 4-5-1998. Representations were also made to the collector on 4-5-1998, 25-5-1998, 16-5-1998 and 25-5-1998 asking him to take action.

Wide media coverage to the issue was given to evoke public sympathy and bring the issue in the public forum. Various newspapers also went on reporting the developments and incidents of atrocities in the Devalia [Chakkargadh] village. Some of the reports which were published in the local daily newspapers includes the reports published in the local Gujarati Daily Newspaper “Jai Hind” dt. 1-5-1998, “Divya Prakash” dt. 1-5-1998, “Fulchhab” dt. 6-5-1998 and the English Newspaper “Times of India” published from Ahmedabad dt. 6-5-1998. A detailed article was also published on the atrocities on the Dalits in the local Gujarati daily newspaper “Times of India” published from Ahmedabad dt. 6-5-1998. A detailed article was also published on the atrocities on the Dalits in the local Gujarati daily newspaper published from Rajkot and Ahmedabad belonging to the “Indian Express” Group, Viz; Jansatta dt. 4-7-1998.

Given the highly political situation and the antagonistic stand of the State, the initial stand of negotiation was replaced with a confrontationary stand strategy. This
helped settle the power equations at the local level. Today, Navsarjan workers are treated differently by the Local authorities.

A writ petition was filed in the High Court demanding that the authorities be directed to take action against the errants, to ensure that the right to life of the residents of Devalia is not affected and to provide adequate and effective protection to the Dalits in the village.

The case was pending with the High Court for almost a year. In order to reactivate the case and to put pressure on the government, a representation was made to the NHRC asking them to intervene in the situation. The special rapporteur of the NHRC visited the village and gave its findings. In its judgment the NHRC clarified that despite the cases pendency before the High Court, it still has jurisdiction in the matter. It ordered heavy compensation, providing essential services and rehabilitation of the affected persons. However, the State took a stand that it will pay compensation not as per the orders of the NHRC but as per the State rules which allow for much lesser compensation. Subsequently, the findings and the order of the NHRC were submitted to the Court. This forced the High Court to come out with a decision on the issue. The court reaffirmed the NHRC directives to the State and ordered payment as per the NHRC orders.

What is significant in the case is the positioning. From some thing initiated at the district level, the case was taken at the State level and subsequently the National level. Cases like this involve high level of local politics. Bringing in an authority which is above the local authority that is involved in politics was helpful in this case. Also, while at the High Court level, the concept of social Boycott did not exist which

took the stand that the Upper castes cannot be expected to employ the Dalits or to socialise with them, NHRC had a record of taking up cases of social boycotts and dealing with them very sensitively. Therefore, NHRC was approached so that its order can be used to influence the Judiciary.

SOME NOTABLE POINTS IN THE CASE

1. The case was well built before it went to the High Court. All local remedies (letter to the commissioner, social welfare department, filing of cases in the police) were utilized.

PREPARE THE GROUND WORK AT LOCAL LEVEL BEFORE APPROACHING THE HIGH COURT

2. Given the highly political situation and the antagonistic stand of the State, the initial stand of negotiation was replaced with a confrontational stand strategy. This helped settle the power equations at the local level. Today, Navsarjan workers are treated differently by the Local authorities.

CHOSE YOUR STRATEGY OF DEALING WITH THE STATE AND INTERCHANGE IT IF NEEDED.

3. The case was handled not bypassing the community but involving them at every step in the decision making process.

KEEP THE COMMUNITY INVOLVED AT EACH STAGE.

4. The media was used to bring the issue to light.

RAISE A PUBLIC DEBATE ON THE ISSUE. CREATE AWARENESS ABOUT THE PROBLEM.
5. The issue was framed from the rights perspective. Also, rather than restricting it to a mere dispute with the non-dalits, it was portrayed such as to bring it within the domain of violation of socio-economic rights. It was projected as loss of right to life.

**FRAME YOUR ISSUES SUCH THAT THE INJUSTICES ARE ALSO APPARENT ILLEGALITIES. ALSO, TAKE THE ISSUE OUT OF THE NARROW DOMAIN AND PROJECT IT IN ITS BROADER PERSPECTIVE.**

6. Alternate forums like the NHRC was used.

**BE AWARE OF WHICH OTHER INSTITUTIONS ARE LIKELY TO WHAT KIND OF ISSUES. WHILE APPROACHING THEM, PORTRAY THE PROBLEM IN SUCH A MANNER THAT IT FALLS UNDER THEIR DIRECT MANDATE AND PHILOSOPHY. PRESENT IT AS AN ISSUE THAT PARTICULAR INSTITUTION IS LIKELY TO RESPOND TO.**

7. After getting the order, persistent efforts are being made to ensure the implementation of the order.

**THE STRUGGLE DOES NOT END WITH GETTING A FAVOURABLE ORDER. ITS PROPER IMPLEMENTATION ALSO IS IMPORTANT.**

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**SOCIAL JUSTICE LAWYERING: AN EMERGING CONCEPT**

**INTRODUCTION**

Judicial activism has been in vogue for quite some time now. In the initial years, when the process began, it was basically at the behest of some sensitive lawyers and judges that the judiciary started playing a proactive role in helping people access their rights. For quite some time, it was restricted to public interest at the High Court and the Supreme Court. In the past five to seven years, there has been much more work happening in this area. It has now become a lucrative career for many. With more and more actors getting involved, today the concept has acquired a much broader meaning.

No single exhaustive definition of the concept is possible as it keeps acquiring a different dimension based on context and experience. However, the following words very beautifully explain what is meant by social justice lawyering:

"Social justice lawyering is necessarily an activist lawyering which transforms the power relations and thus facilitates the assertion of rights and entitlements of the poor through legal processes. The traditional legal aid is directed towards the protection of individuals in specific cases. It is intended to defend the poor but no effort is made to encourage the formulation and effective enforcement for the laws for the poor. In contrast, social justice lawyering goes much beyond the traditional legal assistance and looks towards...

1. Given by Prof. Kailin of University of Bern."
becoming an effective resource in the empowerment of the impoverished. It focuses on social transformation through use of law.

**CHARACTERISTICS OF SOCIAL JUSTICE LAWYERING**

The following could be identified as the key characteristics of social justice lawyering:

1. **IT IS NOT CHARITY BASED**: Social justice lawyering is not restricted to handling a few cases free of cost. It has its foundation in the rights perspective. It helps the person claim her right with dignity and in the process strengthens and empowers her.

2. **IT LOOKS AT THE LINKAGE BETWEEN LAW AND ITS IMPACT ON SOCIETY**: While traditional lawyering is only concerned about winning a given case and getting the maximum benefit for the client, social justice lawyering involves close scrutiny of the impact a particular action will have on the society as a whole.

3. **IT ALLOWS EQUAL SPACES TO LAWYERS AND OTHER ACTIVISTS**: Law is mystified and held in awe by most people. Traditional lawyering strives to maintain the status quo and adds to the mystique. A traditional lawyer derives his power out of the fear people have of law. He tries and maintains a distance from the rest of the fraternity and operates in a very compartmentalized frame work. Social Justice lawyering is about demystifying law. It is about interacting with different fields and deriving a more holistic understanding of law in context. It does not have a superiority tag attached to it. Rather, it derives its strength from a multi-disciplinary approach with different people contributing their expertise in different fields. It is a process which leads to

4. **IT IS NOT RESTRICTED TO COURT ROOM LAWYERING**: Social justice lawyering uses different arena with the key objective being change in society and in the process uses law as a tool. It is involved in bringing about legal awareness in the masses as well as law implementing mechanisms. It uses media to build public opinion on an issue. It contributes to law reform processes. It closely interacts with the legislature on new laws being introduced. It strategically uses non court forums like the NHRC.

5. **IT IS INCLUSIVE IN NATURE**: Social justice lawyering does not operate in isolation. It constantly strives to involve various stake holders like the law colleges, the Bar, VOLAGS etc. in the process. It has a symbiotic relation with the other stake holders specially the main stream issue based movements. It contributes to the main stream issue based movements by providing a legal perspective and in turn derives its strength out of it.

6. **IT IS NOT RESTRICTED TO HIGH COURT AND SUPREME COURT**: Even in terms of using the court, social justice lawyering uses the lower judiciary as much as the High court and Supreme Court. It is not restricted to filing of Public Interest Litigations.

7. **IT DOES NOT GET CAUGHT IN "WIN-LOSE" FRAME WORK**: Social Justice lawyering does not believe in taking up only those cases where it is possible to get a favourable order. It also looks at strategic relevance of losing a case to get a greater impact.
SOCIAL JUSTICE LAWYERING AT THE GRASS ROOTS: A CASE STUDY OF KANUNI SALAH KENDRA, DANG.

Dang is the smallest district in Gujarat. More than 90% of the population being tribal, the Kanuni Salah Kendra, Ahwa was initiated in the year 1994 by two tribal lawyers. The initiative had its roots in the movement for rights of the tribals which was very strong in the eighties. In an effort to break the efforts of the movement, the government filed multiple cases against the active members of the sangathan. As a response, the sangathan trained its own lawyers who took the process forward. Now, there is an all tribal team of 6 lawyers and paralegals and 7 volunteers actively working in the area.

Screening of Movie in a Village

The following have been the activities of the Kendra in the past one year:

1. **USING LEGAL AWARENESS STRATEGY**: The centre has been actively involved in bringing about legal awareness. It has conducted more than 70 legal awareness programmes in about 235 villages in Dang. It uses the folk form of tamasha party to spread legal awareness. Emphasis is put on not merely providing legal information but on motivating people to fight for their rights. It conducted a padyatra where the team traveled from village to village talking to people about their issues, rights and ways of accessing them. It makes optimum use of local festivals, haats and Dang darbar to spread legal awareness. They prepared an audio cassette in Dangi using the popular folk form of thali katha to give legal messages. Apart from this, they also made effective use of other print material, radio programs etc. for the purposes

2. **USING ALTERNATE DISPUTE RESOLUTION MECHANISM STRATEGY**: The Kendra is actively involved in using this strategy. Despite the resistance of the local Bar, due to the intervention of the Kendra, lok adalats are regularly held by the district legal services authority. The Kendra takes efforts to inculcate rights perspectives in the process of settlement. Apart from this, the Kendra has been instrumental in settling 522 cases out of court. It has also been active in activating the mechanism of the panchas. Meetings have also been held with the police patels who are a key part of the local dispute resolution mechanism.

3. **IMPACTING THE SYSTEM**: The Kendra has been active in simplifying the procedure for accessing justice for people. Dang did not have a labour court. Due to this, people had to go to Vansada which is quite far from Ahwa and difficult for people to access. Due to the intervention of the Kendra, now the civil court has been given the power to deal with labour matters there by saving a lot of hardship to the poor people.
Similarly, in order to get a caste certificate, people had to go to Vansada. Due to intervention of the Kendra, the signing authority which vested with the Vansada machinery was shifted to Dang. The court in Dang operates only 10 days in a month. People have to go to Vansada for all their work. The process for demanding a full court in Dang is going on.

4. **LEGAL AID STRATEGY**: The Kendra has been involved in forty one cases that have been filed in the court.

5. **JUDICIAL ACTIVISM AT LOCAL LEVEL**: Kendra has been actively involved in the process of changing the mindset of judiciary and making it pro poor. They have managed to make a break through in terms of getting the concept of release of undertrial prisoners on personal bond accepted by the lower judiciary. In the past one year, more than 100 prisoners have been released by the Kendra.

Polygamy is a common phenomenon in Dang. As per the Supreme court directive, while the second wife can not claim maintenance under s. 125 of the CrPC, she is entitled to get a lumpsum compensation upto 50,000 Rs. Kendra has been attempting to get this accepted by the lower judiciary.

Similarly, confessions in the presence of an executive magistrate are not considered valid in law. The practice in Dang is to do that. This was challenged in a case by the Kendra, the order is still awaited. The Kendra also managed to get compensation for an undertrial who had been illegally detained in the prison.

6. **INVolVEMENT OF STAKE HOLDERS**: Kendra has been trying to establish links with various stake holders. It sends reports of human rights violations to SCST commission and Human Rights Commission. It has linkages with almost 10 organizations operating in the area.

7. **RESEARCH**: during the last year, the Kendra undertook a research on the extent of atrocities committed by the police on the tribals. Based on this they plan to hold a public hearing and submit a report to the NHRC.

Using Media Van for legal awareness
PARALEGAL SERVICES

In recent years, there is a lot of stress being laid on preparing a cadre of paralegals. Lot of social organizations are trying to have a worker who is trained into using law. Paralegal services have been introduced as part of syllabus by several law universities. However, there is very little understanding on the role of a paralegal.

WHO IS A PARALEGAL

A Paralegal is a lawyer who does not have the law degree or a sanad to practice law but has all the knowledge about law and its usage. He bridges the gap between lawyers and judicial systems and the community. He helps in dissemination of legal information, follow up of cases, investigation of cases etc. He can help in pre-litigative work which is very crucial and if not done well, can affect the entire case adversely.

Most of the times, a common person finds it very difficult to understand the technical legal procedure. Not knowing the procedure, not having information of law and fear of the judiciary leads to people suffering injustices and not fighting for their rights. A paralegal has knowledge of law and procedures and attempts to simplify them.

Unlike many people, who think going to the court will get them justice, a paralegal knows what the courts can do and what they cant. He understands the strengths and limitations of the legal system. He also knows how to strategically use the system for maximum benefit. Most people find it difficult to articulate their problem from a legal perspective. Law does not deal with injustices, it deals with illegalities. The courts intervene only if there is a violation of a law. Merely saying that there has been an injustice done to me will not move the legal machinery. A paralegal adds a legal perspective to social issues. He has the ability to convert a social problem into a legal case.

Most people find it very frustrating to deal with a lawyer. While a lawyer is interested only in a legal case, the common person expects some one to help them through their problem. A paralegal is the link between the common person and the community and the lawyer. He identifies with the community in the just-unjust framework and juxtaposes it to lawyers in the legal-illegal framework.

A Paralegal Session in Progress

ROLE OF A PARALEGAL

The following could be identified as the role of a para legal:

a. **DELIVERY OF SERVICES** (pre-litigative work and follow-up). A paralegal is trained into doing the pre-litigative work like investigation and fact finding, out of court settlements with a rights perspective, filing of FIR etc. Also, once a court order has come been obtained, he is involved in ensuring proper implementation of the order and take necessary steps for the same.
b. **EDUCATION AND AWARENESS**: A paralegal is involved in bringing about legal awareness in the masses through means like community education programmes. He educates people about what their rights are and motivates them to fight for their rights.

c. **UPDATING COMMUNITY DISPUTE RESOLUTION SYSTEM**: A paralegal plays a role in revamping the existing dispute resolution mechanisms and adds a legal and rights perspective to it.

d. **ADDING SOCIAL PERSPECTIVE TO COURT ROOM LAWYERING**: A paralegal adds a social perspective to standard court room lawyering. Usually, a typical lawyer gets caught in the technicalities of the law and does not pay attention to the social angle of the case. A paralegal draws the attention of the lawyer to the social angle of the case. He plays an important role in sensitizing the lawyer to social issues.

e. **RESEARCH AND DATA COLLECTION**: A paralegal also does research and data collection on socio-legal issues. He is constantly studying the impact laws have on lives of people, interrelationship between the judicial system and people, where laws need changes, what are the emerging areas where a fresh law is needed and what are the pitfalls and drawbacks of implementation of a particular law.

### PREVALENT MODELS IN PARALEGAL TRAINING

If one takes a look at various models of paralegal training, the following prevalent trends are observed:

a. **ONE SHOT INFORMATION CAPSULES**: Many institutions reduce paralegal training to a one-time information dissemination session. The focus is on imparting legal information to the participants. It does not focus on practical components. Such training sessions could be either general in nature where various laws and procedures are covered or it is issue based where legal information on a particular issue is covered.

b. **PRACTICAL LEARNING WITHOUT SYSTEMATICALLY DESIGNED PROCESS**: Many organizations not having the means and the know how for training paralegals train their workers in the due course of their actual working. Workers learn as problems arise before them. This is not a planned intervention and is extremely slow and unfocussed. This process does not help in developing a conceptual base.

c. **SYSTEMATIC LONG TERM PROCESS WITH FIELD AND CONCEPTUAL COMPONENTS**: A good paralegal training has to be a systematic, well thought out long term process with a combination of practical and theoretical components.

### FEATURES OF A GOOD PARALEGAL PROGRAMME

A good paralegal training programme goes beyond imparting information on law. It focuses on three components - attitude, skills and information. It develops the perspective of the participant on a given issue. It encourages the quality of constant questioning and getting into the heart of the matter. It helps the participant to focus and articulate his stand on a given issue. It prepares the participant to strategize and use law as a part of an overall strategy. It helps the participant differentiate between giving social response to a given problem and planning a legal intervention.
A good paralegal programme is need based and not generic in nature. It takes into account the over all context of the participant and trains the participant to respond in that context. If a participant is focusing issues of domestic violence, an input on how to respond to labour issues will be futile to the participant.

A good paralegal programme is contextualized with respect to participant's background, issues, needs and organizational direction. It integrates the role of the paralegal in organizational context. If an organization is very clearly wanting to focus on strengthening of community based mechanisms, the training should not focus on use of court or should focus on how to use the courts towards the larger objective of strengthening community based mechanisms.

**APPROACHES OF TRAINING PARALEGALS**

The following approaches could be adopted for selecting paralegals for training:

a. training volunteers from the community
b. training members of a particular organization around specific issues
c. training individuals / members of different organizations on an issue

**DESIGNING A PARALEGAL PROGRAMME**

Designing and conducting a paralegal training programme requires a lot of perseverance and hard work.

1. **INFORMATION NEEDED.**

The following information is critical for designing a programme:

1. **Trainees**
   a. **Attitudes** - What are their feelings? What is/might be "climate" in which the training will take place? What are the motivations of the trainees, i.e., how committed are they to the task before them? What is their cognitive level?
   b. **Understanding** - What facts do they know or are acquainted with? What is unclear to the trainees in what they have done so far? What do they desire to know further?
   c. **Behavior** - What do the trainees feel competent to do? What skills do they need to develop and improve? What experience have they had?
   d. **Expectations** - What do the trainees expect to have happen?
   e. **Relations** - What are the relationships of the trainees with one another and their position in the organization?

2. **Trainers**
   a. **Abilities** - What Special abilities do you have in the training team?
   b. **Desires** - What would you most like the trainees to learn?
   c. **Expectations** - What are your expectations?
   d. **Relationships** - What is the relationship between members of your team?

3. **Situation**
   a. **When** - how much time is available for the training event? What time of day will it be? (This might make a difference in alertness of trainees - room lighting might need to be considered. Can visual aids be used if desired?)
b. Where - physical facilities.

c. What - What material resources are available?

d. What are the expectations of the organization? How do they see the role of the paralegal in their overall strategy?

2. HOW TO GATHER DATA

There are several methods of data gathering and each has its advantages and disadvantages. Trainers should decide which method suits the trainees, themselves, and the situation. Adequate data is essential, but only the data that can actually be used should be collected.

METHOD | ADVANTAGES | DISADVANTAGES
--- | --- | ---
Written Instruments (Questionnaires, post - meeting reactions, checklists, etc.) | anonymity, a chance to think, no interpersonal distortion. hidden dynamics may be revealed | cannot press for deeper answers questions may be misinterpreted. no group interactions.
Interviewing | can press for deeper answers. can test meaning of an answer. | no anonymity. interviewer and interviewee affected by other's personality. interviewer may filter answers through his own expectations.
Observation and Memory | based on a series of experiences here and now immediacy. | subject to observer's seeing only one side of the problem. no change to get trainee's statement of his own needs.

The data collected has to be analyzed in the following manner.

A. Trainees desire for change - since learning begins with desire for change, what dissatisfaction do the trainees have in understanding? Attitudes? Behavior? What are the common desires for change among the trainees? Do the desires fit the trainers' observations of trainees' needs?

B. Since training focuses on behavior, what skills will be necessary for the trainees to accomplish their desire for change? Does their desire for change in understanding and attitudes reflect need for any specific behavior change?

C. Trainer's Experience - having discovered any common needs for change among trainees, what new skills do you think would benefit them most? Do you have the abilities to train them in these skills?

D. Time - Is the amount of time available for the designing event, training what skill (or skills) could be most readily accomplished?

E. Resources - any particular resources that might be necessary to accomplish the various tasks you might choose. Are they available, or is there time to get them?

3. DETERMINE THE PURPOSE

A. What specific skill have you decided upon for the training event? Is it sharply defined? Is there more than one skill involved?

B. State the purpose in a sharply focused, succinct statement or what you hope will result - the desired outcome (in training, this should indicate a change of behavior).
C. The standard of consensus needs to be followed by the training team if all are to be committed to the purpose.

4. **TEST PURPOSE**

The following CRITERIA for a skill training purpose make it more likely that the goals reached will be in line with the intentions of the trainers and trainees.

A. **Is it RELEVANT?** (Based on Data Analysis) The purpose should be based on the real needs of trainees for behavior change here and now. It should be in complete touch with the life, interaction, present movement, and experience of the group.

B. **Is it CLEAR and CONCISE?** Avoid double or multiple purpose that tends to split attention and concern. Many modifying clauses suggest a lack of clear intention. The purpose statement should be in one, direct, simple sentence.

C. **Is it ATTAINABLE?** A purpose should be possible to accomplish. Further repractice and training may be needed, but satisfying and measurable improvement should be possible.

D. **Can you do it?** You, the trainers, have to be able to do it. You can't train somebody to do something you can't do! If you haven't the resources, or can't get the resources to design and administer a plan to accomplish this purpose, start over.

E. **Is it SPECIFIC?** The purpose should deal with specific skills rather than the larger areas. Whole problems should be subdivided, and specific behaviors should be focused upon as the skill to be learned.

F. **Is it BEHAVIORAL?** Persons can change their ideas, attitudes, or behavior. Training aims at change of behavior, rather than change of ideas or attitudes. Conceptual, ideological, emotional terms and words should be avoided in purpose statements. Language should be used which has to do with what we say and/or do.

G. **Is it MEASURABLE?** A purpose statement should contain within it some indication of the criteria by which you will be able to tell whether or not the purpose has been achieved.

These criteria may be thought of as boundaries. Any purpose that fully meets them all will be readily identifiable as a skill training purpose.
FIVE EASY STEPS TO DEVELOPING A DYNAMIC DESIGN

1. ESTABLISH GOALS AND LIST THEM
   - Ask: 1. What do you want to happen? 2. What do you want people to go away with?
   - Determine whether your goals can be achieved in the allotted time.
   - Prioritize goals and set logical order.
   - Organize goals in terms of a logical flow.

2. BRAINSTORM METHODS
   - Be creative
   - Exhaust all possible ideas
   - Take off on your own or on others' ideas

3. SELECT METHODS AND STRUCTURES
   - Select methods that best meet goals
   - Select structures to implement methods
   - Structured experience
   - Non-structured experiences
   - Lectures
   - Projects
   - Discussions
   - In-person
   - Over-personal
   - Small group
   - Inter-group
   - Whole group

4. ASSESS THE DESIGN
   - Are the goals clear?
   - Do the methods meet the goals?
   - Does it meet the requirements of a good design?
   - Does the design feel good?

5. REVISE THE DESIGN
   - Do through the Assessment Process if you can say 'yes' to all the questions.

ORGANIZING LEGAL AWARENESS PROGRAMME

Legal awareness is the first step to using law. Only if people are aware of their rights will they be able to access them. It is important to distinguish between dissemination of legal information and bringing about legal awareness. While legal information could be one of the factors which may move a person into taking recourse to law, often, a much deeper process is required before a person can be moved from the state of subjugation. An effective awareness programme not only imparts legal information, it also tries to address social and psychological aspects that prevent a person from standing up for their rights. Frequent follow-up visits are required after a programme has been conducted.

CHOOSING YOUR AREA

The first step to organize a legal awareness programme is to choose your geographical area. The following factors must be kept in mind before deciding the area you want to choose:

1. Is the area accessible easily? If not, do you have the resources to reach there?

2. If there are people interested in availing legal services subsequent to our programme, will we be in a position to respond? In the alternative, is there an alternative source in the area which they can access to avail of legal services?
3. What is the strength of the team? How many days can they devote to the process for followup activities?

4. What is the socio-economic profile of the area? What are the areas where the need is maximum? Where is the population of the vulnerable sections concentrated?

5. Choose villages which are connected with surrounding villages. This way, outreach may be increased.

**DOING A LEGAL PRA**

It is important to identify the legal issues in the area. While there could be several problems people might be facing, identifying the problems which have a legal recourse is important. A quick participatory rural appraisal will give you an overview of the prevalent legal issues in the area.

Visits must be made to the village and meetings held with the community leaders of mahila mandals, yuvak mandals, labourers etc. Specific questions can be asked to specific group members to identify the issues of that particular group.

Some amount of prior information about the village will be helpful in deciding which are the key questions to be asked. PRA should be designed based on a detailed study of the relevant law and possible violations.

The following is given as an illustrative list of questions to identify legal issues:

1. What are the different communities in the village?
2. What is the interrelationship between them?
3. Are there any mandals/other organizations active in the village?
4. Who are the leaders of the various communities in the village?
5. Information about their cultural practices
6. What is the time in the day when the people will be available?
7. How many labourers are there in the village?
8. What are their working conditions?
9. What kind of work are they involved in? How many hours do they work?
10. Do they get paid adequately for their work?
11. Are they contract labourers?
12. How many people in the dalit community own land?
13. Is the land in their possession? If not, is there an encroachment by the upper castes?

Addressing a meeting to identify the legal issues
Based on the above information, one can design the legal awareness programme. The following steps are essential while designing the legal awareness programme:

1. Deciding the issue on which the awareness programme will be conducted
2. Organizing resources for transportation, audio-visual aids etc.
3. Informing the people about the purpose, the time and the venue
4. Identifying audio-visual/print material that will be used in the process
5. Choosing the appropriate method
6. Organizing appropriate followup.

**CHOOSING APPROPRIATE METHOD**

Care must be taken to choose appropriate method for conducting an awareness programme. The selection of the method should be done based on the literacy level, the local dialect, etc. Optimum use should be made of village haats, festivals and other occasions where people gather. Any of the following methods could be used while designing the programme:

1. **LECTURES AND DISCUSSIONS** : They have the advantage of being used anywhere without requiring much resources. To be able to hold the attention of an audience requires good oratory skills. Instances of people in similar situations who have successfully used law should be included as part of the lecture. Also, the lecture should be interactive. It should encourage questioning by the group. It should address attitudinal blocks which stop people from using law.

2. **POSTERS** : In areas where literacy levels are low, posters are a good medium to convey messages. It is also useful in presenting before the audience a true picture of their situation and initiating a discussion.

3. **FILMS** : Some popular films can be used to initiate discussion on a particular issue. In the alternative, films specifically based on a particular issue can be also used to initiate discussions which can then be channelised in the direction of legal recourse.

4. **FOLK MEDIA AND STREET THEATRE** : The existing folk media prevalent in the area can be used to give legal messages and create awareness.

Apart from conducting legal awareness programmes in the above manner, the following could be other options which could be thought of as means for legal awareness:

1. putting hoardings and banners in public places with legal messages printed on them.
2. sticking posters behind buses which go to rural areas.
3. wall writings and graffiti.
4. using local TV and radio channels for information dissemination.
5. distributing pamphlets with legal information on them.