



Lawyers for Change

An initiative of ECONET with technical support from Centre for Social Justice

Date: 28-30 April, 2012

National Meet of Social Justice Lawyers



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Organized by:

Centre for Social Justice

In collaboration with:

National Dalit Movement
for Justice





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Summary

The National Meet of Social Justice Lawyers - Lawyers for Change, held at New Delhi from 28th-30th April, 2012 saw a varied array of speakers addressing young lawyers gathered from across the country. Organized by Centre for Social Justice in association with NCDHR – National Dalit Movement for Justice, the panel included distinguished personalities including Hon'ble Justice Dr. S. Muralidhar, Shri Wajahat Habibullah, Chairperson, National Commission for Minorities, Ms. Farah Naqvi, Member of the National Advisory Council, Prof. Babu Matthew, National Law University, Delhi, Shri A. K. Parashar, Joint Registrar (Law), National Human Rights Commission, Ms. Vrinda Grover and Ms. Geeta Ramaseshan to name a few. The Lawyers for Change programme, the first batch of which commenced in December, 2011, is an effort aimed at bringing young lawyers from across the country for social justice lawyering. The programme at present has 25 Fellows in two batches.

The speakers addressed a variety of issues and aspects of social justice lawyering in specific, as well as the general arena of lawyering itself. The one point echoed by most of them was regarding the quality of work of social justice lawyers. Generally, it has been observed that since these cases are in public interest and are usually not paid for, many lawyers compromise on the quality of their work and get away with second-rate lawyering.

The speakers emphasized the importance of having sharp legal skills, maintaining a level of professionalism, and producing good quality work, be it legal drafting or legal aid. "Advocacy is an art", opined Hon'ble Justice Muralidhar, Delhi High Court, and this was echoed by Menaka Guruswamy, an advocate in the Supreme Court, who feels a lawyer's job is to bring craft and quality lawyering to the court. They both also shared the opinion along with a few others, that it is important to

maintain a level of professional detachment in court as a strategy. However, it was also stressed by many, including Ms. Farah Naqvi, Member, National Advisory Council and Mr. Arvind Narrain from the Alternative Law Forum, that lawyering is not just restricted to the courtroom, and that one needs to engage with spaces beyond that, especially for social justice lawyering. "Walking with both legs" as Sudha Bharadwaj, an advocate and social rights activist from Chhattisgarh, termed it – the balance between working in court and on the grassroots level in the field. The involvement of the community and civil society are vital to social justice cases.

According to Ms. Kajal Bharadwaj, an advocate working on Intellectual Property Laws from a social justice perspective, the most successful legal battles fought have been the ones where community consultation lies at the heart. Community involvement was earlier stressed on by Mr. Gagan Sethi, Vice

Chairperson of Centre for Social Justice and Ms. Sudha Bharadwaj, while Ms. Shruti Pandey from Ford Foundation also highlighted the importance of public participation in law and policy making. In the area of policy making, Ms. Farah Naqvi expressed her deep concern with the number of new laws being churned out by Parliament while there was an abysmal lack of implementation of the existing laws. This was echoed by Shri Wajahat Habibullah, Chairperson of the National Commission for Minorities, who feels India has laws in place to protect all sections of the community but the problem lies in their lack of enforcement. He brought to notice that while there is not a great deal of rights-based legislation, even the ones that exist are not implemented, while laws on status quo are very strictly enforced. The need for accountability was an aspect emphasized by many, be it on part of the government machinery or on that of lawyers. Shri Habibullah pointed out the duty of lawyers to ensure that people subjected to violence are given protection under the law. Many speakers including Ms. Veena Gowda, Advocate practicing in the Bombay High Court, were of the opinion that litigation needs to be demystified for the client and made an empowering process instead of the cumbersome ordeal it usually is. Mr. Tridip Pais, an advocate in the Delhi High Court, was of the opinion that it is the responsibility of

every lawyer, in his unpaid cases, to represent clients who don't have the option of another lawyer. As pointed out by Justice Muralidhar, the demands on the time of a good human rights lawyer is a lot, and involves hard work, but the tradeoff is immense satisfaction, a feeling reiterated by other speakers as well. Another important point raised by some speakers, was the absolute need for lawyers to work bottom-up, beginning from the lower courts, as those are the actual arenas where real human rights work takes place, and requires committed and sharp lawyers. The process is also essential in order to get a first-hand experience of how courts function. But courtrooms don't always have answers to all questions, and it is here that Ms. Vrinda Grover and Ms. Menaka Guruswamy pointed out the importance of legal research and writing in the arena of human rights lawyering, which they placed on an equivalent level with legal practice. Ms. Menaka highlighted what according to her is an extraordinary gap existent in India between legal scholarship and legal practice, and the need to bridge the same.

Lastly, many lawyers advocated the benefits of having a mixed practice, with a combination of both regular, mainstream cases which were also the paid cases, alongside the social justice cases that were done for free. This would ensure, in their opinion, both a decent

livelihood, and a holistic experience that is required for a lawyer in building a vast knowledge repository and which also helps maintain a level of professionalism. However, lawyers like Ms. Veena Gowda and Mr. Arvind Narrain, held a different opinion, and practice only in a particular genre that is akin to their politics. Ms. Veena maintained that her identity was that of a feminist lawyer and her challenge was in mainstreaming women's rights lawyering, bringing it out of the alternative domain. It was clear that there was more than one way here of practicing social justice lawyering and it is up to the individual which path they choose, commitment and focus being vital elements of the process. Apart from advocates, there were speakers from institutions like the National Human Rights Commission, and the National Foundation of India – Mr. A. K. Parashar and Mr. Amitabh Behar respectively who also brought to notice the functioning of these institutions and the roles they play within the social justice framework. Overall, the three days of the meet saw the discussion of important concepts and threw up many interesting questions. Participants got various insights into the working of legal and government mechanisms and the pressing issues of today. Hopefully, the process of empowerment has not ended here, but just begun for all the young lawyers who gathered from different parts of the country, and who will take on these issues of social justice and thereby make a difference to our society.

List of Speakers

1. Justice Dr. S. Muralidhar, Judge, High Court of Delhi
2. Sh. Wajahat Habibullah, Chairperson, National Commission for Minorities
3. Ms. Farah Naqvi, Member, National Advisory Council
4. Prof. Babu Mathew, Visiting Professor, National Law University, Delhi
5. Mr. Abusaleh Shariff, Executive Director, US India Policy Institute
6. Sh. A. K. Parashar, Joint Registrar (Law), National Human Rights Commission
7. Dr. Prasad Sirivella, General Secretary, NCDHR – NDMJ
8. Mr. N. Paul Divakar, General Secretary, Dalit Arthik Adhikar Andolan
9. Mr. Tridip Pais, Advocate, New Delhi
10. Ms. Menaka Guruswami, Advocate, Supreme Court of India
11. Ms. Geeta Ramaseshan, Senior Lawyer, Madras High Court
12. Ms. Vrinda Grover, Human Rights Advocate, New Delhi
13. Ms. Sudha Bharadwaj, Advocate, Raipur, Chhattisgarh
14. Ms. Shruti Pandey, Programme Officer, Ford Foundation
15. Ms. Kajal Bhardwaj, Advocate
16. Ms. Veena Gowda, Advocate
17. Mr. Amitabh Behar, Executive Director, National Foundation for India
18. Mr. Arvind Narrain, Founder, Alternative Law Forum
19. Mr. Gagan Sethi, Vice Chairperson, Centre for Social Justice



Practical Legal Strategies for Ensuring Human Rights

Justice Muralidhar from the Delhi High Court started by saying that one has to talk about personal experiences as a lawyer when discussing legal strategies. He himself didn't start off as a human rights lawyer, but as a civil court lawyer in Madras. He had a very well sheltered life, with no exposure to politics, which in his opinion was a big drawback. He pointed towards the legal education today and called it faulty, as they


Dr. S. Muralidhar is a Judge at the High Court of Delhi. He did his LL.M. from Nagpur University in 1991 securing the first rank. He was awarded the Ph. D by the Delhi University in February 2003 for the thesis on Legal Aid and the Criminal Justice System in India. Has been a lawyer on the panel of the Supreme Court Legal Aid Committee and has been appointed amicus curiae to assist the Supreme Court in several criminal and PIL cases. Has been the counsel for the Election Commission of India and the National Human Rights Commission for several years.

too do not give the required exposure to students. He narrated how within 2 years of his career, he got a break at the Supreme Court under a lawyer, and so, rarely went to the lower courts. This was a mistake and he urged all the lawyers in the audience, not to become a specialist to start with, as it is very essential to know how courts function. The nitty-gritty's like how to get cases registered, called for hearing, summoned before the judge etc were very critical. One needed to be extremely professional and competent. Checklists should be thorough and the opponents' arguments anticipated.

He described his early experiences at the Supreme Court. Legal aid work would be outsourced to juniors like him, and if you prepared a good draft, you got the chance to attend the conference and brief the lawyer. You were then asked to explain the case, and if by some luck the lawyer didn't turn up, you also got the chance to argue the case since you were conversant with it. Justice Muralidhar said that if one did those human rights cases really well, it gave a sense of

tremendous satisfaction, even though they're not well paying at all. He went on speak about how the legal scenario was seen as an instrument of oppression. It was never the first choice for people. In the whole framework, it was very difficult to convince people that law could work in their favour, and that was only possible if one was different as a lawyer. He illustrated the same with example. Firstly, he said, lawyers needed to develop the art of listening, so that they didn't miss out on essential details. Secondly, one should never compromise on the politics of a client.

Thirdly, one should also be very realistic about what he could achieve in court, and be honest about it with the client. Clients should always be kept in the know. Lawyers needed to demystify the whole legal process for the client. Also, he said, as one grows in the profession, the more important cases one handled, the less important cases one would ask their colleagues to handle. But difficult cases in human rights and Public Interest Litigations required a more experienced lawyer. Legal aid cases shouldn't get any lesser



“The legal scenario is seen as an instrument of oppression. It is never the first choice for people. In the whole framework, it is very difficult to convince people that law could work in their favour, and that is only possible if one is different as a lawyer”

priority than one's paid cases. It was true that quite often, one would feel stretched. There would be many demands on the time of a good human rights lawyer but the trade off was tremendous satisfaction, and reinforcement in the minds of people regarding their belief in law. Lawyers like them came to the legal profession because they felt they could make a difference in the lives of people. It was a responsibility one had to take seriously. One had to treat legal aid clients in the same way one would treat all other clients.

Moving to more technical aspects, the judge opined that converting a problem into a case required a lot of professional knowledge. As a judge, he had observed that the quality of drafting had dropped drastically. Young lawyers didn't have their ideas clear. But once a lawyer had the confidence of a court, they could be heard more easily. Lawyers needed to be very watchful and alert to see what worked and what didn't. According to Justice Muralidhar, there is no free time for a lawyer. One was either arguing a case in court or working in office or reading a journal in the library.

There was never time to be idle. Advocacy is an art, he said, and one had to develop the skill. He advised lawyers to be respectful of every colleague in the bar. He also said that human rights lawyers must be excellent criminal lawyers. Being emotionally detached, and modulating one's voice according to the need was also important, as was being firm, polite and patient. The challenge was not in getting yourself heard, but the client for whom you're standing, heard. Citing examples of cases, he said one needed a lot of stamina to take a case through its entire course. In the process, documents, and personal narratives like affidavits went a long way in strengthening a case. One had to practice hard-core lawyering. Giving the example of the US Supreme Court, he stressed on the importance of time and arguing a case well in the allotted time. He suggested mock courts to sharpen one's skills, and advised all lawyers to be stronger and better prepared for their cases to come.



Role of Lawyers in Ensuring Minority Rights: Emerging Challenges

Sh. Wajahat Habibullah, Chairperson of the National Commission for Minorities, talked of the integration of minorities into society as a whole. India is the 1st country of its kind – a multiplicity of nations. Earlier every village was an institution of self-governance and had elements of self-sustenance. India came together first in the time of the Guptas, then the Mauryas, the Sultanate and then the Mughals. According to Mr. Wajahat, India today conforms very closely to the Mughal Empire at its maximum. Today we are attempting to make a nation out of this disparity. He referred to the Supreme Court case of Patil v. Union of India, a case on the

Shri Wajahat Habibullah is currently the Chairperson of the National Commission for Minorities and was previously the Chief Information Commissioner of the Government of India. He was an officer of the Indian Administrative Service (IAS) from 1968 until his retirement in August 2005. Before his retirement and his subsequent appointment by the President as the Chief Information Commissioner, he was Secretary to the Government of India in the Ministry of Panchayati Raj.

Jain community. The Supreme Court found all communities in India to be minorities. It held that such communities would be deemed to be a minority who faced a challenge in terms of their Constitutional rights.

Mr. Wajahat asked whether all minorities were enjoying fundamental rights that are available to every Indian. This was where the question of the Gujarat carnage came in. According to him, what we need to lament is not how many Hindus or Muslims were killed but how many Indians were killed at the hands of Indians in the name of religion. Could a country like India with its traditions and philosophies, its birth of Buddhism and Jainism, forget the murder of its own citizens by its own citizens? This is where, he said, the lawyers come in. He referred to the Internally Displaced People (IDP) in Gujarat and the work on them being done by CSJ, the IDP community in Jammu & Kashmir, the Christians of Kandhamal etc. Terming Gujarat as a laboratory, he asked what the role of lawyers was here. There were laws to protect all sections of the community including minorities, but were these laws being enforced? When the

Communal Violence bill was being discussed, big authorities came to contest it saying there was no need for this bill when there were already so many laws in place. But none of these laws are being enforced. Mr. Wajahat said there was no law in place regarding IDP, but had been included in this draft bill thanks to suggestions made by NAC. He also said that when communal violence occurs, it becomes the duty of the lawyers to ensure that people who've been subjected to such violence are protected under the law. Provisions should be taken advantage of, FIRs should be registered. He referred to the Hashimpura murders case, which after 25 long years, still has not been decided though it is such an apparent and clear case. What we are involved, he said, is the question of building a nation. It is not only the largest democracy in the world alone; it is also the foremost, with decentralization right down to the village level. Mr. Wajahat ended by saying that we had for us a challenge, to ensure India's future as a nation in the true sense of the word, where every citizen is a participant in nation building. He urged the lawyers in the audience to see that the laws that exist are actually enforced.



Inaugural Address

Ms. Farah Naqvi, Member of National Advisory Council made the inaugural address. Expressing her pleasure at being amidst young lawyers, she started out by saying “You have the power to change lives”.

Ms. Farah Naqvi is a member of the National Advisory Council. She is also a writer and activist working on public policy and the rights of the most marginalized from both a development and justice perspective. She works on minority rights, (in particular, on issues related to the Muslim minority), Dalit rights, gender issues, and women's education.

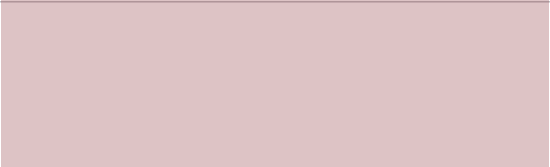
She said all our inequities would be different if we indeed had an army of social justice lawyers both inside and outside our courtrooms. According to her, such an army is required to make the law work for the right reasons, for the weakest in our land. That has to be our benchmark - the rickshaw-puller, the construction worker, the street child, the IDP Muslim, the dalit family massacred for no reason than that they were dalit and dared to educate their children, the woman thrown out of her home to make way for the second wife – all these people look to us lawyers, for it is we who have the power to change lives.

Ms. Naqvi spoke about how we Indians inherited laws from a colonial power, laws that were intended to protect the state from its citizens. Such laws, in her opinion, were highly imperfect, and she was proud that the social justice movements in India had worked on law reform – be it the dalit rights movement, the women rights movement or the child rights movement. For 60 years, everybody put their weight behind law reform to change the letter of the law. But Ms. Naqvi put forward a

question – “What after that?” She mentioned her current work, which involves trying to change public policy and how she worries every time a new law is proposed. She revealed that Parliament today has over 60 pending legislations.

Our law-making ability is getting better, and rights-based legislation has entered the Indian framework but she wondered whether all this is being done as a cover up to excuse implementation of the laws that already exist? Our record of implementation of any of these laws in favour of the weak is abysmal, and so, Ms. Naqvi said we have reason to worry because without social justice lawyering these laws and rights-based language don't mean very much.

Ms. Naqvi spoke about her younger days, when activist lawyering operated within the traditional human rights domain – torture, custodial violence and the like. But today is different; social justice lawyering cannot take place after the fact and has to have a proactive, preventive element so that each one of us can realize our rights. She



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mentioned how taking something like RTE to the courtroom would be an unpopular battle; the entire system of hierarchy would come together to fight so that it could remain untouched. However, these battles, according to her, are the essence of social justice lawyering - to disturb the system, again and again until something gave way. It would require bravery and it would be very lonely, with the other side very wealthy, powerful and privileged.

Every social justice case would be a David and Goliath – except the social justice lawyer would lose his case many more times than he would win. However, the twist in the tale would be that for every one time in the 10 or 100 that he won, it would not just be about winning a case. That win would have the chance to transform the lives of not just the aggrieved, but also change the system. Her final appeal to every lawyer in the audience before she stepped down was that they humanize the legal system, and in the process dignify the victim who had approached them for help. She requested that lawyers kept morality at centre stage. She said that

sometimes law is the only weapon of the weak, and if the weak in India have some faith in the law, it is the job of us lawyers to help the law live up to its faith. She ended by wishing NCDHR and CSJ all the best in forging a much larger army in the years to come.



Professor Babu Mathew from National Law University, Delhi began by congratulating Centre for Social Justice and its entire team for their commendable work in enabling access to justice at the grassroots for over 15 years. Prof. Mathew then commented on how top law schools of the present day produce very few lawyers who take up social justice lawyering and how initiatives like Lawyers for Change are necessary to encourage young lawyers to enter practice on social justice issues.

Professor Babu Mathew is a Visiting Professor at National Law University, Delhi. He is a Science Graduate who went on to do his Masters in Law with specialization in Labour Law and Administrative Law securing the first rank in the University in both subjects, followed by an M.Phil. from the National Law School of India University at Bangalore. He has served as Country Director of Action Aid International in India.

Keynote Address

Noting the importance of the space for young lawyers provided by the Constitution of India, Prof. Mathew reflected that the leading thoughts and thrust area of the independence movement were based on the principles of anti-imperialism. He went on to say that what is not equally well known is that it was also against foreign capital and feudalism and it was this process which really contributed to the Constitution.

According to Prof. Mathew, the Indian experiment (of the Indian Constitution) is a unique one - it has aspects of capitalism, free enterprise and also socialist principles and planned economic development. He says all these factors together contribute to the uniqueness of whole engagement we have seen since then. Analyzing the population which took part in the Indian independence movement, Prof. Mathew said that the sections of the society which are marginalized today are the ones which were also marginalized in terms of participation in the Indian independence movement, particularly Dalits, Tribals and Muslims. He said that it was

only for the presence of Dr. Ambedkar in the Constituent Assembly that made the process of framing of the Constitution inclusive because of which we have provisions abolishing untouchability, minority rights and Schedules 5 and 6.

Prof. Mathew described the mode of development which independent India chose as uniquely different from other models of development; a combination of both capitalism and socialism, which very few countries have consciously opted for. He applied this to Labour Law dividing it into the colonial period, post-independent period, neo-liberal period, and the period of crisis in neo liberalism. He said very huge gains were made in labour jurisprudence in the period of land reforms and there were many deliberative interventions of the State made in order to introduce labour jurisprudence in India. He said that the kind of labour jurisprudence India has hardly exists in any other part of the world and this was as a result of Nehurvian vision, massive legislative effort, the trade union movement and judges like Gajendragadkar. These gains were

“There is a shift in the character of the State, he said, and the State is becoming a victim of monopoly of capitalism. I doubted whether the democratic constitutional frame still holds, where the majority does not get what they want”

security of tenure, application of principles of natural justice, higher wages through collective bargaining, social security legislations, freedom of association, etc. This was during the period of planned economic development. The movement we moved into new economic policy (July 1991) embracing neo-liberalism, every single of these rights was reversed. He also commented on how 93% of India's workforce does not enjoy this kind of jurisprudence since it is unorganized.

Prof. Mathew said that with the ideological change, through the Washington consensus (privatization, FDI, free trade, IP regime, reform of the finance sector), what we had achieved and what we have now has significantly changed. He said that if one wants to advance in social justice lawyering, one has to return to the old model and reject neo-liberalism. Speaking of exclusion, Prof. Mathew said while the government talks of inclusive development, it perpetuates exclusion. The excluded are the Dalits, tribals, and Muslim population. They constitute the overwhelming majority of India. He said that the higher the rate of growth, the more the exclusion is

bound to happen. There is a shift in the character of the State, he said, and the State is becoming a victim of monopoly of capitalism. He doubted whether the democratic constitutional frame still holds, where the majority does not get what they want.

He ended by saying that networks like LfC are extremely important and that there must be an alliance of the marginalized which must work and use the ballot. He said young lawyers should not be lost in everyday court work but be involved in politico-legal work.



Role of Lawyers in Policy Making

Mr. Sharif commenced by explaining that there were legal requirements a country may have of an analyst-academic. India was a large and diverse country where government policies were very important. The Constitution was a guideline to bring sensible governance in the country within a democratic frame. He questioned whether all the 3 institutions – the judiciary, legislature and executive - under the doctrine of separation of powers had equal power. People in the audience had very diverse opinions and Mr. Wajahad said that it was healthy to have different opinions. He said

Dr. Abusaleh Shariff is the Chief Scholar at the US-India Policy Institute, Washington D.C, USA. He is an economist and demographer, works on various aspect of human development and inclusive growth He was a Senior Fellow/Chief Economist with the National Council of Applied Economic Research, New Delhi between 1994 and 2012. He was on the Ministry of Home Affairs, Government of India 'Committee for the Consultations on the Situation in Andhra Pradesh' during 2010.

the three were fairly independent. He also said that he accepted that the bureaucracy here was very strong and had a sort of permanent life. But he said it was required to control the vast areas and organizational structures of the country. He commended the virtuous electoral system but felt sorry for the lack of youth in the decision-making processes. Moving on to the topic of economic gain, Mr. Sharif termed the present as the Golden Age of India. But the fact of the matter was that this economic boom had led to more disparities. He commented that India was one of the worst countries when it came to mistreatment of women. An equal balance in schools was not a reality even today. On another note, a new politically sensitive disparity had emerged based on caste and religion. According to Mr. Sharif, without doubt, we should work for their welfare. Citizenship was equal to every citizen of the country. Some may have unequal resources, but all have equal democratic rights. In actual practice though, he said, we do not see an equal delivery.

In Mr. Sharif's opinion, we as citizens should

fight equal opportunity rights, which would create a level playing field for everybody. It is the judiciary that was trying to create a framework to provide equal opportunity. The legislature, he said, had failed in doing so, and the bureaucracy very often was biased. He said that as advisor to the Prime Minister, he had made the Sachar Committee report on Muslims in India. He had advised the Prime Minister to provide equal opportunity to that community. There was a long debate on reservation, which according to him does not provide that many benefits to people. The Muslim community on certain parameters is lower than the dalit community. What was needed was mainstream programmes and not separate ones for separate communities. Justice too had become expensive, and too procedural. He said we needed to create new institutional structures like an Equal Opportunity Commission open to all, as had been recommended by the Sachar Committee. Mr. Sharif answered many questions of the audience on reservation and youth, opening up those issues deeper for a better understanding.



Role of Lawyers in Ensuring Human Rights: Emerging Challenges

Mr. A. K. Parashar from the National Human Rights Commission spoke about the composition, functions and powers of the Commission. He informed the audience that the interventions made by NHRC, which was set up in 1994, were interim in nature, and one could always take recourse to the legal remedies available. He described some of the important interventions made by NHRC, in the Gujarat riots case, Bilkis Bano case, and the 'Jebkatre' case of humiliation of pick pocketers in Punjab.

Mr. Anil Parashar is the Joint Registrar (Law) at the National Human Rights Commission. He has been working with the NHRC since 1993. He is a commerce graduate from the Delhi University and completed his degree in law from the Kurukshetra University in 1987.

Mr. Gagan Sethi and NHRC's Special Rapporteur brought the Bilkis Bano case to them, and they took suo motu cognizance of the pick pocketers' case in Punjab. Mr.

Parashar stated that their internship programme was quite popular. They also took the help of fresh, young graduates on a part-time basis. The commission's most prominent program was the task of spreading awareness. They were also in touch with different core groups of NGOs, lawyers etc and tried to have one or two meetings with them every year. The most pressing issues that they were currently being approached for were Right to Food and Right to Rehabilitation. Mr. Parashar commented on the study of law in today's age as very different from earlier times. He also acknowledged that human rights work was not lucrative.

Many questions were addressed to Mr. Parashar post his speech. One lawyer wanted to know what were the common mistakes made by lawyers in approaching NHRC and how could they prevent their commission. Mr. Parashar answered that

lawyers should have faith in one institution. Copying a complaint to 30 institutions only increased everybody's workload. Also, he said, basic facts should be mentioned clearly on the complaint to make work easier. Another question was whether an aggrieved person could approach NHRC if he did not get relief via the State Human Rights Commission. Mr. Parashar replied that the NHRC was not an appellate authority. If some matter had already been taken to the SHRC, it could not be brought to NHRC. However, NHRC could transfer a matter to SHRC, if it fell within the jurisdiction of that state

Dr. Prasad Sirivella



Welcome Address

which was a practice in the State of Rajasthan where the 'chamars' are made to remove the dead bodies of animals.

Dr. Prasad began by saying that he was very happy to be interacting with so many young lawyers and talked about visiting CSJ in 2003 when he was the Director at Sakshi. He started by sharing some of the atrocities which Dalits face, where the dominant castes attack the Dalits. He said that there were many grave incidences but to mention a few he recalled an incident where a Dalit woman agriculturalist was having lunch and a dog belonging to the higher caste had one roti from her lunch. This caused the dominant community to come to the woman and drag her naked through the village. The dog was also outcaste. He talked about another case

Dr. Prasad recalled how he had a lot of problems as a Dalit Human Rights activist struggling for justice. He shared an incident of a human rights case where the charge sheet was not being filed and they had no option but to surrender to the injustice. At that time he found a ray of hope in a senior lawyer in Andhra Pradesh. He asked the lawyer that even though as per the Act the investigation has to be done in thirty days, why in none of their cases charge sheet was being filed. The lawyer asked him to file a petition in the High Court. He asked for help from a group of young lawyers but they were unwilling to offer their services since that involved raising voices against the dominant castes. He says "The Dalits face discrimination not only in the society but also in the court by judges. They are abused; papers are thrown at their faces."

He said although many cases go to the court, the accused are acquitted. The usual grounds

of acquittal are that the victim was not abused in the name of the caste, lack of evidence, the accused not being identified, death of the victim during trial, no evidence or lack of medical evidence, victim not being an SC/ST, the investigation not being done by the competent authority. He said that this was the point when he realized that unless and until capacities are built of advocates from the community and given confidence, nothing is possible. He said that he believes that people who take social justice issues do something beyond the existing law.

In his concluding remarks, he said India legitimizes caste based discrimination which can be seen from the policies and schemes. Giving examples, he said Self Help Groups generated a new kind of discrimination by not allowing Dalit women to be a part of it. An interesting statistic that he presented in the end was that if Dalits demand a country then it will be the 6th largest country in the world, and even then Dalits of the country face the kind of discrimination that they do.

Dr. Prasad Sirivella is the Gen. Secy of NCDHR-National Dalit Movement for Justice. He was a member of the drafting committee of the National Advisory Council for drafting of the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011.



The Plight of Dalits in the Country

Mr. Paul Divakar, sharing the dais with Dr. Prasad Sirivella started his brief note by sharing a sign of protest in the form of shaving his head. He said that this protest was against the siphoning off of Rs. One Lakh Crore which meant was for the SC & ST communities but which was manipulated and diverted. He said that it has been 33 years since they have been resisting. He said the shaving of the heads was to communicate that “this cannot be tolerated anymore”.

Mr. N. Paul Divakar is the General Secretary of NCDHR-DAAA (Dalit Arthik Adhikar Andolan). DAAA mainly focuses on Economic Rights of Dalit and works on Budget Analysis and Advocacy. He has earlier been the Convenor of National Campaign for Dalit Human Rights (NCDHR) based in New Delhi

He said that according to him, democracy is the core of the Indian Constitution – the principle of “One person, one vote”. He said the entire politics of the country revolved

around this tenet of the Constitution. He said there is a hierarchy existing not only in the society as a whole but also within the communities which the society comprises of. He said that even within the so called lower castes of the society, there is stratification and a hierarchy.

According to Mr. Divakar, one factor which determines whether an act is a crime or not is the age or the era. Giving an example, he said that, before 2005, domestic violence was not a crime – but today one can sue one's husband or even a partner for domestic violence. He gave another instance of how non-consensual sex with wife is not a crime today, but we could have it as a crime tomorrow. Through these examples, he expressed his views on how while there was so-called development in the society, certain sections of the population still engaged in age old practices such as untouchability, one of

the main causes of atrocities on Dalits. He expressed hope that development and the society would go hand in hand and the laws would play a positive role in the same.

He insisted that as Lawyers for Change, one needs to believe in access to justice and deal with it. He said often people restrain themselves from reporting instances of atrocities inflicted on them since the act of complaining itself brings shame. He said, “as long as Dalits run away from their identity, they will feel ashamed. The person who is inflicting the violence is the one who needs to be ashamed.”

He closed his address by telling the young lawyers present that it was high time for the judiciary to be exposed. He appealed to the lawyers to analyse judgments better and to file cases on social justice matters and atrocities since only this could bring about a change in the system.



Mr. Tridip Pais, Advocate, Delhi High Court shared his experiences as a lawyer who combined a practice of mainstream as well as “free” cases as he chooses to call them, devoting 25% of his time to the latter.

Mr. Tridip Pais is an advocate at New Delhi and was involved in the landmark case in the Delhi High Court of decriminalizing homosexuality. He used to represent the Students Islamic Movement of India and has also worked with several youngsters who were implicated falsely in terror cases.

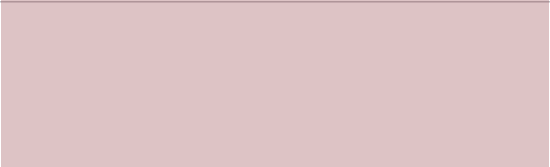
Sensitive Lawyering - Integrating Response to Human Rights within Mainstream Practice

He said working independently on free cases was different from being linked with a team or organizations since these come with a mandate, leaving no scope for freedom of choice. He chose this model as opposed to leaving his mainstream practice entirely, so that he could follow his own mandate and refuse a case where it conflicted with his virtues and interests. For e.g. if there was an environmental rights case, he could choose not to represent the client as their mandate for clean air resulted in the displacement of many people. As an independent practitioner, one can set his own goals, and have a particular method of working.

According to Mr. Pais, in order to be clear and focused in the legal profession, and have a macroscopic view of how the system works, one needed to be in the main stream. This way one gets to see a variety of cases. Also, he said, morale for a lawyer was very important. If he won 50% of his paid cases, losing most of his free cases didn't matter as much. In the free cases, since the system didn't sympathize with the social justice lawyer, and the client

usually had very little evidence, defeat therefore was mostly inevitable. One needed to be within the system to understand how it worked, and in social action litigation such exposure might not take place, therefore he advised the young lawyers to get exposed to every area of law so that when they chose their kind of practice, it was an informed choice. It had to be their own choice to do a free case, and they should take it up only if they had the conviction.

He shared that in the transition from mainstream to 'free', there was a tendency to carry the baggage along. But one did not apply the same mainstream logic to a woman in distress. One's attitude towards a 'free' client could not be the same as towards a paid, educated client. More empathy and patience was required from the lawyer, and very detailed explanations of the legalities. The lawyer also needed to be able to relate to the ground level activist and take their help. Another rule was that once you took up a case, there was no way you could leave it midway no matter how bad or difficult the client was. One's responsibility towards a free



“One's responsibility towards a free client was much more since they might not have anyone else to represent them. So the lawyer needed to convince himself he was doing it for self and not for glory”

client was much more since they might not have anyone else to represent them. So the lawyer needed to convince himself he was doing it for self and not for glory.

The cause of the client was always larger – Mr. Pais advised them to put the cause above all, the players working for it below, and then prioritize. Ego and self-importance could not get in the way – the lawyer was merely a vehicle in the entire process, and nothing more. Lawyers, activists, they all needed to sit together and take the cause forward. Mr. Pais termed this 'broad based litigation'. He said it was very easy to get labeled as a human rights lawyer, get very good and then not make an effort to reach to levels where one would have in paid cases. So it was very important for lawyers to set their standards of professionalism and maintain it throughout, in all kinds of cases.

According to Mr. Pais, there was nothing called a boring case. Lawyers need to do all kinds of cases, and also acknowledge when they were not good enough for a case. Above all, it was their responsibility never to refuse a

weak client who might not find someone else to represent them. That was a mandate Mr. Pais himself followed and urged all the lawyers in the audience to follow as well.



Sensitive Lawyering - Integrating Response to Human Rights within Mainstream Practice

Menaka began by thanking Mr. Pais for capturing so many sentiments and making principal points about mainstream lawyering. She mentioned that the audiences she generally spoke to were students from law schools and usually the conversation she needed to have with them was the reverse – why it made sense to do such interesting and challenging work. As a lawyer, Ms. Guruswamy mentioned that she was fascinated at the potential of the law to make some semblance of a difference to people's lives. She went on

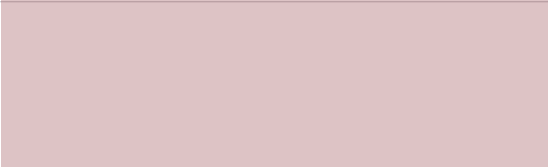
Menaka Guruswamy is an advocate in New Delhi, India. She is a gold medalist from the National Law School of India University, Bangalore. Menaka has practiced law at the Office of the Attorney General of India. Menaka presently lives in New Delhi, where she practices law, and focuses on constitutional law scholarship and litigation.

to say she disagreed with classifications such as 'mainstream', 'human rights' and expressed her sadness at the polarization of the bar.

According to her, all lawyers were supposed to see the potential of law systemically. Cases might be civil, constitutional etc, but to her the categories didn't matter – she was a lawyer because she was fascinated by this discipline.

Menaka spoke about her experience as an appellate court lawyer, and that one of the big problems, especially in constitutional law was that very rarely were people's voices heard. This was the reality of PIL lawyering. So in many ways, constitutional law – a facet of law that speaks for people - is debarred from people's life and stories. She mentioned her practice being a mixture of white collar crimes, civil work, commercial work etc, and that the litigation following the 2G scam had allowed 40% of her work to be free. This 40%, she said, which comprised of constitutional claims, was the heart of what made her work interesting.

Menaka focused on a few points – the previous year at the Supreme Court, some systemic issues that exist in terms of a segregated bar, and finally the choice of cases a lawyer has. Menaka mentioned some cases that had given her reason to be optimistic about the Constitutional Court, as far as crafting of judgments were concerned. The Naz Foundation case, the Dara Sundara case and the RTE judgments, showed that the Supreme Court was interested in socio-economic rights too apart from civil and political rights. She went on to speak on what Tridip had focused on in his discussion, and that was the freedom that in many ways an individual practitioner has. According to Menaka, many lawyers practice outside an institutional setting, and have different values. They want to access a bundle of cases that helps them connect with people in their country, but they also have the compulsion of earning a livelihood. This results in a conflict of interests. Setting up a not for profit practice is expensive, difficult and challenging. The legal education on offer in this country is woefully uninspiring. So how does one arrive



“A lawyer must bring craft and quality lawyering to his job, but also must be able to maintain professional detachment. A lawyer could not walk away from a case because he think he would not win”

at this happy proposition of what she terms an interesting life? She thinks a mixed practice may be the answer. An individual practicing lawyer who does commercial work but also an interesting array of public interest work, social action work, free work. Professional ethics demand you represent each client, regardless of whether the case is paid or not. She said people like Tridip and her and others like them tried to make sure to create spaces where young people working with them could access a decent livelihood. Because if they didn't it would mean saying that 'cause lawyering' is only for people from well-to-do families. So one challenge, in her opinion, was to broad base this kind of litigation. She also mentioned that one of the most wonderful things about mixed practice was that it acted as a morale booster. While doing a palate of interesting challenging cases, one needed a mixed bag of cases, where you could win some and lose others. That would help maintain a level of professional detachment. The important thing, according to Menaka is that a lawyer must bring craft and quality lawyering to his job, but also must be able to

maintain professional detachment. A lawyer could not walk away from a case because he thought he would not win.

Finally, she highlighted the extraordinary gap between the world of legal scholarship - reading and writing about the law - and legal practice. Menaka pointed out that our academics feel more comfortable outside the country, and our practicing lawyers have very little time or litigation for scholarship. The question was how to bridge this gap between writing, reading, critical thinking and the cases that are decided.



Experiences from the Civil Liberty Movement

Geeta Ramaseshan, an advocate at the Chennai High Court spoke about her experience of 30 years in the legal profession. She focused on the legal aid movement in Tamil Nadu in the 1980s. The courts experienced a transformation post-emergency and lawyers came to fore regarding legal aid. A Legal Aid society was formed and registered, comprising both junior and senior lawyers who were part of the mainstream structure. Geeta personally wanted to use law as an instrument of social

Ms. Geeta Ramaseshan is a senior lawyer practising in Madras High Court in the area of criminal law, constitutional law and family law, with specific emphasis on human rights and women's human rights. She has also specialized in international human rights law and has conducted workshops on international human rights for the Asian Forum for Human Rights and Development, Bangkok and the International Women's Rights Action Watch-Asia Pacific.

change, but in those days of junior lawyering, did not actually know how it was to be done. At that point of time it was hard to get a senior to work with. However, though she was in a very mainstream office, she had plenty of freedom to look into other issues as long as it didn't affect allotted work; this led to her getting very involved with legal aid processes in the state. She started out by visiting detained people in prisons.

The scenario was prior to the Sunil Batra case on prisoners' rights, and they had to tread very cautiously, so that their efforts didn't affect the prisoners adversely. Another outcome of the Tamilnadu legal aid movement was to improve legal access for persons detained in prison and their families so that the period of detainment could be reduced.

Ms. Ramaseshan spoke about important lessons learnt in those early days, one of which involved her discovery of the apathetic attitude of the police in cases regarding social issues like marriage. She learnt through these experiences how the de jure law becomes so

difficult in more ways than one, when it operates at the facto level. Their path in the Legal Aid Movement was not smooth. It had pioneering leaders, but due to constant challenges to the state, it resulted in an agitated govt., which stopped the funding. Lawyers would then get funds released by filing writ petitions.

Ms. Ramaseshan narrated one challenging and memorable experience from those days, which was triggered off by the Sikh riots in Tamilnadu in the 1980s. After reading an advertisement for help posted by the Sikh community post the riots, she made a trip down to meet them and understand their problems. On returning, she made a report to the PUCL chapter of Tamilnadu, but got a very negative response. Her senior lawyers then decided to challenge this, and filed a Public Interest Litigation on complete State inaction. It was a shot in the dark, and strongly opposed by the government, but the first judgment agreed on the fact of state inaction and directed compensation to be paid to the Sikh community as ascertained by them. Thus, the Legal Aid Movement in

“While in the 80's, lawyers rushed to the court with PILs and got many good orders, the use of it today is risky. That is because if the PIL is unsuccessful, there is a judicial seal of approval to the cause, and so the court washes its hands off the issue. Hence PILs should be the used as the last resort, and in a very cautious manner.”

Tamilnadu led to something as important as the development of jurisprudence on State inaction in the country was started by. Sadly though, it fell to disuse after the Legal Services Authority came into existence. The quality of legal aid being given nowadays, according to Ms. Ramaseshan, is very poor and the lokadalat procedure is more of a disposal mechanism than free litigation.

Commenting briefly on legal strategies used in the legal aid movement, Ms. Ramaseshan moved on to the role of judiciary in strengthening socio-economic rights, which took place from the Bandhua Mukti Morcha judgment onwards. So the 1980s saw a proactive judiciary, which moved beyond just civil and political rights. However, Ms. Ramaseshan also spoke about Public Interest Litigations with reference to abuse of power. In her opinion, where in the 80's lawyers rushed to the court with PILs and got many good orders, the use of it today is risky. That is because if the PIL is unsuccessful, there is a judicial seal of approval to the cause, and so the court washes its hands off the issue. The political process then becomes far more

difficult. So, according to Ms. Ramaseshan, PILs should be the used as the last resort, and in a very cautious manner. Another tool she expressed caution about was the use of media for litigation. She expressed that in her opinion, the Bilkis Bano case was successful because of the complete non-involvement by the media. She also emphasized the importance of evidence collection, and that a lawyer should not hesitate to go on ground, to the field if required.

Lastly, Ms. Ramaseshan spoke about the need for lawyers to be part of all processes of law. She said there is no such thing as mainstream practice. We all have to have a regular practice to sustain ourselves and earn a livelihood. It gives one balance, and builds a repository of knowledge that is essential. Finally, she urged all the lawyers in the audience to rise to the occasion, use every case as a challenge, and definitely practice a combination of social justice lawyering and other, regular lawyering.



Vrinda Grover, a well-known advocate from Delhi, began by saying that we all needed to understand why we were doing what we were doing, and this understanding would come through work itself. No one would come to tell us what to do; we would have to locate ourselves in the profession. Commenting on the profession, Ms. Grover spoke about the need to deglamourize the 'black robe business'. She too stressed, that there was much more to lawyering than just practicing inside the courtroom, and that the best of lawyers, without an understanding of

Ms. Vrinda Grover is a Delhi-based human rights lawyer and is Director of Multiple Action Research Group (MARG). She is presently counsel for survivors of the 1984 anti-Sikh carnage, 1987, Hashimpura police killings and the 2008 anti-Christian riots in Kandhamal and has been a counsel in the IshratJehan encounter case. She is also a Board Member of Centre for Social Justice.

Experiences from Kashmir

the issue on ground, could not do justice to the case.

In her experience of over 20 years, she had understood that law is politics. The two could not be separated. She commented on the non-institutionalization of human rights, despite a well-funded Legal Services Authority system. Moving on to communal violence, she pointed out the clear link in today's day between state power, authorities and agencies. Communal violence is one of the biggest challenges to democracy, and Ms Grover put forward the question of how we understand it and what do we do about it as lawyers? She indicated her own experience of practicing for 10 years under a tree in Tis Hazari and urged everyone to go through that experience. It was, according to her, where the real human rights work takes place, and as a lawyer, one needs to see it to understand how systems are functioning or not functioning. Moving on to another significant topic, she expressed that in her own journey as a lawyer, she felt compelled to do some research and writing because she found questions to which there were no

answers in the courtroom. So, in her opinion, legal research and writing as equally important facets of the profession as practice. She mentioned her work on the 1984 Sikh riots. The writing evolved out of lived experiences that led to a political understanding no book could give you. But thanks to the research, those analyses were now down on paper, and contributed in a significant way to human rights lawyering.

According to Ms. Grover, the system functions in a myriad of ways against the weak in our country, so in legal practice, one has to evolve one's political frame alongside. There existed a communalization of the bar in many parts of the country today – a reality one could not escape from. Moreover, there was also the socialization of people in certain manners. For e.g., cases of violence, riots etc were difficult not only because there was no money in them, but also because a sense of accountability was missing on part of the lawyers. There was a general feeling that it was alright to do second-rate lawyering if the client was not paying money, and Vrinda expressed her deep concern around this.

“The system is counting on lawyers to get exhausted and so they had to carry on. My personal source of grit and determination to keep fighting does not come from within but from the people who I am fighting for”

Regarding the use of media in litigation, Ms. Grover said that sometimes it was required, like in Soni Sori's case. In her opinion, sometime being public becomes the protection. But she completely agree with Ms. Ramaseshan that the cult of creating a mega human rights lawyer or activist syndrome was very detrimental to any kind of political activism, and must be avoided at all costs. Moving on, she also put across the fact that the legal profession required a lot of stamina. The system was counting on such lawyers to get exhausted and so they had to carry on. She revealed her personal source of grit and determination to keep fighting, which did not come from within but from the people who she was fighting for. She gave the example of the '87 Hashimpura killings case – after 15 long years it was finally transferred to the Supreme Court and when she was approached to take up the case, many people advised her against it. But Ms. Grover said she was no one to decide that if the people who were affected still wanted to fight. She learnt that they might lose the case, but the actual win was in the fighting of the case, and not the resulting order.

Ms. Grover narrated her experience of working in Kashmir, with the Association of Parents of Disappeared Persons and also doing litigation in the Supreme Court for victims of Kashmir. She said the law relating to Kashmir or communal violence could not be mediated but through a political analysis of the state. It was a complicated state of affairs, with no straight path, and many, many questions. In the name of national security, Ms. Grover said all of us were condoning something that is nothing short of crimes against humanity. She gave many examples of the failure of the government and legal machinery in granting justice to the victims. She talked about recently filing an RTI to the Ministry of Defence and Home Affairs, as to how many requests for grant of sanction they received for crimes like rape, murder etc – how many were granted, how many rejected, and how many kept pending. In the reply, she learnt 44 such requests had been made, where 11 were pending, and 33 had been rejected. So, not even one request for sanction had been granted. With this striking statement, Ms. Grover ended her speech and opened the floor for questions.



The Legal Face of Corporate Land Grab

Sudha Bharadwaj, Advocate at Chhattisgarh High Court, was next. She said she was very happy to be meeting young lawyers like those before her, and confessed that her own coming into the profession has not been by choice. She became a lawyer because her work with Mazdoor Unions demanded it, and so at the age of 40, she entered the legal profession.

Ms. Sudha Bharadwaj is an Advocate and social rights activist based in Raipur, Chhattisgarh. She is the leading member of the Chhattisgarh Mines Mazdoor Sangh that was set up by legendary trade unionist Shankar Guha Niyogi. She is also an executive committee member of Chhattisgarh PUCL. She is associated with Janhit, an NGO working on civil rights in Chhattisgarh.

She spoke about her organization, Janhit, which gave legal aid only to groups and not to individuals. This was because giving individual legal aid was a common practice, but giving it to groups had a snowball effect. Informal groups in the villages saw an increase in confidence as a result. She stressed that the choice of forum, legal plea etc were very important factors. A lawyer had to work both at the ground level and in court. She termed this as 'walking with both legs', and said the same was practiced in Janhit. In her opinion, law everywhere does not adequately reflect justice. She criticized the SAIL judgment, which threw out the existing labour force and recruited new labour. She said this kind of judgment ensured that no workman would ever approach the court again.

Ms. Bharadwaj advised lawyers to keep the quality of their legal aid and help good. The corporate lawyers had an edge but that shouldn't affect social justice lawyers in their quality of work. Though the community could not afford to pay corporate fees, it did raise enough for the sustenance of the organization.

The lawyers on their part needed to be very sharp. She gave instances of a few interesting cases, concerning the Land Acquisition Act, PESA etc. She further advised that consultation with gram panchayats, especially in scheduled areas, was a must. She urged the lawyers to search for rights within the law. The rights existed, but were not implemented, and so it was the job of the lawyers to find them within the legal provisions. She explained that laws on status quo were very strictly implemented, sometimes out of the way, while laws concerning rights were poorly implemented. She touched on some important issues needing attention like environmental clearance, mining and contract labour.

She ended by asking lawyers to have faith in the people, to go to the field and interact... *"to walk with both legs."*



Policy Formulation, Challenges and Learning

Shruti Pandey, an advocate now working with Ford Foundation, began by pointing out that in the last two days, all the speakers had made some common points, one of them being that social justice lawyering is not restricted to the courtroom, and one has to go outside to the field, on the ground level. Shruti said there was one more field that required attention - law and policymaking. For a social justice lawyer, law is just a tool to create change.

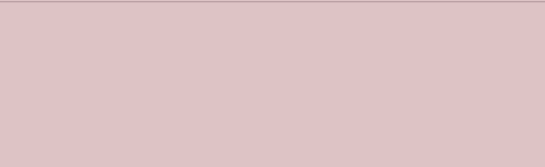
Ms. Shruti Pandey is a Programme Officer at Ford Foundation, and works on human rights issues at the New Delhi office of Ford Foundation. She has been associated with several landmark cases of public interest litigation in the Supreme Court of India on issues such as: child marriages; workplace sexual harassment; human trafficking; unsafe/coercive sterilization of women; access to anti-retroviral drugs; and uniform civil law for adoption of children in India. She also led the drafting of a national health bill for the government of India and has been part of Indian law and policy reform on several other human rights issues.

There are many laws pending in Parliament, and many different kinds of laws already existent. Some are regressive prima facie, some rights-based but not implemented properly, due to lack of either human or financial resources or lack of a mechanism in place. Furthermore, there are some that don't relate to the problem they are trying to address, they don't have an understanding of the issue itself. Rights on paper are not rights until they are actually realized, and if accountability measures do not exist, neither can rights. There needed to be proper grievance redressal mechanisms, consequence mechanisms etc.

Of late, the government had formally recognized the need for public participation. The advantages of this process were that it enabled people to have information about the laws that were being passed, it allowed stakeholders to come together for a consultation process, and also allowed spaces for negotiation and consensus processes. It would also instill a sense of ownership in people. In India, the government was, to some

extent, committed about public participation, and in other ways was also using the process to gain competence in areas they didn't have knowledge about. According to Ms. Pandey they used the process to legitimize laws and showcase them in front of the international community. Therefore, she said, though it was very important to use the public participation process for our progress, but we also had to be careful not to be taken advantage of by the government. She gave examples of the HIV AIDS bill where Lawyers Collective, on being invited by the government to work on the bill, put tireless efforts into it and then presented it to the government. But the government ended up removing the most important segments from the bill. So though to speak, it was a bill made by civil society, but in actuality, the essence was removed. So citizens needed to be very cautious when doing work on invitation from the government.

Ms. Pandey spoke about new tools such as financial memorandums at the end of bills, which had been asked for by the Supreme Court. As lawyers, she said, we could play a special role in this process of consultations



“Lawyers are the enablers of justice. It is the duty of lawyers to connect people with the policy makers”

because we were better equipped in our understanding of the technicalities of law. We would have to interpret these and connect them with the people for whom they were made. We could help by drafting in simple language. Another tool she spoke of was the framework made in some countries based on tiers – the Constitution, then legislation, and then implementing system. Every law made within a framework had to be in harmony with the basic elements of the framework.

Public Interest Litigation, in her opinion, was a tool for courtroom, especially in the Supreme Court. Through Public Interest Litigations, new laws had been made, existing ones had been changed or their implementation ensured. She gave the example of the Vishakha judgment, which was truly a unique intervention by the court. Another example was the Public Interest Litigation on child marriage that led to a completely new law, or the amendment of the PCPNDT Act due to the efforts of NGOs like CEHAT and MASUM case. So Public Interest Litigations, according to her, could act as tools for policy formulation or reform.

She ended by stressing on her core point, that as social justice lawyers we had to be watchful and alert throughout the process of policy and law making, since it was a very political process. We had to engage with it with that understanding. Finally, she said, we are enablers of justice, we had to connect the people with the policy makers, and she asked the lawyers in the audience to perform that role as best as they could.



Intellectual Property Regime and its Impact on the Vulnerable

Kajal Bharadwaj, an advocate, spoke about her work that acted as a point of intersection for Intellectual Property Rights and social justice/human rights, which seemed to be mutually conflicting. This conflict was now being reflected domestically, which she illustrated through three examples:

India, IPR and access to medicines

HIV was practically a chronic disease, and at one time there were three medicines in the US that could cure it but they were very expensive and had to be taken lifelong. Lawyers' Collective started getting calls from South Africa on the possibility of India making the same medicines. That is where the whole story began.

Ms. Kajal Bharadwaj is an Advocate and has done a lot of work on HIV, health and human rights. Of late, she has been working on intellectual property rights.

In 1970, India did away with the IPR law inherited from the British and formulated its own Patent law. The government identified two areas – food and medicines – which could not be monopolized by companies or private establishments. It put in place an industrial policy and started putting money in R&D. They built up a huge local, manufacturing capacity in pharmaceuticals. However, the US started putting immense pressure on India to change these policies and then, India joined the World Trade Organization (WTO) and signed the TRIPS agreement, the latter dealing with giving monopolies to companies. TRIPS globalized patent rules. The time period for product patent protection went from 7 years to 20 years. However, developing countries negotiated a waiting period before all those provisions became applicable to them. As a result, India got a 10-year window period and had to amend its law only from 2005. Product patents meant one manufacturer, no competition and high prices.

Civil society protests took place across the world since medicines manufactured in India

were the most affordable. It was the age of privatization but something like HIV got things back into the public health sector, since governments couldn't afford the medicines otherwise. Today there are 6 million people living with HIV over the world and 80% of their medicines come from India. Then came the Doha Declaration (2001) which interpreted TRIPS in a manner supportive of the right to public health. The groundbreaking provision was Section 3D which prohibited 'ever greening'. Anyone could challenge a patent on solid legal, technical grounds. As a result, many challenges were successful, and resulted in the withdrawal of patent applications by companies. The reality check, though, was that many legal battles had been taking place since 2005 to try and make enough space for generic production in the country. The opponents were powerful MNCs, and were suing health groups and the Indian Government for every health safeguard. The courts have taken a very pro-public interest position, but the scenario is still a difficult one with many big players involved.

“If you wanted to do social justice lawyering, you always have to ask who your client is, as sometimes we lose sight of whom we are fighting for. According to me, the best legal battles are fought where community consultation is at the heart.”

Indigenous rights, traditional knowledge and IPR

IPRs required by the WTO started having very strange impacts on communities that held medical, traditional wisdom. Companies would come and take away the knowledge from the community and then create ownership. This process was known as bio-piracy – it essentially boiled down to stealing. Ms. Bharadwaj gave the example of the Turmeric Patent case where CSIR challenged a US patent on turmeric, which was traditionally used as medicine in India, and got it overturned. Many other cases like the Basmati Patent case, Neem Patent case etc dealt with Western countries taking traditional knowledge from India, producing drugs and getting ownership. India had the Patents Act, Bio-diversity Act, Forest Rights Act etc, which were good laws, but their practical application was very problematic. The Indian government was under pressure to share traditional knowledge and wisdom and to impose data exclusivity. This was problematic for its consequences.

In the 90s, when India was liberalizing, there were treaties to protect foreign investors. There were provisions that said that if there were an impact on profits or investment, the government would have to pay compensation to foreign companies. Ms. Bharadwaj cited cases such as the Metalclad v. Mexico case, the Dabhol case which undermined the Indian Supreme Court, the White Arbitration award etc.

Finally, Ms. Bharadwaj said that if you wanted to do social justice lawyering, you always had to ask who your client was. Sometimes we lose sight of whom we are fighting for. According to her, the best legal battles have been fought where community consultation has been at the heart.



Feminist Lawyering - Challenges and Learning

Ms. Gowda began by sharing her desire of joining law school with the intention of pursuing human rights. She joined Majlis, a Mumbai-based women's rights legal organization headed by Flavia Agnes – a great feminist thinker and lawyer. Ms. Gowda expressed that a lot had changed since the time she joined. During the initial years of family court, she witnessed a lot of resentment within the professional community. The polarized atmosphere sometimes worked for them as feminist lawyers, and sometimes didn't. They would argue cases on a very high emotional tone, rather than on legal rights, and sometimes would be stunned by their opponents' legal arguments and strategies. Ms. Gowda pointed

Ms. Veena Gowda is an Advocate and has been involved in fighting for women's rights since last few years. She initially worked with Majlis and is now exploring options of non-funded work for securing women's rights.

out that there was a big difference between litigating in the higher courts versus the lower courts. In higher courts, one argued on questions of law, but the lower

courts were where the real sharp, legal mind was required, a mind prepared for anything. Ms. Gowda says the experience was great fun for her. Simultaneously, it was also a struggle – to mainstream women's rights lawyering and bring it out of an alternate domain. She said that Tridip's mainstream-cum-alternate model was one that not all lawyers chose to use. She saw herself as a women's' rights lawyer, with a certain kind of politics she would not compromise on. As a feminist lawyer, she would not appear for a man. The whole idea, she said, for her was to see if she could mainstream her politics and appear before the court as good as any general practitioner. Appearing for “half the market” was not an easy task but at the same time, was not too difficult.

Ms. Gowda went on to speak of the challenges in her kind of work. She gave the example of the Dance Bar case which

involved the right to dance of the bar dancers. It split groups in different factions. One had to be ready to understand the complexities in this field, which challenged one's notions of morality through cases such as the one above. Another issue was that women were used to not being believed, and so the lawyer had to understand and empathize with them differently from a regular client. Ms. Gowda also asked of the audience, as to what were the different spaces that a lawyer should work in, in a courtroom and outside. According to her, one had to constantly engage with your other fellow lawyers, your bar association etc. Her final piece of advice was that as lawyers, they should not play the power game. Litigation has to be an empowering process. Often she told her own clients to carry on with their business, and that she would handle the litigation and work it around their affairs. Litigation could not be the centre of their existence; It is the lawyer's since it is his profession. She asked the audience, as human rights lawyers, to go into their field free of prejudices, with a very open mind. According to her, more than understanding the law, that was the challenge.



Understanding Planning Process for Advocacy

Mr. Amitabh Behar from the National Foundation for India began by revealing that the planning process had started in India through a cabinet resolution, and not through Parliament. Since then, there has been a fundamental shift in understanding the role of the Indian state. In the 1950s, the idea was that the state has a pivotal role in ensuring resources etc, but post-90s we moved to the state playing a minimalist role and that it should be an intervener at best. Similarly the

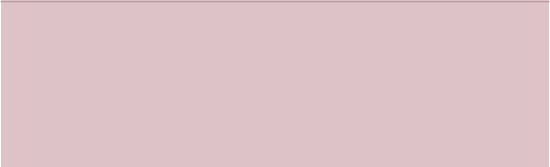
Mr. Amitabh Behar is Executive Director of National Foundation for India. He was earlier with the National Centre for Advocacy Studies (NCAS) in Pune, an Indian civil society organization dedicated to the advancement of human rights, accountable governance, and the development of just and humane societies in India and the global south. Mr. Behar is also Asia Convener of the Global Campaign Against Poverty (GCAP). His areas of interest include civil society, governance and Panchayati Raj.

planning process also underwent a fundamental shift.

Mr. Behar said that he didn't agree with this minimalist conception of state. In an unequal society like India, state has a fundamental role in not only ensuring efficient use of resources, but also delivery of social justice. He conveyed that the Planning Commission was the site of a huge debate around this issue of state responsibility. The Planning Commission was set up as a very powerful body and had a significant role in our nation building and development process. The question was how to make India self-reliant. The first two plans focused on investment in heavy industry and science and technology because of which, we were able to become self-reliant. The Third Plan focused on agriculture. When they started working, they discussed how to set up bottom-up governance. They felt that unless they were able to intervene at the macro level, things would not change at the local ground level. They started looking at history and what they needed to change.

Mr. Behar then explained the entire structure and the procedure of the planning process. Moving on to the Eleventh Plan, he said it was an interesting one. He mentioned the 'Vada Na Todo Abhiyaan', which monitors and looks into whether the five year plan is doing its job or not. Autonomous entities and civil society groups should do the monitoring of the plan. It was termed the 'People's Mid-Term Appraisal'. To the credit of the Planning Commission, they started taking interest when work began, and by the end of it, quite a lot had been accomplished. He said they had needed to do solid research, and started inviting engaged academics to get involved in the planning.

The Planning Commission listened to their final presentation very seriously. For the Twelfth five year plan, they realized that just a few people should not do the entire planning, and so they did 16 national consultations from the point of view of the socially marginalized like the dalits, tribals, women, children etc. The Planning Commission then tried to incorporate these into the plan. But when the Commission took out its paper,



“I don’t agree with this minimalist conception of state. In an unequal society like India, the State has a fundamental role in not only ensuring efficient use of resources, but also delivery of social justice”

barely any recommendations were included. So though they succeeded in making the process participatory, they still could not make it accountable. According to Mr. Behar, transparency and participation are not enough for accountability. Also, at consultations and the like, he said we need to speak from the points of view of our organization or groups we represent, and not from our own mind. He cited an example as inspiration. In Kerala, common people in the gram panchayat made their own plans for development, and 40% of state funds directly devolved to the panchayat there. Mr. Behar said that they wanted to continue trying to make the Planning Commission more accountable and keep up public participation.

Speaking about the Twelfth Plan, he said it had a very strong trend towards privatization, and was being talked of in the social sector as well, which is a huge shift. The vehicle to do this was Public Private Partnership (PPP), which had largely been the privatization of public resources. Thirdly, though they were very willing to give growth rate figures, they did not want to provide human development

figures. Mr. Behar said that their own demands were to put human development as the central piece of the plan. Secondly, they advised not looking at a growth rate model, but a bubbling up economy, which invested in human resources, but also ensured livelihoods. Thirdly, accountability was still very weak and there needed to be improvement on that front.



Rights of Sexual Minorities

Arvind Narrain from Alternate Law Forum started by talking about his organization, which was in the 11th year of its existence. It had come together as a collective of people who wanted to do like minded work, Arvind being one of them. Alternate Law Forum is one of the few prominent organizations in India that has consistently been fighting for the rights of the sexually marginalized.

He questioned the audience to think about who came to mind when one thought of human rights lawyers. In some ways, he said, the larger canvas behind which we can think is

Mr. Arvind Narain is the founder of Alternative Law Forum and is one of the most prominent faces behind the struggle against Section 377. Arvind is a graduate of the National Law School of India University, Bangalore. He set up the Alternative Law Forum in 2000 with a group of his close friends back from college.

the same where activism comes from. Gandhi, Ambedkar, Mandela, the experience which all of them had was the experience of humiliation and that, according to Arvind, was

really the starting point for much activism. He talked about the incident when Gandhi was thrown out of a train while in South Africa and that was the date from which his active non-violence started. He cited other examples, of Rosa Parks, a black activist in the US, Ambedkar and Mandela all having faced indignities at some point in their life and the deep impact it had on them. Arvind questioned why these people decided to become lawyers. Was it because they felt the law would be a route to address the humiliation they faced? He spoke about the link between legal activism and political activism, which could sometimes be complicated. One of the persons prosecuted for sedition during the Indian independence struggle was Bal Gangadhar Tilak, and interestingly the lawyer who defended him was Jinnah. Gandhi too was prosecuted, and used his trial as a political platform. He pleaded guilty, and then made one of the most

powerful statements in history. This was an example of creative use of the law, which Mandela too practiced. Sometimes, said Arvind, it was important to think outside the law.

He narrated stories of two important human rights lawyers in the contemporary context – Kannabiran and Balgopal. Kannabiran started his career as a conventional lawyer; it was the emergency that changed his politics. Arvind referred to the powerful documentary made on Kannabiran's life, and pointed out from his book, *Wages of Impurity*, how he'd thought of creative strategies. He had said that the courtroom is a public platform where one communicated a public point. Balgopal was an activist and became a lawyer towards the end of his life. He took up fact-finding reports, and brought light to a particular issue through a systematic analysis of what had happened. He also wrote more widely on many different issues. Arvind said that sometimes we think that the work we do is work in courts, but Balgopal's work had no gap between legal practice and activism.

“In issues of sexuality, discrimination took place not just by State but also equally by society. Sexuality is as much about what your family thinks that you are as about what the State thinks”

He moved on to the current work that Alternate Lawyers' Forum and other organizations had been doing, on rights of sexual minorities, or LGBT persons. How did one see the act of sex? As linked to the act of intimacy? Referring to the Naz Foundation judgment, he said this was the way Justice Shah and Justice Muralidar saw it. He advised on how to start working on issues like this, that one should begin from the commonalities. For example, everyone agreed that torture was wrong, abuse was wrong. One did fact-findings and through them, built a sense of grassroots intervention in the community. Other things one could do was community building, and in a lack of any support or conversation on the issue – protest and demonstrations. Arvind also asked how was it that one filed a case in court, how one built up adequate documentation – these were important questions. A case in the court depended upon some level of documentation, which sometimes became the base on which the case was filed. Commenting specifically on the Naz Foundation judgment, he expressed that Justice Shah and Justice Muralidhar had got

into the language of dignity and rights for the first time where homosexuals were concerned. Innovations were made in court in terms of the legal arguments, using Articles 14, 15 etc. It was argued that constitutional morality could not be rights-denying, it could only be rights-affirming. Morality could be the basis only to expand rights, and not to curtail them. The order of the Delhi High Court was an unprecedented one in this regard.

Lastly, Arvind put forward the question of how one made a case broader than a legal case into a socio-political case? In issues of sexuality, discrimination took place not just by state but also equally by society. Sexuality is as much about what your family thinks that you are as about what the state thinks. The objective, said Arvind, was to change society so that they could think inclusively about LGBT persons.



CSJ's Journey of Engaging with Lawyers

an institution which would train a group of young lawyers and paralegals in social justice across the county.”

Mr. Gagan Sethi began by greeting those present in the auditorium. CSJ's journey started in 1987, he said. Recalling those days, he said “At that time we realized it took us so much of an effort to fight issues of Dalit atrocities because of absence of young lawyers and activities who could support such a case. It took us two years and took the breath out of all of us just because of this lack. We knocked door to door, lawyers didn't have time. When we won that case, everyone was happy, I was sad. I said if this is how you win a case, there is no way to work in this country and get justice. And that day my friend Martin Mackwan and I thought one day we'd set up

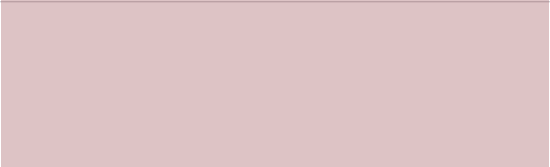
Moving on, he said CSJ has trained and supported over 1000 lawyers and over 5000 paralegals in the country and that is what the genesis behind the Lawyers for Change programme is. He said that the bulk of lawyers and paralegals which CSJ has trained are from Gujarat. LfC is the first systematic effort of bringing them from across the country. LfC already has its first batch of 11 bright young lawyers, who're balancing identities and trying to equip themselves to build democracy from the grassroots, he said. “It is a very long and arduous journey. Designing these programmes, finding sources, doggedness with which we follow each and every lawyer to see if he or she becomes operational, and see in a year he is able to take up at least twenty cases of social justice issues”, said Mr. Sethi.

According to him, the profession of lawyers today is one of the most abused, but the same was one that provided our freedom

movement leaders. He questioned what had happened to this profession in the last 70 years. “These are the questions troubling us and which we want to put to our young lawyers. When we ask them, they start talking of corruption, the system, and that's why it's important. We dig this out – cases of ordinary people doing extraordinary things. It is very easy to talk of the problem out there and do nothing. Each one of us who is lawyer has a role to play in the justice making process”, he said. He said that between the word 'law' and 'justice', law has become much more used than justice. On the term 'social justice lawyering', he said “we thought we would change the nomenclature from just activist lawyers or human rights lawyers to Social Justice Lawyers. Justice and law go hand in hand - one without the other makes democracy incomplete.”

Giving an example of CSJ's lawyers in the Dangs district of Gujarat, he said there are tribal lawyers running radio programmes who act and dance. He said CSJ has derobed the lawyers from their black coats and made them human beings, and once they started dancing

Mr. Gagan Sethi is the co-founder of Janvikas-Centre for Social Justice, Dalit Foundation and on the board of several other civil society initiatives. He has been a Dalit and women's rights educator and post 2000, lead the justice and rehab process of both the Gujarat earthquake and the 2002 communal carnage. He was a part of the NHRC special monitoring group for the 2002 Gujarat communal riots.



“It is a very long and arduous journey. Designing these programmes, finding sources, doggedness with which we follow each and every lawyer to see if he or she becomes operational, and see in a year he is able to take up at least twenty cases of social justice issues”

with the communities where they belong, they started being accepted as Lawyers for Change. Today, the Dang unit has 11 lawyers – 5 tribal women and 6 tribal men. All started as paralegals, but later went on to become lawyers from the community itself. He said CSJ feels that ultimately social justice lawyering has to be done from the community where the issues are burning and that outsiders have a limited role to play. First battles, according to him, are not fought in the Supreme Court and the High Courts, but in the Taluka courts and if we don't have excellence there, the rest of the edifice will crumble.

Mr. Sethi said that CSJ's aim is to get those HC and SC lawyers to come and work with young lawyers who can stand in Taluka Courts and Courts of the Judicial Magistrate First Class. He said that young lawyers of today are dazzled with the big cars and money a Supreme Court lawyer makes. “If those were our ideals we would be in deep trouble”, he said. He said he will not bring up the issue of non-functioning of judicial systems and that he would prefer to talk about solutions rather

than problems. He said for him, the solution is to have lawyers from every community, panchayat - men and women. He said CSJ has demonstrated this is possible.

In his concluding remarks, he said LfC is repositioning how law is to be understood in the context of the problems human beings of India face. He said, “Unfortunately, today clients' problems are not listened to. They are only examined on which laws they fit into. But laws have to be fit into issues which we struggle with, not the other way round. These are some of the issues we are facing with our young lawyers. We hope these young lawyers will one day go into academia and change those institutions.”

List of Registered Participants

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|-----|------------------------|-----|-------------------------|
| 1. | Priyanka Barupal | 22. | K. M. Krishnababu |
| 2. | Kush Kalra | 23. | Sanya Yadav |
| 3. | Parnika Malhotra | 24. | Kamble Satish Maruti |
| 4. | Prateek Rathee | 25. | Abhishek Kumar |
| 5. | Vaibhav Jain | 26. | Ankur Sharma |
| 6. | Arjun Sheoran | 27. | Ashutosh Hota |
| 7. | Rajender Soni Adv. | 28. | Uday Kumar |
| 8. | Veer Vikrant Singh | 29. | Dr. Chandrabhanu Bharas |
| 9. | Marisport A. | 30. | Sital Kalantry |
| 10. | Md. Zaryab Jamal Rizvi | 31. | Monalisa |
| 11. | Palak Mittal | 32. | Sushil Kumar |
| 12. | Niteesh Kumar Upadhyay | 33. | Parveen Kumar Sharma |
| 13. | K. M. Krishnababu | 34. | Natasha Sahni |
| 14. | Neha Shukla | 35. | Jaasir Ashraf Mir |
| 15. | Sumit Sharma | 36. | Hans Raj Chawla |
| 16. | Chandranath Dani | 37. | Tara Chand Verma |
| 17. | Shantkumar V. K. | 38. | Banwari Lal Mimroth |
| 18. | Rajagopal P. | 39. | Sanjay Upadhyay |
| 19. | Amrita Dubey | 40. | Rajender Singh Negi |
| 20. | Ashutosh Tiwari | 41. | Jhuma Sen |
| 21. | Bilal Kagzi | 42. | Miriam Fozia Rahman |
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List of Registered Participants

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| 43. | Vipin Kumar | 64. | Aprajita Nigam |
| 44. | Manuj Bansal | 65. | Nishant Anand |
| 45. | Ujjawal Bhushan | 66. | Anubha Jain |
| 46. | Rohit Jaiswal | 67. | Dinesh Singh |
| 47. | Ashvini Swami | 68. | Dr. Ramesh Kumar |
| 48. | Upneet Kaur Mangat | 69. | Waseem Ajaz |
| 49. | Himani Mittal | 70. | K. Muthu Selvam |
| 50. | Bikash Vishwakarma | 71. | Waize Ali Noor |
| 51. | Fatma Jabeen | 72. | Faiz Ahmed |
| 52. | Nudrat Jabeen | 73. | Surabhi Guta |
| 53. | Sharvan Kumar Garg | 74. | Satinder Kaur |
| 54. | Latika Vyas | 75. | Vibhu Sharma |
| 55. | Swati Arora | 76. | Ritika Juneja |
| 56. | Divya Jyoti Jaipurian | 77. | Amit Kumar Singh |
| 57. | Bhuneshwari Devi | 78. | Gowthaman Ranganathan |
| 58. | Ravindera Kumar Verma | 79. | Mubashir Mushtaq |
| 59. | Krishna Darshan | 80. | Gunjan Singh |
| 60. | D Suresh Kumar | 81. | Abhaid Parikh |
| 61. | Rakesh Kumar Gautam | 82. | Sanyam Chaturvedi |
| 62. | Sahil Ahmad | 83. | Sameer Prakash |
| 63. | Gaurav Bhalla | | |
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