

**SUMMARY
REPORT**

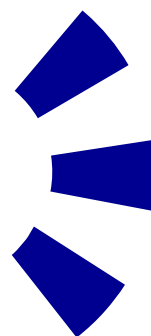
Policy Dialogue

**LEGAL EMPOWERMENT AND SDG 16
UNPACKING LIVELIHOOD POLICY STORIES**

**11 FEBRUARY 2019
NEW DELHI**



**policy
talks**



Introduction

Despite the rapid developments taking place in world economies, Poverty is visible in different forms of people's lives. It is a known fact that major functions and contributions of an economy today in any given country lies on the hands of its informal economy. In this case, the poor and their day to day life depend on the informal economies of our countries. Therefore, the lack of access to legal protection, formal policies and effective welfare systems and lack of recognition of economic assets/activities worsens existing vulnerabilities and further constrains the economic and social development opportunities of the poor. Since the majority of the economic activities are under the informal economy, the formal sector is being overshadowed. This condition results in issues such as slow economic growth, less revenue and less opportunity for investment in health, education and infrastructure and increasing number of governance problems, corruption and discrimination. It is the poor who are engaged in the informal economy that are impacted more than the formal sector as the opportunities for poverty reduction & effective social service provisions are being affected.

In response to this continues reality of the Poor in the world, the United Nations Development Programme in 2005 hosted the Commission on Legal Empowerment of the Poor (LEP). The commission is an independent organization which has been the first international initiative to focus on the link between EXCLUSION, POVERTY & LAW.

Based on 3 years of research findings, the Commission proposed strategies for creating inclusive development initiatives that would empower those living in

**Poverty is Man-made
by Action & Inaction,
And a Failure of Public
Policy and of Markets.**

**Commission on Legal
Empowerment of Poor**

poverty through increased protection and rights. The Commission report in 2008, 'Making the Law Work For Everyone' highlight that legal empowerment of the poor can be developed on the basis of Labour Rights, Legal Instruments for Entrepreneurship, Property Rights and Access to Justice & Rule of Law, which are referred to as the Four Pillars of Legal Empowerment.

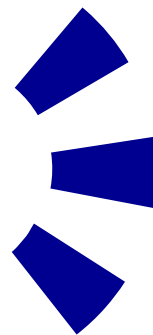
61% Global Employed Population in Informal Economy

AFRICA 85.5%
ASIA & PACIFIC 68.2%
ARAB STATES 68.6%
AMERICAS 40%
EUROPE 25.1%
(ILO 2018)



The Policy Dialogue in New Delhi on 11th February 2019 was a collaborative initiative of Policy Talks and Jindal School of Government and Public Policy of O. P. Jindal University. As the LEP commission's work celebrates 10 years of its impact, the discussion was based on the recommendations given by the commission, the global context of post commission work, Progress of Sustainable Development Goal (SDG) 16 and the Indian Context on legal empowerment. This discussion unfolded the latest stories and possible debates related to empowering the poor.

The Concept of Legal Empowerment



IIIIIIII CONDITIONS FOR LEGAL EMPOWERMENT IIIIIII



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SYSTEMATIC CHANGE

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The Four Pillars of Legal Empowerment

1. Access to justice and the rule of law

The poor may be unable to access the justice system due to a lack of formal identity or of knowledge about the system, illiteracy, or lack of legal services available to them. Laws that affect the poor are often unclear, contradictory, outdated or discriminatory in their impact. Access to formally document legal identity and the existence of functioning mechanisms for implementing rights are key to providing access to justice for the poor.

2. Property rights

Secure and accessible property rights provide a sense of identity, dignity, and belonging. They create reliable ties of rights and obligations within a community and a system of mutual recognition of rights and responsibilities beyond it. Functional property rights are associated with stable growth and social contracts.

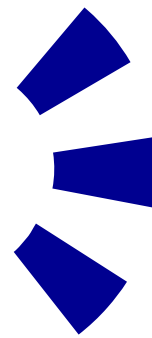
3. Labour rights

A well-designed system of labour rights should provide both protection and opportunity. Recognition and enforcement of the rights of individual workers and their organisations is critical for breaking the cycle of poverty.

4. Business rights

When laws regulating small businesses are unfairly drafted, implemented, or enforced, or simply too weak and inefficient, they leave the poor little option but to trade in the informal economy. Ensuring rights to vend, to have a workspace and related infrastructure and services would facilitate the success of small and medium enterprises and be an invaluable step towards poverty reduction.

(Source: UN Commission on the Legal Empowerment of the Poor, 2008, 'The Four Pillars of Legal Empowerment', in Making the Law Work for Everyone Volume I, Commission on Legal Empowerment of the Poor and United Nations Development Programme, New York, pp. 25-42)



Unpacking the context of Legal Empowerment

Dr. Naresh Singh, International development Adviser based in Canada, with a special focus on Sustainable livelihoods and Legal Empowerment



The discussion and reflections are based on revisiting the commission's work, its impact & limitations in the past decade. There are many aspects and concepts the research work came across in the whole process while studying the conditions of the poor in linking exclusion, poverty and law. In connecting the work, recommendations and strategies to today's global context, Dr Naresh Singh emphasised that the report may have had limitations in including each and every aspect of the reality at that time and the global changes of the years to come. However, looking back at the commission's work impact, there are a few interesting aspects that needs to be more elaborated.

ANALYSIS OF POWER

Legal empowerment is not as much as about law as it is about power. How does the poor ever manage to take power? In an establishment of the elite, those who have power will never give power to those who do not have. Thus, how does the poor possibly have empowered? This leads to the question of does 'empowerment' really make sense as it just doesn't work in reality. The research work of the commission and the process of using the recommendations have confirmed what works, in reality, is rather

'Self-empowerment' instead of just empowerment. Self-empowerment works when people take power, which then leads to the question of how do people take power in legal means?

THE PROBLEM

In 2008, it was estimated that four billion people on the planet could not use the law to make their livelihoods or improve their living conditions. The only time they have use the law was in any punitive action and these people were the people those who lived in the so-called 'informal sector'. In India, currently 90% of livelihoods are in the informal sector and 50% of the GDP comes from the Informal sector. Most of these activities, therefore, are not using the law. Additionally, the 2008 facts reflected that there were twenty million legal cases pending in Indian courts and there are only 10 judges to every one million people. In the other hand, in Cairo at that time, it took 500 days, 350 laws and equivalent of 15 months of wages to register a bakers shop. What is the problem here? The existing systems and procedure are not in practical terms and are hindering development opportunities further for the people, particularly the poor. Thus, the tendency to function in informal means without using the law becomes a norm.

ACCESS TO THE LAW IS

that to have people engaged in taking greater control of their lives using the law.

SOLUTIONS

The simplest articulation of the solution to the situations related to Access to the Law is to have people engaged in taking greater control of their lives using the Law. Thus, the solutions lie on the **Four Pillars of Legal Empowerment** that has been the base for the report of the Commission on Legal Empowerment of the Poor.

1. Property Rights
2. Business Rights
3. Labour rights
4. Access to Justice & Rule of Law

Therefore, the **Empowerment Process** and the strategies for the process are explained in four steps.

| Step One: Mobilization; People need to form groups, referred to as mobilization of concerned population.

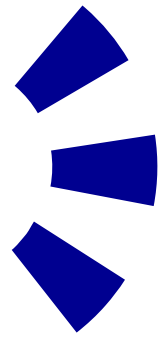
| Step Two: Articulation; the issues that people want to address to be clearly articulated.

| Step Three: Contestation: Where you have to contest the existing power structures to change the law that keeps people far oppressed & in poverty.

| Step Four: Confirmation; Finally the confirmation in Law.

These four strategies work together with each pillar of legal empowerment in achieving its objectives.

Global Context & SDG 16



Sustainable Development Goal 16 aims to achieve Peace, Justice & Strong Institutions by 2030. It demands governments to promote peaceful and inclusive societies for sustainable development, provides access to justice for all and builds effective, accountable and inclusive institutions at all levels. All the 17 SDGs are clearly interlinked and thus, SDG 16 has to be taken into consideration in the context of all others. Looking at most of the countries' recent commentaries at Davos 2019 and considering what is happening economically, politically and socially around the world, it is obvious that Economic elites are finding new ways to justify what they do best. SDG16 has to be achieved in this context

Populism and its impact: Are we heading to a leaderless world? Populism has resulted in weakening the President of France, Chancellor in Germany & United States ended up electing a non-Leader.

Globalism: Globalization has been taking place forever as a natural process. Important is not globalization but 'globalism' which is the ideology rather than the process.

These global aspects couple together creating global situations and we thus have a triple confidence crisis.

- a. We have a problem globally, nationally with Democracy.
- b. Global institutions continues non democratic actions (IMF, WB & WTO)
- c. Large corporations which continue to be driven by greed and by the tax evasion.

We are in a global world which China's Presidency summed up as an "unpredictable International

scenario" that he is calling for vigilance against 'black swans', things that going to happen that we could not predict or 'Gray Rhinos', things which are obvious but ignored.

In this context, the impact of SDG 16 and its progress, in general, has been in a low phase. Some indicators progress reflects as follows;

- Birth registrations: In 2008, 50% of the babies born in Sub-Saharan Africa were not registered at birth and still the numbers remain the same. Though the Global average does show improvement including India.
- Freedom of Information is major challenge although it has been improving.
- Rates of Free trial detentions: There have been very slow progress and 2003-2005 it has been in the rate of 32% and currently it has only made a 1% change.
- Poverty has been reducing significantly, but most of it has come from one part of the world and thus it is an average that has done well and not shared globally and people in sub-Sahara African is still in extreme poverty.
- Legal Empowerment of Women and Girls: This is an indicator that needs a lot of attention. There are strong and effective legal & International norms can be built. Ex. Convention of Elimination of Discrimination Against Women (CIDAW) & Maputo Declaration on Agriculture and Food security.
- Achieving the rule of Law in conflict states: States that are fragile and in conflict has significant challenges and in the process, there are important new ideas developed. For example: considering the idea that Solutions

are not technical but are political; blending politics with technical interventions in a slow and evolutionary manner by not using classic project kind of interventions.

In conclusion, the aspects of the rule of law are under challenge around the world. Governments have to backtrack the core elements of the rule of law from judiciary independence to accountability and fundamental human rights. This behaviour is evident in developed and developing countries. As political and economic commentator Martine Wolf has written 'there is a growing ascendancy of authoritarians around the world'. At the international level influential states have grown and bolder in their effort to undermine international support to the rule of law. Active opposition who have rules based on international order is being led by states once instrumental in the creation of post-WWII Institutions constitute of that order Governments can bristly murder journalist and other states barely register disapprobation due to trust in economic calculations.

The offsite claim that good governance and rule of law is essential to economic progress is being challenged empirically as illiberal states rap up suitable goals over many years.

Authoritarian governments and private firms collude to exploit state resources and company assets to personal enrichment. In Europe, major banks have to launder tens of billions on closet funds for top managers at so convective internal controls and compliance systems leading the international financial law review to as whether the continent has begun to be money lauding heave. Overall, the landscape of the rule of law appears weak and increasingly hopeless.

However, there is that another perspective which has sharply contrasted with this characterisation. On the alternative view rule of law remains a

vital concern that increasingly central to the development agenda and the SDGs that seek to advance norms and standards across domains ranging from Human Rights to investment laws. Indeed a hallmark of 2030 agenda is to hard wire the Human Rights based approach to development policy and practice. Many have argued that governance and rule of law have significantly improved in developing countries over the past 20 to 30 years.

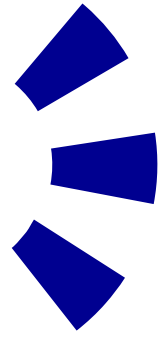
The 2030 agenda is to hard-wire the Human Rights based approach to development policy and practice.

International Criminal Justice tribunals which is struggling with ongoing growing pain continues to enforce international criminal law and help to strengthen reorganization in their legitimacy and authoritative risk of these norms. In the meantime, against the objection of certain United Nations members, UN Human Rights mechanisms launched an investigation to the above models.

Meanwhile, countries compete for rankings in the Ease of Doing Business by improving predictability and quality of domestic regulatory frameworks.

Global Anti Corruption treaties and cross-border Judiciary Corporation is now increasing. Additionally, Civil Society organizations are actively working to advocate and enforce Human Rights and other governmental norms such as Transparency, Accountability and Responsibility.

Therefore, there is a duelling narrative in the context of legal empowerment in today's world.



The Indian Context of Legal Empowerment

Mr. Bibek Debroy, Chairman, Economic Advisory Council to the Prime Minister of India, Member, NITI Aayog



It is important to acknowledge that the framework around the four pillars are already been implemented in the Indian governance system to a large extent. Following is a reflection of the current perspectives of the legal empowerment aspects in the country.

Labour Rights: In the Indian context, what everyone is familiar is that labour is on the concurrent list. And therefore, the Union Government can legislate on labour and so can the states. Although most labour legislation in Union Government level, the enforcement is done by the States & States have orders, regulations under primarily not exclusively Union Government laws. There are around 54 Union Government pieces of legislation on labour. And these 54 belongs to 4 different Heads. Wage-related (Payment of Wages Act), Social Security-related (Payment of Bonus Act), Industrial relation related (Industrial Dispute Act, Contract Labour Act, Trade Union Act) and Safety related Acts

The earliest legislation in the statute book goes back to 1855 which is the Fatal Accident Act. Over a period of time, the legislation varies in definition and case law. Therefore there is an urgent need to unify and harmonise them. In the implication of legislation, it is important to state that the bulk

of these labour legislations are applicable to the organized and formal sector. The informal sector is out of the purview of the productive legislation and what exist cannot be enforced.

Thus, what needs to be done to overcome this situation in the area of labour is to rationalise and harmonise and, in the process, the organized and unorganized dichotomy will breakdown. The union governments have been trying to do this, not overall but under the four heads. Apparently, the organized sector is not inline to these developments.

Legal Reforms need ‘Champions’; who are leaders that can make the change, improve and take it forward.

Mr. Bibek Debroy

For a legal reform, you need a ‘Champion’, who is a leader that can make the change or improvement and take it forward. For an instance, Jammu & Kashmir was the first state to draft a rationalised & harmonised one employment/labour code in India. The Chief Minister of the State was the Champion involved in taking it forward. However, there are constitutional issues that stopped it though article 370 and 254 of the Indian constitution does allow States to act so. Additionally, as a matter of fact, in this case, the Champion lost the job and thus, the cord didn’t move forward. This is part of the context of Labour issues in India.

PROPERTY RIGHTS

In India for the most part, Property rights are the issue of Land. One of the reasons India is having the problem of property rights is simply because of the **absence of clear titles**. There are States where the cadastral survey still goes back to the 1920s. There are however states such as Gujarat & Goa, where the survey reports are up to date, the cadastral map is up to date. Resolving the clean land titles cases would involve litigation of 20% to 30% of cases. In fact, where land titles are reasonably cleaned is actually owned by the Governments.

Meantime, it is important to mention that there are certain developments taking place in some States where Governments are investing on cleaning the issues of land through latest technology. This is with a particular number (similar to Aadhaar number) enabling a complete record of the property that can be tracked. This initiative produce cleaned property ownerships to everyone. Though it will be costly, the point here is that whether you want an unclean system or spend a little more and migrate to a cleaner system. Hopefully, this development will be seen in more states.

BUSINESS RIGHTS

Few years back 95% (currently 97% approximately) of Small Medium Enterprises (SME) were not registered under any legislation, Including Company's Act and Proprietorship Registration. You cannot mandatorily force enterprises to register. They are supposed to be benefits from registration. Nonetheless, if enterprises are not registered, presumably, the procedural cost is too high or the perceived collateral damage is too high but they cannot possibly be forced to do this. One of the problems with this has been that historically there have

been no satisfactory exit provisions for SME. Thus, the concept of limited liability has not existed. Therefore, when the enterprise fail the entrepreneur fails.

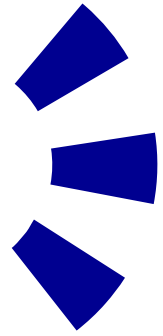
One of the positive things that happened recently is IBC (Insolvency and Bankruptcy code) which enables for the first time satisfactory bankruptcy and insolvency provisions to all the SMEs provided they're legally registered. However, if they are still not legally registered still not have been able to figure out what has to be done.

ACCESS TO JUSTICE

In the good old days, the Supreme Court used to be 20,000 cases. Today the Supreme Court is 60,000 cases. The problem really is, it is very easy to talk about the number of Judges. However, there is a difference between the workings strength and the sanctioned strength. This doesn't mean only about the Supreme and the High Court which is extremely visible but also the local courts filling vacancies in lower courts which are really the responsibility and the right of the Judiciary. There are 30% vacancies, thus, if fill those vacancies in time that would amount to 20% of productivity. It is difficult to understand why the judiciary is reluctant to hand over Case Flow management to professionals and do what they are supposed to do. Why the Supreme Court cannot insist on Case flow being monitored and the template of Case flow to be enforced in all the States? In the year 2001-02, there were amendments to the Civil Procedure Court at that time we all thought that the average civil case would be resolved in a maximum of 18 months because of the procedural separation that the civil procedural simplifications. However, the reality is that for some reasons it was not implemented or taken forward.

Indian Legal System

Prof. Raj Kumar, Vice Chancellor, O.P. Jindal Global University



In India, there have not been enough efforts taken to create a legal system seriously. Even after passing the constitution it has absolutely no effort and never taken the entire legislative process seriously. Laws are being passed frequently with little or no imagination. Then, very quickly work towards its amendments and go through the judicial process. As a result, loopholes emerged and course to mitigate and navigate those contradictions is a challenge in the law itself.

India needs a new Imagination for Legislative process.

– Prof. Raj Kumar

Therefore, it is interesting to note that most of the laws, if we really want to go through the process, it is done by the Ministry officials themselves and not necessarily by the law commission and if you want a law not to be passed then you asked the Law Commission to do it. In that way, it will go through a very long process and never see the light of the day.

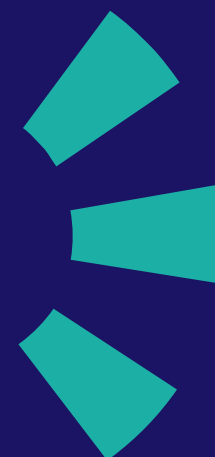
Delays in the legal system: While there are numbers of old laws have been repealed, yet it is obvious that nothing is going to happen because of that, when it comes to delays, problems and challenges of the legal system. There are the real issue that needs to be addressed. Delays should not be caused by the Government itself. It's like the defensive mechanism of the Government officials. The bureaucrats feel that if they do not sanction appeal, there is a good chance in the future somebody might question that why they did not appeal on a verdict that was supposed to be not favourable. So that a sense of the insecurity and potential bias, prejudice charge is being responded to by automatic appeal process. Adjournment framework on the basis of which the article system is governed we have no mechanism to ensure that.

Indian Judiciary: There is a need to double the strength of the judiciary. That's part of our investment. We cannot continue in a situation where we see the problem clearly and saying we are not finding solutions. Mark Galanter told many years ago "that it's not that India is a highly litigious society, it's all that so many people are going into the courts it's that that stuff that goes in doesn't come out easily". The real challenge is we need to increase the capacity. There may be incompetent judges, some slow at times and delays take place but if we really want to address the problem then we need to look at radical solutions. Current Indian Government is good at finding radical solutions. For an instance, the demonetization was a radical attempt to a problem. Then in this case, why not double the judiciary. Let's think radical.

Legal empowerment is

the process through which the poor become protected and are enabled to use the law to advance their rights and their interests in relation to the state and the market.

It is a country and context-specific approach that takes place at both the national and local levels. The legal empowerment agenda aims to incorporate the best practices of informal systems into the formal legal system, and to reform existing formal institutions to make them open, accessible and legitimate.



Making the Law Work for Everyone – Volume 1

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