

Legal Empowerment as a path towards social justice and inclusion: the work of Nazdeek
by Francesca Feruglio

Nazdeek is a legal empowerment organisation working to bring access to justice closer to marginalized communities and individuals in India. Nazdeek is currently working with communities in Delhi and Assam (north-east India) to demand accountability in the delivery of essential services, including maternal health care, housing and food.

Despite strong laws, policies and schemes protecting the right to adequate standard of living and providing for health, food and education services to the most vulnerable, hundreds of million people in India live below the poverty line.¹ The country also carries one of the highest rates of malnutrition² and maternal and infant mortality³ in the world.

Lack of enforcement of laws and government policies depends on a number of factors including poor allocation and expenditure of government's budget on health and food security; people's unawareness of their rights under existing laws and schemes; and poor mechanisms available to individuals and communities to demand accountability for the delivery of essential services. As a result, millions of people are denied access to basic entitlements such as healthcare, food and housing.

Legal activism begun in India in the '80s through Public Interest Litigation has sought to use the law to address the socioeconomic marginalization and inequality. Human rights lawyers and activists have resorted to court to obtain implementation of socioeconomic rights enshrined in the Indian Constitution. Landmark judgments from various courts across the country have recognized healthcare, food and housing as central components of the right to Life (Art. 21 of the Constitution), and expanded access to essential services for countless petitioners. However, these judgments remain today dead letters for millions of Indians whose cases are not addressed in court. Skilled human rights lawyers are scarce in the country and human rights cases are only addressed at High Courts or the Supreme Court located in capital cities, thereby often unreachable to particularly marginalized groups and individuals. Furthermore, even those who do obtain a favorable court order have very little means to demand its enforcement. Indeed, these serious barriers in accessing justice call for a more grassroots and community-oriented approach to the law.

Against this backdrop, Nazdeek, an organization based in Delhi, works with communities, activists and lawyers to ensure that community members, particularly women, are able to demand and secure access to essential services, including healthcare, food and water and sanitation. Our strategy is grounded on the concept of legal empowerment, which aims at building legal agency (or legal capability) of marginalized individuals. Agency-building is a long-term process that entails gaining knowledge of the law (i.e. actual entitlements as well as available mechanisms to address them) as well as being able to use the law to claim rights and entitlements.

In our work, the first step on this process entails legal education programs aimed at building a pool of 'paralegals' who are able to identify, document and seek redressal for rights violations at community level. Initially, an in-depth assessment conducted with community members allows mapping out a number of key factors such as the existing access to government services, level of rights awareness, existence of community-based groups or civil society organizations, and relation with local government authorities. A major factor for consideration is the motivation and commitment of women in the community to participate to the programme as consistently as possible. Whenever possible, we also collect baseline data to be used for monitoring and evaluation purposes.

In terms of the methodology used, the programme fuses training sessions with field research and documentation of cases carried out by community volunteers (training participants) themselves. At the beginning of the programme, training participants, mostly women

¹ Estimates set the percentage of people living in poverty in India between 53% (Multidimensional Poverty Index, Saxena Committee) and 21% (UN MDGs, World Bank) of the country's population of 1,2 billion (2011 Census).

² Global Hunger Index, 2010, 2014

³ UN Inter-agency group for Child Mortality Estimation, 2015

belonging to marginalized groups like Dalits or Adivasis (tribals) or below poverty line, gain awareness of their rights under the law, as well as reflecting upon wider power dynamics (state-society) that affect their daily lives. Poverty is analysed and addressed as the result of compounded discrimination (gender, caste, socioeconomic status etc.), rather than as a fatal circumstance in which people live. Moreover, a gender lens is applied to the training programme, and women have an opportunity to discuss issues that affect them at household, community and society levels.

The training also unpacks the State system at different levels, with a particular focus on the justice system. For instance, in a training session recently conducted in Delhi, participants familiarized with the notion of 'rights' and 'human rights' as well as discussing the role of the State as duty-bearer in protecting human rights.

Secondly, training sessions aim at building skills to identify and document violations of health, sanitation, and food entitlements. Training participants are asked to identify and document violations they observe in their communities. In doing so, they engage with other fellow women and frontline service providers (such as village-level "Accredited Social Health Activist"), exposing the gaps and shortfalls in the service delivery. This stage is crucial to build a culture of 'questioning' among participants, and set the ground for challenging the status quo and demand for increased accountability in the delivery of services. To the extent possible, sessions seek to stimulate collective reflection over problems and issues faced, which will at another stage lead to planning collective actions towards greater accountability.

In every training session participants engage through group discussions, role-plays and games. For instance, a moot court session can be very powerful to build oral advocacy skills, including the ability to formulate legal arguments and to demand reliefs consistent with relevant provisions. We've also observed this exercise is useful for participants to understand the need for accurate evidence.

A main 'output' of the training sessions is the development or adoption of tools for documentation that allow for more consistent and accurate data collection. For instance, in our work with tea garden workers in the North-Eastern state of Assam, we have developed a technology-based platform for community members to anonymously report gaps in access to maternal health services through SMSs. The system has led to the identification of over 120 cases and recurring patterns of rights violations. The data has then been disaggregated, analysed and submitted to local authorities to demand improved healthcare services.

The third stage of the capacity building programme aims at ensuring community members are able to effectively use grievance mechanisms to claim their entitlements. In terms of existing grievance mechanisms, litigation is resorted to as a last resort. Redress is often sought at more local level, through the filing of administrative complaints and right to information requests to obtain benefits if they have been wrongly denied, or applications to receive the necessary documents to obtain benefits.

The focus on administrative, and more grassroots, remedies is not only effective on the short run, but it is also important for more strategic reasons. The real 'empowerment' only occurs when community members are driving the process to claim justice. Using local remedies affects those very power dynamics (between service providers and community members, for instance) that make a difference in people's daily lives. Community members are able to monitor and oversee the delivery of services and exert increased control over the state.

When administrative remedies are exhausted, community members have the option of recurring to strategic litigation. The understanding of the rights framework and the court system gained during the trainings allows for a more informed and participated approach to litigation. For instance, affected community members, assisted by paralegals, are able to support evidence collection and to formulate demands based on legal arguments. Community ownership over the legal process not only eases the work of the legal counsel, but also ensures the enforcement of court orders is more consistently monitored by affected individuals.

Finally, we also believe it is essential to build alliances between community members and other local stakeholders, especially lawyers. The most obvious way is to connect communities with pro bono human rights lawyers who are able to provide representations when administrative remedies have been unsuccessfully exhausted. However due to gaps in the education system, India lacks a strong cadre of human rights lawyers who have the knowledge and skills to serve their communities, especially in more remote areas outside capital cities. As a result, in 2015 we launched an innovative Human Rights Clinical Programme aimed at promoting a culture of pro bono lawyering and help filling the human rights education gap in rural Law Colleges. Currently the clinical programme set up at Tezpur Law College in Assam provides human rights law education to about 10 students per year, combining lectures international human rights law and systems, Constitutional law, with skills-building sessions (on drafting skills, for instance) and field exposure to real, life cases. Indeed, our clinical students have begun providing legal support to the cases reported by paralegals working in nearby areas by providing advice and assisting with filing of applications.

In the near future we plan to expand this program and incubate similar clinical programs in the areas where our legal capacity building projects are established. As a recently-established organization, we are keen to strengthen the use of legal education to address gaps between community members and the legal system, and ensure the law is a meaningful and accessible tool for people to obtain justice.