

# Evaluating Legal Empowerment: Problems of Analysis and Measurement

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## INTRODUCTION

The term ‘empowerment’ has been used to describe a whole gamut of experiences – ranging from increased literacy and income to self-reliance, participation and decision-making; however, ‘legal empowerment’ is distinct from other forms of empowerment in that the process involves the explicit or implicit use of the law in improving poor people’s access to legal redress. Legal empowerment strategies strive to help the poor achieve incremental changes in their lives by bringing reforms at the state, community and household/individual levels. The principal goal is to ensure access to justice by the poor and the marginalized through enhanced legal knowledge and related skills to acclaim entitlements in meaningful ways. The strategies generally utilized for legal empowerment are legal literacy, alternative dispute resolution, legal aid and public interest litigation.

The paper reflects on questions as to whether legal empowerment projects have been able to strike a balance between competing aspects of rights and social justice and change prevalent structural inequalities and power relations that essentially perpetuate disempowerment of the poor and disadvantaged groups in the first place. In other words, do the strategies simply provide ‘quick-fix’ solutions and promote a politically disengaged model of empowerment or do they assist beneficiaries in developing an intrinsic understanding of the issues at hand and the capacity to deal with them in effective ways? Additionally, the paper addresses the problem of impact assessment and sustainability of legal empowerment strategies.

## THE PREMISE

Different approaches to legal empowerment apparently help instill a sense of confidence in their own capacities that was hitherto absent amongst the poor and the

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disadvantaged. They assist in creating a culture of rights amongst vulnerable groups in ways that subtly alter the manner in which they perceive themselves *vis-à-vis* those who have power over them, whether husbands, landlords, employers or government functionaries. Indeed, there is evidence of shifts in the balance of power that previously affected particular groups negatively; for example, women exposed to these initiatives seemingly deal relatively effectively with a violent husband or farmers appear better placed in their transaction with exploitative landlords or slum residents more confident in tackling police aggression.

A combination of paralegal activities, legal consciousness-raising and community-based dispute resolution strategies has blended to transform disadvantaged individuals and groups into a cohesive force for challenging social inequities. Public interest litigation on the other hand offers a tactical leverage not only for mobilising the judiciary, other state actors and social advocacy groups, but for generating broader public sentiment in respect of social injustices. In their more advanced forms, legal empowerment strategies add a participatory, demand dimension to institutional reform; as the capacity, knowledge and confidence of the poor develop, they are not only better able to resolve specific problems but also able to challenge the regulatory role of legal and governance institutions and political dynamics of decision-making.

Changes evolving from legal empowerment interventions are manifest at both personal and state levels; their approaches have yielded results that range from protecting groups and individuals against arbitrary detention and treatment, challenging work-place discrimination, halting unlawful evictions from their homes, mobilizing local communities to demand their entitlements and obtain basic service delivery and ensuring gender justice and rights of minorities.

## ON THE EFFECTIVENESS OF LEGAL EMPOWERMENT INITIATIVES

It is inconceivable that strategies for legal empowerment in the way they are practiced will guarantee absolute equality or ensure complete justice for the poor. Approaches to legal empowerment might remove inequities and eliminate repression; however, do they provide conditions that would make these victories meaningful? What happens to a woman who has gained freedom from a violent marriage or a man who has been freed after years of illegal incarceration? To what extent legal empowerment initiatives can promise enduring measures of relief that would lend meaning to these achievements? How can legal empowerment help them to stand on their own feet? How can they restrict lawlessness, curb administrative deviance?

One of the key principles of a sound democratic system is the guarantee of a fair and equitable legal process whereby people, irrespective of social and eco-

conomic influence, can resolve their disputes/problems. Unfortunately, the situation on the ground is often quite different. The poor unequivocally consider the legal and judicial system unresponsive to their needs and as such, nurture an inherent mistrust for legal institutions. After living through years in which the judicial system has been corrupt, inefficient or complicit in oppressive practices, ordinary people may well be reluctant to assert claims and actively seek relief. Besides, disadvantaged individuals and groups might not regard their problems, often involving complex socio-economic elements, as ones that could be redressed through the formal legal process. Even if they were able to recognize the legal underpinnings of the damage sustained or harm incurred, fear of retribution may well keep them from approaching the court for redress. In this complex milieu, using law as an entry point in legal empowerment programmes may be counter productive in that they may offer only symbolic leverages for a more responsive and just socio-legal order.

The adoption of narrow legal approaches, as in using the law to deliver rights, can be problematic in that they fail to comprehend how people actually experience their world and tend to sustain hegemonic hierarchies. While 'legal empowerment' for the most part focuses on developing capacities of vulnerable groups to take control of their lives through the strategic use of law, there is very little initiative to change prevalent structural inequalities and power relations that essentially perpetuate disempowerment of the poor and disadvantaged groups. In order to be effective, legal empowerment strategies must essentially be tailored to respond to the needs of the people in their day-to-day interactions within the wider social, cultural, political and economic setting. Unless steps are taken to address the contradictions inhering in the political and structural processes, these approaches will simply be reduced to a technical innovation that has failed to provide social justice in sustainable way.

Indeed, the mobilizing potential of the various tactics employed in pursuing legal claims and their significance within specific terrains is largely contingent on existing contextual factors. In considering legal empowerment of the poor and the marginalized, it is important to bear in mind that simply grafting borrowed ideas from foreign legal cultures would not produce the desired effects. Rather, it is the 'local' as opposed to the 'borrowed' that essentially lends efficacy and meaning to laws and legal institutions, influences the use and administration of laws and moulds legal attitudes and values in a given society.

## ON MEASURING LEGAL EMPOWERMENT

The proof of success of the various strategies employed for legal empowerment is whether the situation has changed for the poor and the disadvantaged in respect

of a particular right. Many of the contextual factors underscored in existing literature while discussing perceived achievements of legal empowerment interventions contribute more to analysis rather than scientific measurement of legal empowerment. It is indeed difficult to establish a causal link between specific legal actions and the resultant development. One of the fundamental problems in assessing legal empowerment is that the characteristics and conduct that typify empowerment in one context may well have different implications in another. For example, a woman being able to visit a marketplace by herself may signify empowerment in the rural context but not so in the urban slums where women routinely go about in public on their own.

It is often argued that the very nature of legal empowerment activities bars the possibility of assessing their impact in the short-term. While anecdotal examples can be, and are, drawn upon to underline immediate gains made by disadvantaged groups, they do not satisfactorily reflect the extent of knowledge retention and the mobilization for permanent change in their lifestyles. It is difficult to assess, on a regular basis, for instance, the growth of collective strength and feelings of solidarity amongst beneficiaries, a rise in their confidence and self-esteem, women's role in decision-making and non-discriminatory attitudes and treatment, because these outcomes are largely in the abstract. They represent intangible processes that are difficult to measure, except perhaps in the long run. Nonetheless, secondary changes do occur as a result of legal empowerment activities, many of which are discernible in the context of the immediate family and others that spill over into the community. The payment of dower and maintenance, decline in arbitrary divorce, reduction in wife abuse, collective bargaining for fair wages, membership in local government bodies and so on, are but some examples of the changes in existing structures that determine power relations, opportunities and resource allocation in local communities.

In all fairness, investigations and assessments for testing successes, failures and lessons of legal empowerment activities are by no means simple; they require carefully devised tools and strategies, adequate funds and skilled personnel if they are to inform programmes in constructive ways. Monitoring, both of processes and of outcomes, is not only about implementation but is central to producing sustainable results; as such monitoring and evaluation of legal empowerment activities would have to be strategic and grounded in the specifics of culture, environment, politics and legal issues and processes.

## CONCLUSION: WHO SUSTAINS LEGAL EMPOWERMENT IMPACTS?

Legal empowerment initiatives are characterized by a two-fold dependence: beneficiaries' dependence on NGOs, and dependence of NGOs on donor funding.

In the absence of either, the scenario may well change unless the lessons learnt are internalized by local communities. However, it is equally true that a premature closure of the legal reform process by NGOs can have disastrous consequences because it takes time to alter practices and ideologies that have become embedded in the social fabric over generations. In order to develop a locally-owned legal empowerment culture and to achieve sustainable impacts, it is thus important to have prolonged financial and technical support in terms of legal empowerment initiatives.

While poor communities may indeed experience law as a tool for oppression, it can also be converted into a force that expands access to justice and economic benefits, ensures accountability in governance and affects broader socio-political change. Whether good outcomes resulting from innovative legal empowerment activities will transform society in a sustained manner is dependent on a number of factors, primary amongst which is the commitment of the state to uphold principles of equality, non-discrimination and overall welfare of the society. In this context institutionalization of legal empowerment activities is an essential first step towards attaining sustainability of their impact. To this end, the establishment of a National Commission on Legal Empowerment for the poor and the disadvantaged may be contemplated to act as catalyst for change. Steered by policy planners, law-makers and representatives from civil society and development and legal service NGOs and of course, representatives of the poor and disadvantaged who ordinarily feature as 'beneficiaries' and not partners in action, the Commission shall identify pragmatic and multiple entry points for reform, mobilize domestic as well as international support for initiating reform processes and finally, help translate them into reality.

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