

Legal Literacy and Poverty Reduction

Hamid Sharif

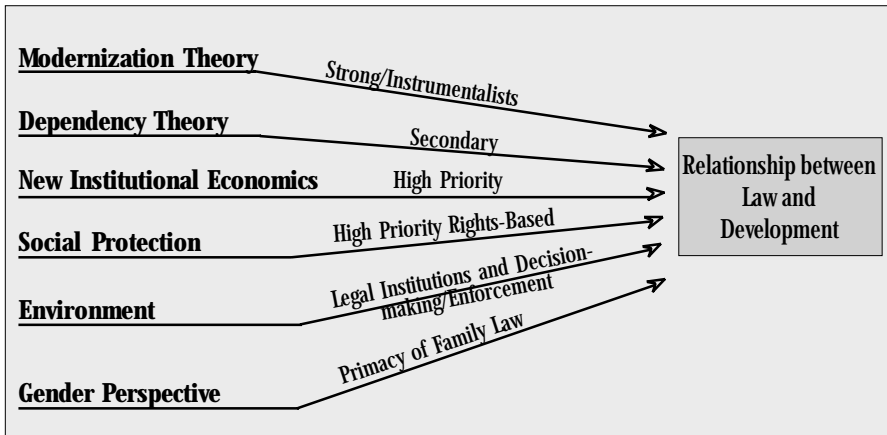
1. Theoretical Perspectives on Law and Development

I will start off with theoretical linkages between law and development. Despite all the slides you see on the board, very little in fact is known about the linkage between law, or the rule of law, and development. Wescott (2001) has referred to certain correlations between the rule of law and high income. The jury is still out regarding the robustness of this juxtaposition, especially with respect to the “causation” behind this correlation. What is important, however, is that when one considers the different theoretical perspectives from which people have approached the subject, there seems to be a convergence and an increasing recognition that law does play, or has the potential to play, some sort of a role. What exactly that role is differs across different perspectives.

If we consider the experience of the 1960s and the first law and development movement, which was out of steam by the mid-1970s, we see that this movement was basically an attempt, led mainly by the United States Agency for International Development, to try and create Western-style legal institutions in developing countries, in the hope that this would help economic development. The emergence of Western-style institutions in developing countries was seen as an indispensable progressive step to development. The movement itself was condemned for being egocentric and seeking to be a sort of intellectual imperialism.

Figure 11.1 illustrates the different theoretical perspectives on the relationship between law and development. In contrast to the first law and development movement, dependency theories view law as simply the outcome of political conflicts in any particular country, and therefore consider law to be secondary. These theories, nevertheless, recognize that the rule of law is important to achieve certain economic and social goals. If we move to the theoretical perspective of new institutional economics, we see an emphasis on shifting the focus to institutions, particularly legal institutions, and their ability to create predictability for impersonal exchange. Functional institutions fostering impersonal exchange are seen to be critical for reducing transaction costs and helping economic development. From this perspective, law and legal institutions are extremely important. Those who espouse welfare or social protection emphasize the importance of providing people with basic entitlements in order to promote development and poverty reduction. This perspective argues that there has to be a rights-based system, so that people have rights to a minimum standard of living and freedom to exercise basic liberties. The importance of law to that perspective is quite obvious.

Figure 11.1 Theoretical Perspectives



Source: Author.

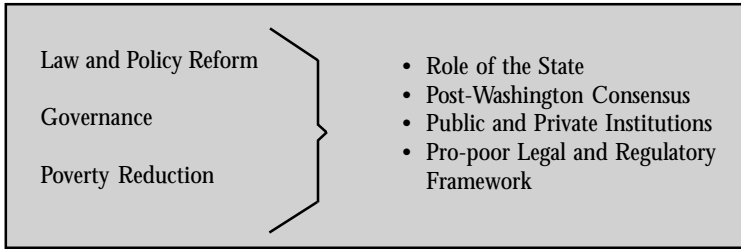
Similarly, from an environmental perspective, it is important that decisions be made in a manner that includes all stakeholders. For this to occur, one must have lawmaking institutions that are inclusive and that allow maximum participation. Beyond this, one must have legal institutions that can enforce laws promulgated to protect the environment. This perspective, again, recognizes the importance of the role of law.

A feminist perspective also highlights the need to focus on appropriate and relevant laws affecting women. For example, a gender specialist in India stressed that there is no point talking about certain types of laws relating to rights at work, and so on, as mechanisms for improving the welfare and participation of women, if most women in developing countries stay at home and are mainly affected by family law.

This brief overview of various perspectives on the role of law in development shows that while there is no agreement on the exact relationship between law and development, there is increasing recognition of the relevance and potential role of law in economic and social development.

2. Law and Policy Reform: Creating a Pro-Poor Legal Framework

The Asian Development Bank (ADB) has taken a very pragmatic approach to the role of law in development. The organization's law and policy reform activities are centered on its governance program. Institutions are considered central to development, as is the role of the State (Figure 11.2). In that context, legal and judicial institutions have an important role to play. There are increasing expectations that the State will play a greater role in creating an environment for development. An essential part of creating such an environment is the creation of legal and judicial institutions that can underpin economic transactions and

Figure 11.2. Law and Policy Reform as Part of Governance

Source: Author.

provide security for them. Beyond the courts and the formal legal system, evolution of public sector institutions that can interact with civil society and private sector organizations to foster development will be extremely important. As part of that effort, attention to creating pro-poor legal and regulatory frameworks will be crucial. Efforts in this area promise to be increasingly important for ADB.

The term “pro-poor legal framework” may seem a bit contrived and difficult to grasp, so I would like to illustrate it with examples from India. These examples are from a book entitled *Policy and Legal Reform for the Poor in India* by Mr. N.C. Saxena, a former planning secretary. When I first read the book, I was quite impressed, but as a result of interaction with a delegate from India yesterday, I think even more highly of the book today. Mr. Saxena, I am told, is someone who, except for formal occasions, goes barefoot to his office. He reportedly is extremely particular about the use of public property, to the point that when he was told that his wife was using the office car, he promptly informed the police and had her arrested. She was ultimately convicted and fined. When a person of this caliber comes up with suggestions to improve governance, especially to help the poor, I think we have to take these seriously.

I would like to refer to three illustrations from Mr. Saxena’s book, which bring out the importance of pro-poor legal frameworks. The first example relates to the importance of freedom-of-information laws. Mr. Saxena cites a case from the state of Rajasthan in India, where a local nongovernment organization (NGO) created an alliance of workers and peasants against corruption. The NGO successfully started to expose the corruption of local officials by getting hold of certain public records, which the lowly clerks at that time were making available to them. The use of public records stirred the senior bureaucrats involved in corruption. They protested the exposé, invoking certain provisions from the Indian Civil Service rules and the laws relating to state security, stating that any disclosure of this information would be detrimental to state interest. This is a classic example where the law, which may originally have been written to truly protect the State itself, can actually become an instrument against the public interest by preventing local NGOs from exposing corruption. Therefore, in thinking of legal frameworks that promote the interests of civil society, especially the poor (who suffer most from corruption), it is important to resist certain assumptions underlying “security of state” to ensure that these do not become tools in the hands of corrupt officials to thwart transparency.

Another example Mr. Saxena cites relates to food adulteration in India. Under Indian law, food found laced with “insects” is considered adulterated. Chilies are a basic ingredient in food. Worms sometimes germinate in chilies, but since according to the law, as interpreted by Indian courts, “worms” are not “insects,” the adulterators cannot be convicted under these particular laws. The laws further provide each of the implementing officers with a budget for taking samples of food. The inspector pays for every food sample taken. The daily budget is so low, however, that it allows for only a very limited number of samples. The adulteration laws are, therefore, largely ineffective in protecting the public, especially the poor who are likely to opt for the cheapest foods. These laws, and especially their implementation, need to be carefully reviewed to ensure that they actually protect the poor from the adverse effects of food adulteration.

A third example is where the State itself sometimes becomes the culprit. This example relates to minimum wage law in India. Despite the existing minimum wage law, during times of drought the state of Rajasthan resorts to what is known as a drought-relief minimum wage, which is well below the minimum wage stipulated in the law. Many people have petitioned the Supreme Court, which has ruled in favor of workers, stating that the minimum wage ought to be the same, whether the

“ADB’s law and policy reform work is not a stand-alone activity...but is centered in its governance policy.”

work is in a drought area or not. The state government has conceded that in these particular cases, the minimum wage for drought-relief work should be higher, as per the general minimum wage law. However, it has not always applied this to those who do not petition the court.

If pro-poor laws and policies are to have the effect intended, there has to be a change in attitude. When we refer to a pro-poor legal framework, we are talking about revisiting laws to make sure they will not be used as instruments to prevent the poor from getting the protection that the policy was meant to give them. We also have to ensure that implementation of laws is done in such a manner that the policy is actually achieved, that is, that the poor in fact benefit.

For ADB, its law and policy reform work is not a stand-alone activity. It is very much centered in its governance policy, which is mainstreamed in ADB operations.

There are three different policies that impact on ADB’s operations. First is the governance policy discussed earlier by Wescott (2001). Second is the private sector development policy, which basically seeks to create an enabling environment for the private sector to work, and for that to happen, there needs to be an appropriate legal and regulatory framework. ADB’s legal reform work, particularly on reform of commercial laws, insolvency laws, transaction laws, registration, etc., results from this analysis. The third part is ADB’s poverty reduction policy, which declares that poverty reduction is ADB’s overarching goal. In pursuit of this goal, we should now pay attention to the sort of detail that Mr. Saxena has referred to in his book, when we confer with our member countries in developing a legal and regulatory framework.

In the operations sector, specific legal issues arise in loans and technical assistance projects, which are addressed as part of ADB's law and policy reform work. I will just cite a few examples of such law and policy work. For example, in Pakistan, ADB has played a leading role in creating perhaps one of the most independent securities and exchange commissions in this region: it has not only functional independence, but also financial independence. As a result, there has been a marked improvement in governance in that particular institution and an impact on the market as well.

Social forestry projects in Pakistan and Bangladesh have sought to address poverty reduction in the communities living in and around the forest. Enunciating a new concept such as social forestry is one thing, but creating a conducive legal framework for such a policy is another matter. Often the legal framework for forestry is based on a poacher and game-keeper model under which nobody is supposed to enter the forest, nobody is supposed to take nontimber products from the forest, and violators are to be punished. For social forestry to work, all of that has to change. Laws have to be changed so that the rights of communities to get nontimber forest products are fully recognized, and so that contractual arrangements are possible by which the poor can benefit from reforestation.

A very live and current issue, which ADB is examining in the context of another project in Pakistan, is that of bonded labor. There is ongoing debate about bonded labor laws and tenancy laws. These are apparently in conflict; different parties look at these laws differently. Now, again, if ADB proceeds with the project, these laws will have to be reconciled so that the minimum protection available to citizens under the bonded labor laws is made available to tenants as well. A legal framework must be developed that in fact protects tenants and gives them the protection of bonded labor laws.

The definition of poverty taken from ADB's Board document is "deprivation of essential assets and opportunities to which every human is entitled." When we look at assets, we are not simply looking at physical assets; we are also looking at legal rights and entitlements. It is this broader concept that will inform ADB's work.

I would like to discuss some themes and projects that ADB is sponsoring in support of its poverty reduction goals. An important aspect is access to justice. It is important to make sure that the legal entitlements, which in theory are granted to the poor in various laws, are real entitlements, known to the poor and enforceable in the courts. ADB is currently looking at access-to-justice issues in Pakistan. Since then, ADB has approved Loan Nos. 1897/1898/1899-PAK: Access to Justice Program (ADB, 2001a). It is working with the government toward a new freedom of information law. In other countries, it is assisting governments to create far greater access to legal information. Ongoing projects in the People's Republic of China, Pakistan, and Tajikistan will facilitate access to legal information.

Delays in court proceedings, which are a huge problem in South Asia and in many other countries, is another area of ADB's focus. ADB's proposed assistance to Pakistan for access to justice is looking at ways to reduce such delays. Access to justice is, however, viewed from a very broad context. It is not simply the formal legal system comprising the courts. Often,

the administrative machinery and the use of administrative law are equally, if not more, important to ensuring the entitlements of the poor. This will need to be an important area of focus in the region. In addition, the whole area of alternative dispute resolution will also be of importance. Trying to create mechanisms that citizens can access outside of the formal court system (which tends to be very impersonal), will be a key to taking away the burden on the courts and providing the poor with inexpensive and speedy justice.

3. Legal Literacy and Pro-Poor Growth

Legal literacy or legal empowerment of the poor is the last point I would like to stress. Legal empowerment of the poor, from simple awareness of legal rights to the power to enforce them, is central to making pro-poor growth possible. This is well illustrated by a small study that was carried out under a larger regional project on legal literacy sponsored by ADB (ADB, 2001b). This particular study focused on land reform in the Philippines. Under a presidential decree, tillers of land were basically given the right to obtain up to 2 1/2 hectares of land from landlords, while the landlord's shareholding was supposed to be reduced to no more than 7 1/2 hectares. In some areas, quite a lot of legal literacy activity had taken place. The study compared areas with and without legal literacy, and the results were quite stunning.

The *barangay* (administrative village) officials themselves named barangays with legal literacy activities as those with the most successful agricultural reform. Box 11.3 highlights the findings from the study. The survey further showed that among respondents in barangays with legal literacy activities, tenancy was much lower and squatting was much higher, indicating that people had a far greater sense of ownership of land and were asserting their rights to land ownership rather than accepting their fate as tenants. The overall level of land ownership, the survey revealed, was almost equal in both areas; what was significant was the

Box 11.3. Findings of a Study on Legal Literacy

Official Philippine government data absent at the *barangay* (village) level; notwithstanding, Department of Agrarian Reform officials independently name barangays with legal literacy activities as those most successful.

Among respondents in barangays with legal literacy activities:

- Relationship to the land is different;
 - Tenancy levels lower, "squatting" higher
 - Levels of land ownership roughly equal
- Land much more likely to have been acquired through land reform;
- Quality of housing is higher;
- Levels of direct political protest are higher; and
- Legal literacy activity affects ordinary residents' land acquisition.

Source: ADB (2001b).

way in which people acquired ownership. In legal literacy areas, ownership was attained usually through agricultural reform and some NGO activities, whereas in areas with low legal literacy, ownership was attained mostly through inheritance.

The quality of housing was also much higher in those areas with legal literacy, indicating that people in these areas were able to spend more on essential goods like housing. The study also showed that there were far more direct political protests among those people who had been the beneficiaries of legal literacy activities, and participation in community activities was generally higher. In areas where legal literacy activity had taken place, even those residents who were not tenant farmers were affected in a positive way. Legal empowerment activities, ranging from awareness raising to assisting people to assert and enforce their rights, thus had a positive effect on the net resources that these people could acquire. More importantly, it gave them a heightened awareness of their rights as citizens.

References

- ADB (Asian Development Bank). 2001a. On-line: <http://www.adb.org/Documents/Profiles/LOAN/32023013.ASP>
- . 2001b. Law and Policy Reform. On-line: http://www.adb.org/Documents/Others/Law_ADB/default.asp?p=lawdevt
- Wescott, Clay. 2002. Pro-poor Governance for Reducing Poverty. Manila: Asian Development Bank. On-line: <http://www.adb.org/Poverty/Forum/default.htm>.