

PREFACE

On 10th March 2005 BLAST arranged a seminar on 'Role of Media in PILand Advocacy' at the VIP Lounge of the National Press Club. Two papers were presented in that seminar. Along with a summary report of the seminar, this occasional paper contains those two papers besides recommendations.

The keynote paper of Soma Islam identifies the role of media in public interest litigation and advocacy, explores the scopes of legal aid and human rights organisations, and media to work together for enforcement of human rights of the poor and disadvantaged people.

The paper presented by Shahiduzzaman of the New Age shows nicely how PIL originated and how media played and can play a stronger role in future for PIL.

The occasional paper emphasizes that the media plays a pivotal role to draw public attention to different issues, important or interesting relating to gross violation of human rights. The media does not only draw public attention but also serve better public interest. It engages every reader to answer the questions raised. It also encourages a broad participation of the society in dealing with issues of public interest.

Taslimur Rahman

Executive Director, BLAST

This is a need for better coordination amongst the lawyers, judges, media and human rights organizations with a view to ensuring that human rights are adequately protected.

-Dr. Kamal Hossain Chairman, BLAST

Report of Seminar on

Role of Media in PIL and Advocacy

Shadeka Jahan

Introduction:

This report contains a summary of discussions held in a Seminar entitled "Role of Media in PIL and Advocacy" organized by BLAST on March 10, 2005 at the V.I.P Lounge of Press club.

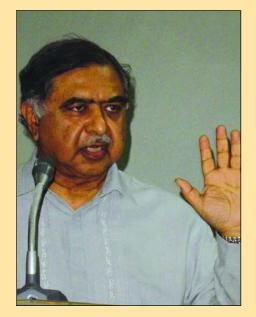
Dr. Kamal Hossain, Chairman, BLAST graced the seminar as the Chief Guest. Justice Naimuddin Ahmed, Vice Chairman, BLAST and Ataus Samad, Member, Board of Trustees, BLAST was also present amongst other media and NGO representatives. Mr. Monjurul Ahsan Bulbul presided over the seminar. Soma Islam, former Assistant Director present D.D, Advocacy and PIL, BLAST stressed for increased cooperation between the legal-aid NGOs and the media with a view to ensuring effective implementation and dissemination of the directives issued by the High Court Division of the Supreme Court of Bangladesh in her key note paper. Mr. Shahiduzzaman, Special Correspondent, New Age also made a power point presentation on the role of Media in PIL and Advocacy, Mr. Fazlul Hag, Executive Director of BLAST in his welcome speech noted that the print and the electronic media is playing a laudable role in identifying issues of gross legal and fundamental rights violations that were subsequently challenged in courts in the nature of public interest litigation which in turn have paved the way for judicial activism and led to the pronouncement of many landmark pro-people judgments.

The objectives of the seminar was amongst others:

To reflect on the role of media in Public Interest Litigation (PIL) and advocacy,

Explore the opportunities for BLAST, other legal aid and human rights organisations and media to endeavour to work together and more fruitfully to ensure enforcement of fundamental and human rights of the poor, disadvantaged and marginalised people.

Some important recommendations came out of this seminar. Everybody agreed that media is by far the most effective source of influencing people's thoughts and catalyzing the judiciary to secure legal and constitutional rights for those who are otherwise denied justice owing to knowledge and resource constraints.



Presentation of Soma Islam,

Deputy Director, PIL & Advocacy, BLAST:

Soma Islam, Assistant Director, PIL and Advocacy Cell of BLAST in her key note paper discussed ornately about the PIL and Advocacy activities of BLAST. She acknowledged that the role of the print media in strategic selection of cases of high public importance by BLAST was enormous. She further iterated that except for a few cases referred by the unit offices and other beneficiaries, it is extensive media coverage on incidents of gross violation of human rights that prompted BLAST to instigate legal action on behalf of the aggrieved. She also cited the example of the writs filed by BLAST challenging persistent abuse of powers by law enforcement agencies, gender discrimination in public employment and continued incarceration of under-trial prisoners as major success stories for BLAST in which the role of media cannot be overemphasized. She further noted that the media has to shoulder the responsibility of raising public awareness on the directives issued by the Supreme Court on arbitrary arrests, detention and treatment of suspects, informing people about the existence of the government legal aid program, influencing public support for ensuring permanent settlement for the slum dwellers and landless as well as creating an environment whereby the fundamental human rights of the people living with HIV/AIDS are protected and promoted. She observed that the media through dissemination of information could educate the general public to overcome the fear and stigma associated with the dreaded illness.

Soma Islam called for collaboration with the media on issue identification, continuous follow up of PIL cases, dissemination and enforcement of judgements delivered on PIL cases, strengthening post-judgment monitoring and mobilizing public opinion for reforms in the legal system and sharing experiences.

Presentation of Shahiduzzaman

Special Correspondent, New Age:

Shahiduzzaman, Special Correspondent, New Age in his paper touched upon the origin and advent of public interest litigation. He observed Public interest litigation is commonly used as tool of the Social Action movement. Public interest litigation is perhaps the most developed in India, where it has been used in a particularly vibrant way. Public interest litigation is also used in Bangladesh and a number of countries to test the constitutionality of legislation. The writ petition that challenged the Jatiya Sangsad Reserved Seats for Women (Election) Act is the most recent example of such litigation in Bangladesh. He also discussed about legislative advocacy, legal advice, paralegals, and legal research as important tools of PIL.

Summary of discussions

Probash Amin

Chief Reporter, Prothom Alo:

Referring to the ruling government's initiative of deploying the Rapid Action Battalion (RAB) in order to handle the deteriorating law and order situation, he observed that it is indeed surprising that despite its highhandedness, RAB is very popular with the general people. He noted that the media and human rights organizations such as BLAST should work in tandem to address human rights violations by law enforcement agencies and extra-judicial or crossfire killings by the RAB. He iterated the need for effective implementation of the directives and orders passed by the High Court Division of the Supreme Court of Bangladesh as a result of successful PIL instituted by the legal aid and human rights NGOs.

Zaydul Hasan Pintu Chief Reporter, The Daily Star:

He expressed serious concern over the indiscriminate crossfire killings by law enforcement agencies and lamented that there is no independent investigation in this matter. He also cited the example of a case where a man was languishing in Jamalpur jail for several years and BLAST petitioned the High Court Division of the Supreme Court to get his release order. Unfortunately, the man incarcerated in the jail for another four months until the release order reached the jail authorities, he noted.

He opined that of late there has been a tendency among the reporters to shy away from uncovering the truth although their main duty is to serve the people. He stressed the need for forming a monitoring cell comprising judges, civil society actors, media personalities, human rights and legal aid organizations in order to ensure compliance with the directives of successful PIL cases. This group could also assist in identifying potential issues for PIL, he said.

Golam Mortoja Chief Reporter, Weekly 2000:

He mentioned that the media almost everyday reports about human rights violations. However, the voice of those who are poor and uninformed are seldom heard given they are precluded from access to information. He also regretted the lack of co-ordination among the media, human rights and legal aid organizations and iterated the need for regular follow-up of PIL interventions. He noted that the media and human rights organizations could work together on the Chittagong Hill Tracts issues as well as HIV/AIDS with a view to enhancing public awareness as well as effecting policy change.

Faruqe Kazi

Special Correspondent, UNB and

President of Bangladesh Law Reporters Forum:

He said that that the concept of PIL and its utility is not so clear to the general people. He observed that the scope for PIL has been widened through the landmark decision in Mohiuddin Farooque vs. Bangladesh, 48DLR, 1996, page: 438 that has enabled public spirited and conscious citizens to move the High Court Division through PIL. He further reiterated that the duty of a reporter is to look after the interest of the majority people. He said that it is worth collaborating with legal experts and human rights organizations in order to overcome problems of legal reporting by journalists.

Shah Alamgir News Editor, Channel I:

He observed that it is very important to ensure that the lawyers and the reporters irrespective of their political affiliation remain neutral while addressing human rights violations. He further called for identifying and exploring what constitutes public interest in consultation with relevant stakeholders before going into PIL.

Ataus Samad

Advisory Editor, Daily Aamar Desh and Member, Board of Trustees, BLAST

The people of Bangladesh are going through a bad time due to prevailing confrontational politics that is also affecting the freedom of the press.

Ataus Samad noted that the people of Bangladesh are going through a bad time due to prevailing confrontational politics that is also affecting the freedom of the press. He expressed concern over the commitment of the media to report gross violation of fundamental human rights of the poor and the unorganized given rich and influential people are often holding proprietorship of many leading newspapers. He also noted that journalists should be sufficiently informed before reporting on legal issues of public importance and called for co-ordination and collaboration between BLAST and the media in relation to reporting breaches of basic human rights.

<mark>Justice Naimuddin Ah</mark>med

Vice-Chairman, BLAST-

The veteran Justice took the opportunity of thanking the media for its support in making the PIL initiatives by BLAST successful in many instances. He also requested the media to refrain from creating unnecessary pressure on the judiciary, which often result in less thoughtful verdicts. In the same vein, he also asked the media to refrain from publishing articles in the press that would tarnish the image of the judiciary. He called for urgent investigation into the crossfire and extra judicial killings by law enforcement agencies and termed them as custodial deaths. It is the duty of the law

enforcing agencies to protect the arrestee, he observed. He further urged for judicial inquiry into the extra judicial killings and careful application of contempt powers by the court.

Dr. Kamal Hossain

Chairman, BLAST

This is a need for better coordination amongst the lawyers, judges, media and human rights organizations with a view to ensuring that human rights are adequately protected... Referring to the increasing number of writ petitions filed before the High Court Division of the Supreme Court of Bangladesh in recent times, he noted that it is an indication of institutional awareness of the potential of public interest litigation. It is also an indicator of the rise in instances of human rights breaches that is prompting more and more people to seek legal redress through PIL, he observed. On the issue of extra-judicial killings by law enforcement agencies, he noted that it is very unfortunate that they are violating the law that they are sworn to uphold as a matter of duty.

Recommendations

A separate writ bench should be established to address PIL issues.

Public opinion should be sought about the ramifications of implementation of the directives of the High Court Division in relation to arbitrary arrests under section 54 and remand under section 167 of the Code of Criminal Procedure.

There should be an independent investigation into the crossfire deaths that should also determine whether crime committed by the alleged criminals who died in crossfire encounters is punishable with death.

The media and the human rights organizations should endeavor to follow-up on the directives of successful PIL cases through better communication and post-judgment monitoring.

A monitoring cell should be set up with judges, civil society, media and human rights activists for pursuing post-judgment follow-up initiatives in a systematic manner.

Law journalists and BLAST should convene meetings at regular intervals on exploring and identifying PIL issues and strategies.

Keynote Paper

Role of Media in Public Interest Litigation and Advocacy

Soma Islam

Deputy Director, PIL and Advocacy, BLAST

Introduction:

Part III of the Constitution of Bangladesh provides for certain rights of the people to be fundamental, hence, inalienable, unassailable, incontrovertible and indispensable except through due process of law. These rights are important for the people to live with liberty, integrity, safety, security and human values. Any law (save certain exceptions prescribed in the Constitution) that is inconsistent, or conflicts, with those fundamental rights is void. The Constitution further provides for enforcement of those fundamental rights by resorting to the High Court Division of the Supreme Court (Art.44 and 102).

Despite the Constitutional guarantees, incidents of fundamental and human rights violations of the poor and disenfranchised people have become endemic in the country. The existing legal system precludes the poor, disadvantaged, unorganised and marginalized to restore and enforce their fundamental rights owing to their resource and knowledge constraints.

In recognition of the above, Bangladesh Legal Aid and Services Trust (BLAST) and many other legal aid and human rights organisations in Bangladesh have undertaken the cause of making the legal system accessible to the poor and disadvantaged by enabling them to protect their fundamental and legal rights that, otherwise, are infringed with impunity. To this end, BLAST provides legal assistance to the poor, disadvantaged and marginalised people. Besides, it is pursuing legislative and policy advocacy for amendment or enactment of laws in line with the constitutional safeguards.

The media, on the other hand, is increasingly playing a pivotal role to draw the attention of the concerned authorities as well as the people at large to various instances of fundamental and human rights violations. This in turn, has in many occasions, instigated concerned government authorities to take necessary action to prevent such violations and catalyzed the judiciary to provide legal redress to the aggrieved through **suo motu** prerogative. At the same time, it has generated awareness and mobilized public opinion for the protection of the fundamental and human rights. The media further discharges the very important responsibility of ensuring people's right to be informed and educated.

This note aims to identify the role of media in Public Interest Litigation (PIL) and Advocacy and explore the opportunities for BLAST, other legal aid and human rights organisations and media to endeavour to work together and more fruitfully to ensure enforcement of fundamental and human rights of the poor, disadvantaged and marginalised people.

PIL and Advocacy activities of BLAST:

Although BLAST undertook the mission of providing legal aid to the indigent masses since its inception in the year 1993 it began exploring the potential of PIL in the year 1996 with the objective of securing collective justice to the disadvantaged. In the year 2003, BLAST established its PIL and Advocacy Cell to give its PIL and advocacy activities more dynamic, responsive and institutional shape. So far, BLAST has severally and jointly with other organisations initiated a total of fifty-one PIL cases. The PIL and Advocacy Cell also conducted many researches and investigations on various issues involving public interests.



Member of the BLAST trusty board, Mr. Ataus Samad speeks on the seminar

The role of the print media in strategic selection of cases of high public importance by BLAST was indeed laudable. It may be noted that except for a few cases referred by the unit offices and other beneficiaries, it is extensive media coverage on incidents of gross violation of human rights that prompted **BLAST** to instigate legal actions on behalf of the aggrieved.

Majority of the PIL issues in which BLAST was involved include human rights abuses; rights of landless people; forced eviction of slum dwellers; rights to healthy living conditions; consumer rights; discrimination against ethnic minorities disabled persons; discrimination in public employment; persistent abuse of power by law enforcement agencies; safe custody; detention of vagrant minors and women; juvenile justice; continued incarceration of under-trials; detention of foreign prisoners beyond their sentences; issuance of voter identity cards; challenging the impugned Gram Sarkar Act, 2003 etc.

The role of the print media in strategic selection of cases of high public importance by BLAST was indeed laudable. It may be noted that except for a few cases referred by the unit offices and other beneficiaries, it is extensive media coverage on incidents of gross violation of human rights that prompted BLAST to instigate legal actions on behalf of the aggrieved. The following part of the note describes few significant PIL cases and advocacy activities of BLAST where media played a significant role in identifying issues, focusing public for law reforms and implementing decisions of the High Court on PIL.

Public Interest Litigation (PIL)

Safe custody

BLAST and others vs Bangladesh(1997): In the year 1997 the Daily Ittefag published a report on the sufferings of Sufia Begum who was being held in a vagrant home in the name of safe custody. BLAST along with Ain-O-Shalish Kendra (ASK) and Mohila Parishad (MP) petitioned the High Court Division of the Supreme Court challenging the illegal practice of incarcerating women and minor girls, who were victims of various heinous crimes, in jails or vagrant homes for long periods of time in the name of safe custody. The High Court upheld BLAST's argument and accordingly the detainee was released. The case was widely covered by the media. Consequently, the case along with other similar cases prompted the government to enact the Repression of Women and Children Act of 2000 containing provisions for safe arrangements for minors and women who are victims of crimes and cannot be protected by their families.

Persistent abuse of powers by law enforcing agencies: arbitrary arrest (s.54) and detention (s.167) of the Code of Criminal Procedure

BLAST and others vs. Bangladesh 55 DLR, 363: A news paper report published in the Daily Ittefaq on 24-07-1998 stated that one Shamim Reza alias Rubel, a brilliant student aged about 20 years, was killed during interrogation under police custody. Rubel was arrested under section 54 of Cr. P.C and was mercilessly beaten by the police to which he later succumbed. Widely reported by the media, this incident sent shock waves amongst the civil society and human rights organizations. BLAST along with other human rights organizations filed a writ petition challenging the persistent abuse of powers by the law enforcers in Bangladesh. On 7 April 2003 a landmark judgment was pronounced by the High Court with 15 directives to be followed by the police as to arrest, detention and treatment of suspects. Both BLAST and media are endeavouring to ensure compliance of the fifteen point directives on arbitrary arrests, remand and treatment of suspects.

Gender discrimination in public employment

Nasrin Akther and others vs. Bangladesh: The Daily Prothom Alo published a report titled 'huge rush for collecting fake Kabinnama' that drew the attention of BLAST. Following the report, BLAST conducted its own investigation, which revealed that an advertisement was published in the Daily Ittefag inviting applications from Bangladeshi nationals for temporary appointment in three thousand vacant posts of Health Assistants under the Ministry of Health and Family Planning. The advertisement included a gender discriminatory clause requiring female applicants to be married and submit marriage certificate along with their applications. This employment advertisement prompted the unmarried applicants, who were otherwise qualified to apply for the posts, to procure fake Kabinnama to prove their marital status. However, such an arbitrary requirement did not apply in case of the male

applicants.

BLAST along with ASK and BNWLA petitioned the High Court Division on behalf of Nasrin Akther and other aggrieved women challenging the legality the gender discriminatory advertisement in public employment. The High Court issued a *rule nisi* calling upon the respondents to show cause why the impugned advertisement should not be declared to have been issued without lawful authority. The court also passed an ad-interim order staying the operation of the said notice and holding examinations thereunder initially for three weeks and thereafter for further three months. Later, pursuant to joint advocacy initiatives of BLAST, ASK, BNWLA and media, an out of court settlement was arrived at and the co-petitioners were summoned to the office of the Director General of the Health Directorate. The Health Directorate agreed to delete the impugned requirement from the appointment notice and publish fresh advertisements for holding examinations on a non-gender discriminatory basis. Accordingly, the case was withdrawn and this out of court settlement opened the door for public employment to three thousand men and women without further delay.

Continued incarceration of under-trial prisoners and juveniles 57 DLR, 11

On 23 December 2003, the Daily Star published a report on continued remand in custody of Mohammad Jahangir for over 11 years without trial and 155 other under-trial prisoners who had been incarcerating in Dhaka Central Jail for years without trial. Following the report, BLAST petitioned before the High Court challenging the continued remand in custody of Mohammad Jahangir for 11 years and 155 other under trial prisoners who had also been held in custody for years in violation of fundamental rights under Article 27, 31, 32, 35 (3) of the Constitution.

The High Court directed the government to submit a list along with particulars and status of under-trial prisoners that have spent five years or more at the different jails of the country. The government provided a list of 7402 under-trial

prisoners languishing in the custody without trial for one to eleven years. Later, the list was revised to 7409 after scrutiny by BLAST. The High Court directed the government to comply with the directions made in suo motu rule 248 issued by the court in 2003 in respect with the speedy trial of juvenile accused and their release in appropriate cases. The rule also provides for separating juveniles from other prisoners and sending them to the correctional homes. It calls for cooperation between government and legal aid NGOs to ensure the right to speedy trial of under-trials languishing in the jails of Bangladesh.

Advocacy

Compared to PIL cases, the role of media in advocacy initiatives pursued by BLAST has been limited. BLAST received media assistance in the matter of adulterated zinc fertilizer at Kusthia, Chuadanga and Jessore districts. Following news reports in the Daily Prothom Alo, the PIL and Advocacy unit of BLAST conducted an onsite inquiry, which revealed that adulterated zinc fertilizer were being produced in Chuadanga and sent to Dhaka to be packed and labelled as imported from abroad.

BLAST collected samples of zinc fertilizer being produced and manufactured locally by six fertilizer factories in Kushtia, Chuadanga and Jessore for chemical analysis. The Advocacy Cell sent the samples to the Department of Soil, Water and Environment, University of Dhaka, which established that none of the samples contained zinc as prescribed under Fertilizer Control Order, 1999.

Pursuant to the chemical analysis, the Cell served legal notice on the six fertilizer factories, relevant Ministry and government departments for taking necessary action within 14 days to prevent further production, sale and marketing of adulterated zinc fertilizer, provide redress to those affected as well as prosecute the accused. Following issuance of the legal notice, 11 out of 15 respondents who were notified sent written replies explaining their positions. Few owners sent written promise of complying with the legal requirements in the future and sought apology.

On 26 February 2004, BLAST undertook the bold initiative of organizing a discussion meeting on "Emerging Legal Rights of the People Living with HIV/AIDS". The meeting was intended to explore the possibilities of drafting a HIV/AIDS specific legislation covering the legal, ethical and human rights issues that HIV/AIDS have raised. The meeting was attended by representatives the government, NGOs, INGOs, human rights activists. doctors. WHO. UNICEF, UNAIDS and the media.

Subsequently, the Deputy Director (Physical Verification Wing), Directorate of Agricultural Extension, Khamarbari, Dhaka notified BLAST that they had instructed the concerned Deputy Directors, Department of Agricultural Extension of Dhaka, Kushtia, Jessore and Chuadanga districts for taking legal action against all the six adulterated zinc fertilizer manufacturing factories as per Fertilizer Control Order, 1999.

In other advocacy initiatives undertaken by BLAST, media still has an essential role to play. The on-going advocacy activities of BLAST and the role of media are described below:

15 Directives of the High Court on arrest and detention:

With a view to ensuring effective implementation of the directives issued by the High Court in *BLAST & Others versus Bangladesh* 55 DLR, 363 as to arbitrary arrest and detention, BLAST has convened advocacy meetings in 17 districts across Bangladesh through its unit offices. The advocacy meetings were intended to sensitize law enforcing agencies, magistrates and administration so that they may refrain from abusing the powers conferred upon them under ss 54

and 167 of the Cr.P.C. A survey to assess the number of arrests under s 54 and case studies indicating the nature of abuse has been compiled by BLAST. The advocacy campaign further intended to raise public awareness as to the rights of an arrestee and to work in tandem with the media to prevent recurrence of arbitrary arrest and custodial deaths.

Legal rights of people living with HIV/AIDS

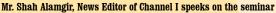
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Oblivious of the enormity of the globally devastating HIV/AIDS scenario, Bangladesh is yet to embark on a rights based intervention which if not addressed from a holistic viewpoint is likely to undermine the development activities taking place in this region. Social responses to this disease are overwhelmingly negative and hostile. Some go even further to lament the disease as a punishment from God pursuant to commitment of a great sin.

Personal interviews with people living with HIV/AIDS as well as organizations providing care and support to them reveals that the dreaded disease involves unbearable social sanctions including discrimination, stigmatization, isolation, ostracism and deprivation of fundamental rights and often lead the victim to commit suicide.

Role of media:

Given that people living with HIV/AIDS are discriminated against out of fear, the print and electronic media can play a very important role in educating and informing the general public which in turn would help to overcome the fear and stigma





There should be an independent investigation into the crossfire deaths that should also determine whether crime committed by the alleged criminals who died in crossfire encounters is punishable with death.

-Justice Naimuddin Ahmed

Vice-Chairman, BLAST-

associated with the illness. Again, media should not be perceived as a forum to promote hatred and discrimination against People Living with HIV/AIDSs (PLHAs). Also, media regulations should enforce requirements for accurate, scientific and properly researched information relating to HIV/AIDS. The general public further needs to be educated by the media that PLHAs are equally entitled to seek legal redress like any other citizen of the country for their fundamental human rights violations.

Activating the Government Legal Aid Programme

The PIL and Advocacy Cell of BLAST held advocacy meetings across 15 districts of Bangladesh through its unit offices with the objective of making the government legal aid program more effective. On the basis of the data collated and analyzed it was felt imperative to have the findings known to the law makers so that the government legal aid scheme could be made more effective and taken to the door-steps of the overwhelming majority of the people in Bangladesh who cannot afford to seek legal redress owing to resource constraints. To this end, BLAST organized a national round table conference on 24th March 2004 entitled "How to make the government legal aid program more effective".

The meeting was attended by the Hon'ble Minister for Law, Justice and Parliamentary Affairs, Barrister Moudud Ahmed, representatives of NGOs, donor agencies, media, lawyers and human rights activists.

Role of media:

To activate the government legal aid program media can facilitate the advocacy efforts of BLAST for raising public awareness and educating them on the availability of government legal aid. It can disseminate views and opinions of experts and researchers on the necessary amendments to be made in the Legal Aid Services Act 2000 for making it

more user-friendly and effective.

Permanent settlement for the urban poor: Rights of slum dwellers

BLAST along with ASK and other human rights organizations have successfully challenged the forced eviction of slum dwellers in Dhaka and elsewhere by the government without ensuring their right to life, livelihood and security. In most eviction cases, BLAST has been successful in getting stay orders from the High Court. Extra legal initiatives such as campaigning and lobbying by human rights activists have prompted the government to include alternate housing and rehabilitation provisions for slum dwellers in the National Housing Policy (NHP), 2004. Besides, through workshops and seminars BLAST and other NGOs have attempted to mobilize civil society responses to the housing challenges of the slum dwellers. However, public sentiment in general does not support the slum dwellers. The government also tend to treat slum dwellers as unauthorized occupants with a view to exclude them from the purview of NHP. This poses a formidable challenge to protect and enforce their rights through courts.

Role of media

Media can play a significant role in educating people that the fundamental human right to life, as guaranteed under the Constitution, includes right to shelter and livelihood and that slum dwellers cannot be evicted without making alternative housing arrangements. Media, through creative articles and write up, can mobilise public opinion towards the causes of slum dwellers including pressing government to adopt effective low income housing initiatives to prevent further expansion of slums in the cities.

Future Initiatives:

Media can play an impeccable role in the following aspects of PIL and advocacy:



Issue identification, fact finding and investigation:

Freedom of press is a constitutionally guaranteed fundamental right. This right has been guaranteed to ensure people's rights to be informed and educated. To this end, both the print and electronic media have the onerous duty of reporting to the public in the event of any human or fundamental rights violations. The media is also equipped with the necessary capacity, skills and resources to investigate and reveal infringement of public interests. Given that PIL cases are dependent on retrieval of sensitive information and materials, media can assist BLAST and other human rights organizations to have access to the required information.

Continuous follow up of PIL cases:

In many occasions final hearing of PIL cases reel over long periods since initial ruling. During this period, the relevant PIL issue remains dormant and people tend to forget what happened. In such cases, media can continuously follow up the issue to keep it alive and focused.

Dissemination and enforcement of judgements delivered on PIL cases:

The influence of media in shaping people's opinion and mind cannot be overemphasized. Given the media's accessibility to disseminate information to all sections of the society, it can play an instrumental role to disseminate judgements and directives pronounced in PIL cases. Unless a judgment or direction is effectively enforced, the purpose of PIL is defeated to a great extent. In a system that is fraught with corruption, arbitrariness

and non-compliance, there is a general reluctance amongst authorities and individuals to submit to the verdict of the courts. This is where the media can intervene to ensure enforcement of judgments by the concerned authorities and report non-compliance.

Strengthening post-judgment monitoring and mobilizing public opinion for reforms in the legal system:

Pursuant to the pronouncement of a judgment in public interest litigation, the onus is upon the media to create an environment whereby the majority of the public are informed on the issue and to monitor the extent to which a judgment is being enforced. Unless there is involvement of the general public as well as the civil society on issues of public interest, significant amendments and enactments cannot be effected in the existing laws. Public pressure and media attention are by far the most effective mechanism in seeking the accountability of state actions and enabling positive changes in the legal environment of the country.

Sharing experiences:

Media, BLAST and other organisations can share experiences related to investigation, reporting, data collection and analysis. If required, media can impart training to rights activists on investigative journalism, fact-finding and reporting etc., which are important for the success of PIL and advocacy.

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PIL and the Media

Shahiduzzaman

Special Reporter, Daily New Age

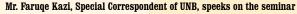
Some of the PIL activities in countries of the world have been influenced by the PIL movement in the US, which had a particularly productive period in the 1950s, 1960s and 1970s. The US experience drew attention to the potential for law to serve as an instrument for change, and began the processes of thinking law not simply as a method of dispute resolution, but also as an instrument of social justice.

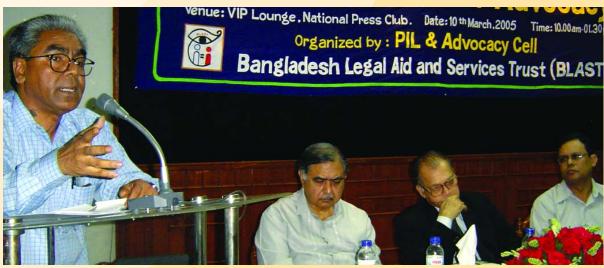
The origins of PIL

PIL is a term of US origin. In the US, PIL means 'Public Interest Law'. But, in Bangladesh it means 'Public Interest Litigation', which is one of the tools used in a number of countries including the US in PIL movement. In this paper, I prefer to go for using the term for Public Interest Law relying on its original meaning.

Some of the PIL activities in countries of the world have been influenced by the PIL movement in the US, which had a particularly productive period in the 1950s, 1960s and 1970s. The US experience drew attention to the potential for law to serve as an instrument for change, and began the processes of thinking law not simply as a method of dispute resolution, but also as an instrument of social justice.

Different terms including 'alternative law', 'developmental law' and 'structural legal aid' have been used interchangeably with 'public interest law'. Senator Jose W Diokno of the Philippines identified the major characteristics of what is often called 'public interest law' saying, '.... development requires a different type of legal aid.... concentrating on public rather than private issues, intent on changing instead of merely upholding existing law and social structures, particularly the distribution of power within society'. ¹





PIL has also flourished in countries of the world. because it provides a way for civil society to become actively involved in questioning public decision-making, including decisions on political structure and democratic space. It provides a way to challenge and change major public policy decisions and campaign for social, economic and political reform.

Law framework

Law or a law-related framework is used in the PIL movement in furtherance of its objectives. Law, if used creatively, can be one source, among a number of sources, which enables people to mobilize and engage in positive action to better their lives. The amount of time and resources PIL groups spend working within the state-administered legal system depends on the nature of that system. If the rule of law is upheld in a country and the legal system commands credibility, then there will be a tendency to use the formal legal mechanisms within that system. Where the rule of law is absent, and/or the legal system does not command much credibility, PIL groups will tend to work outside the system, although again, they may, on occasion and in a specific context, use a particular legal mechanism or channel.

For example, the legal system has more credibility in some former British colonies. In Bangladesh, India, Sri Lanka and Malaysia, there has been a tendency to work within the confines of the state-administered legal system. While this may have some positive aspects, it has also generated some negative ones. Except perhaps in India, few groups in the other countries have looked for new and imaginative ways of using law and law-related strategies. By contrast, in Indonesia and the Philippines, where public institutions, including the judiciary, do not command much confidence, there has been a search for other, more legitimate and credible institutions.2 There, by refusing to stick within the confines of the formal legal system, the public interest law movement has been more creative and dynamic.

Issues in PIL

Unlike mainstream law, PIL is not oriented to the individual nor does it deal with a range of 'single' disputes. PIL is invariably group-oriented. It deals with the assertion of group or collective rights, involves questions of injustice pertaining to a group or collectivity, or may involve a legal

action where an individual is representative of a group. PIL sees in this group dimension to its work the opportunity to make more profound structural changes in society and initiate larger ripples of change.

The intent on 'changing instead of merely upholding existing law and social structures' often distinguishes the PIL work from, for example, many governmental legal aid schemes which provide legal services to underserved or disadvantaged sectors of society, but may not intend, in doing so, to change existing law and social structures or to challenge the distribution of resources and power in the society.

This intent has brought PIL groups into conflict with governments. Indeed, many NGOs all over the world, in Bangladesh as well, have emerged as governments have shown themselves incapable of promoting positive social change and eradicating patterns of unequal distribution of resources and power.

The socio-economic context in which PIL groups function is crucial to their work. The groups contend with unequal development patterns and fighting unjust socio-economic policies and see as one of their objectives the redesigning of the legal map to promote in their view a more equitable system of legal relations. Matters relating to access to credit, marketing schemes, land ownership and use, land tenure and production-sharing systems are matters of concern to them, as are questions of squatters' rights, access to sanitation and water, environmental rights, and the rights of indigenous or tribal peoples.

PIL has also flourished in countries of the world, because it provides a way for civil society to become actively involved in questioning public decision-making, including decisions on political structure and democratic space. It provides a way to challenge and change major public policy decisions and campaign for social, economic and political reform.



Mr. Manzurul Ahasan Bulbul, Executive Editor of Daily Sangbad was the moderater of the seminar

Litigation in the form of PIL deals with group issues and/or promotes social change is used most frequently where the formal legal system commands a degree of credibility.

Tools of PIL

A range of different tools is used in PIL movement and these are quite dependent upon the context within which the PIL group works. The use of these tools does not automatically qualify an organization as a PIL group, but a survey of the tools is helpful to understand the range of ways in which PIL work towards their goals.

Public Interest Litigation

Litigation in the from of PIL deals with group issues and/or promotes social change is used most frequently where the formal legal system commands a degree of credibility. Public interest litigation is perhaps the most developed in India, where it has been used in a particularly vibrant way. Public interest litigation is also used in Bangladesh and a number of countries to test the constitutionality of legislation. The writ petition that challenged the Jatiya Sangsad Reserved Seats for Women (Election) Act is the most recent example of such litigation in Bangladesh.

Public interest litigation began to emerge in India around the late 1970s and early 1980s, when the Indian judiciary responded in a sympathetic way to the initiatives of Indian social action groups, journalists and scholars.³ It became

possible for any member of the public, not only public interest groups, to initiate litigation by merely addressing a letter to a judge. In this way a number of public interest issues affecting prisoners, workers and children were brought to the attention of the court.

Three features came to characterise this litigation in India:

- 1. An expansion of the doctrine of locus standi, which permitted any bona fide petitioner to bring matters of public interest before the court. The petitioner was not required to show that he or she was personally affected, 4
- 2. Dispensing with formal court procedures for the commencement of such actions that could be initiated by writing a letter to the court, and that would be converted into a formal petition; and
- 3. The use of novel methods to gather facts. Often the court appointed a sociolegal commission of inquiry to investigate the disputed facts and submit a report to the court.

It has been used to impose sanctions and claim compensation from government. The concept of public interest litigation has been mooted for expression of the voiceless, disadvantaged, weaker, oppressed and those unable to gain access to the court of law and justice to ventilate their grievances.

Legislative advocacy and lobbying

Legislative advocacy and lobbying is the most important tools in PIL. A considerable amount of work in this area focuses on bringing existing law into compliance with international human rights standards. Lobbying efforts may also be directed at institutions outside of government, such as International Financial Institutions, donor agencies, corporations, and so on.

The extent to which proposals for law reform and associated lobbying are shaped and driven by the experience and perspectives of the affected community/ies varies from country to country and organisation to organisation.

Legal Advice

Legal aid and advice to groups is often part of PIL movement. This assistance may often be provided by paralegals, law students and lawyers and sometimes by media as well. To the extent that through this advice the PIL groups try to give target communities the capacity and confidence to use the legal process and legal institutions, it shares some similarities with community legal education.

Paralegals

The role of paralegals in PIL in most countries reflects PIL's preoccupation with changing social structures, particularly the distribution of power within society. These paralegals (unlike their counterparts in the US) are often members of the target group who are given a basic training in the law. The heavy use of non-lawyers within PIL in countries serves to demystify the law and make knowledge of the law and legal tools more accessible to the community.

Many PIL groups have engaged in the training and deployment of paralegals in a very successful way. In Peru, paralegals have been used effectively in combating gender-based discrimination. Paralegals have helped disadvantaged communities with such routine matters as the procurement of birth certificates and identity cards and also with more complex matters like lodging sexual assault complaints. ⁵

Legal Research

Legal research is also one of the major tools in PIL. PIL groups have tried to develop critical and applied legal research. One of their tasks has been to investigate and review. where appropriate, some of the fundamental assumptions of the law and the legal system. Their research also includes what has come to be termed socio-legal research, a combination of experimental and theoretical study. This has resulted, among other things, in monitoring and documenting the impact of development projects or laws on the lives of communities. Frequently the research of PIL groups has been multi-disciplinary employing sociologists, political scientists, anthropologists and economists. This multi-disciplinary approach represents a sharp break from traditional legal research, which has tended to be sceptical about the contribution non-lawyers can make to the world of law.

In India, through this type of research, scholars have developed critiques of court procedures and concepts such as locus standi, which have, in turn, led to changes in the way the judiciary perceives these ideas. Thinking has also emerged in relation to the design of new and innovative remedies. Another area, which has felt the impact of this type of research, is custodial rape, where the burden of proof has been reversed so that the police must provide evidence that a rape did not occur rather than the woman having to prove that she was raped.

Education

One of the key objectives in PIL education has been to expose the law—to convey to groups— that law can be understood and used effectively by non-lawyers as well. Education programs undertaken by PIL groups seek to disseminate awareness of laws and rights and to develop an independent legal capacity in the target community.

PIL groups use a variety of techniques to make law-related knowledge and skills available to the larger public. One striking innovation has been the alternative law school initiated by several Filipino groups. A program of critical and participatory education is conducted on law related to a specific sector.

Besides, some law schools function as PIL centres in two ways. Firstly, some are substantially devoted to producing PIL lawyers. The National Law School in Bangalore, for example, was set up with the objective of introducing a degree of relevance to legal education in India and producing lawyers committed to social change. Secondly, a number of law schools have set up centres or clinics that do PIL work. The Office of Legal Aid of the University of the Philippines is an example of such PIL work. Among its stated purposes for running the legal aid clinic are: (a) to provide free legal services to those who can't afford it; (b) to provide law interns practical experience and learning opportunities from actual handling of legal problems; and (c) to undertake law reform activities.

There are clinical programs along these lines in a few other countries including South Africa and the United States. Some of the centres work in collaboration with PIL groups in their area. In some cases academic credit is given for participation in clinical programmes.

PIL and Media

The mass media, be it print or electronic, plays a great role in PIL movement, as it facilitate to spread awareness about the rights of the people. The Law and Society Trust in Sri Lanka at one time conducted a series of radio plays on legal themes. The Law Division of the Open University in the US has used public television to raise rights-related questions. Comics, cartoons and games have also been used in legal educational efforts.

Educational efforts may also reach out using mass media to certain elite groups, including judges, lawyers, legislators and politicians, to foster a greater openness to PIL efforts.

Most studies, especially by political scientists, emphasize that legal mobilization campaigns aim to effect change largely through the 'radiating effects' of PIL movement including litigation on differently situated social actors, both 'directly' on alleged wrongdoers through actual or threatened enforcement actions, and 'indirectly' on lawmakers, potential issue-allies, and the general public. The dissemination of messages – among parties to disputes. their legal representatives and third party lawmakers such as judges and legislators, and generally to the broader public - about legal claims, possible enforcement actions, and broader social visions may routinely be conducted through a variety of channels. But, it is through the news production process of mass media that objectives and visions of the PIL are most broadly communicated among relevant actors and public, especially on matters of general social concern. Indeed, the self-conscious effort to package legal knowledge and narratives for dissemination in the mass media has been a hallmark of the PIL movement.

Nearly all scholarly studies have recognized the efforts by activist groups to coordinate litigation and publicity campaigns as interactive strategic endeavours. 'Media-oriented stagecraft and legal advocacy... constitute the complementary tactics of modern professional policy advocates'. 6

While the quantity of media attention to PIL tends to receive much attention as an indicator of impact, the substantive content or quality of the coverage has drawn far less scrutiny. This is important, after all, for the news practices of iournalists and editors contribute in distinctive ways to the 'construction' of public interest litigation and PIL movement as a whole. Systematic pressure to 'sell' news in simplistic, appealing, even titillating ways that attract readers and to fit news rapidly and cheaply into simplistic, standardized 'scripts' make mass media important sources of mass legal knowledge production. Indeed, law itself, as a form of constitutive knowledge, is significantly produced and reproduced by the narratives circulated by print and electronic news along with other forms of media produced entertainment. That constitutive content justifies attention to the qualitative content as well as quantity of coverage.

This recognition regarding the substantive role of mass media in legal knowledge production has not entirely escaped the notice of socio-legal scholars generally. A huge body of scholarship has documented the role of the media in shaping public understanding of crime and the criminal justice system. A much

smaller but still important group of scholars has analysed how federal and appellate court rulings, especially regarding matters of constitutional law, are covered in the press. Moreover, debates over tort reform in the last several decades have generated increased attention to media reporting of civil disputing and litigation practices in the US ⁷

Few efforts, however, have been made to develop similar analyses regarding the role of the mass media in substantively shaping the character, scope, and terms of specific reform litigation campaigns. Indeed, just as the mass media have been recognised as a discrete 'political institution' or even 'fourth state', so is it also a key institutional domain contributing to the mass construction specifically of legal knowledge and practical legal action.

The Mass media play a fundamental role in the production and reproduction of law itself. To the extent that law is understood as a body of knowledge, a complex tradition of discourses, symbols, logics, and modes of reasoning, so must we confront the means by which that knowledge is generated, circulated, consumed, and incorporated into practical action. To put it most plainly, newspapers, magazines, TV shows, and other organs of the mass media are every bit as much institutions of legal construction as are judicial trials. administrative rulemaking processes, and police decisions in the street. Regardless of the institutional site where legal practice is studied, we miss a great deal if we ignore the degree to which mass produced knowledge of and about law is present and powerful, contributing to the ongoing constitution of legality.

Recommendations:

- To go for public interest law movement using its various tools including public interest litigation, as PIL movement is more useful than the litigation only.
- To emphasise on policy and legislative advocacy and lobbying.
- 3. To make an appeal to the government and the Jatiya Sangsad to introduce a system for consultation of the people concerned including the PIL groups and media people before enactment of and amendment to any law and formulating any policy.
- 4. To make an appeal to the government and the Jatiya Sangsad as well to disseminate thorough the media the law to be enacted and the policy to be formulated before the enactment or formulation in order to ensure peoples participation in the law making process.
- 5. To initiate networking of the media people and PIL groups.
- To initiate networking of the media people, PIL groups, jurists and the lawmakers having the commitment for propeople laws and policies.

Note

- $^{\rm l}$ Jose Diokno, Developmental Legal Aid in Rural Asean: Problems and Prospects (1981).
- ² Daniel Lev, Human rights in Indonesia and Malaysia.
- ³ One of the best essays on this subject is by Upendra Baxi, Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India, (Revised), Upendra Baxi (ed.) Law and Poverty: Critical Essays, Bombay: Tripathi 1988. See also Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice, Colombo: Legal Aid Centre, University of Colombo, 1993.
- ⁴ In the Philippines petitioners have been permitted to sue on behalf of
- succeeding generations in a case involving ecological damage: Juan Antonio Oposa v. Hon. Fulgencio S. Factoran. (Supreme Court, 30 July 1993).
- 5 Gridley Hall and Burton Fretz, Legal Services in the Third World, Clearinghouse review, December 1990.
- ⁶ Michael McCann, Taking Reform Seriously: Perspectives on Public Interest Liberalism. Ithaca: Cornell University Press, 1986, p 205)
- 7 Garber, Steven and Anthony G. Bower, 1999, 'Newspaper Coverage of Automotive Product Liability Verdicts', Law & Society Review.

<mark>বাংলাদেশ লিগ্যাল এইড এন্ড সার্ভিসেস ট্রাস্ট প্রধান কার্যালয়, ইউনিট অফিস ও লিগ্যাল এইড ক্লিনিক এর মাধ্যমে বিনামূল্যে আইন সহায়তা দিয়ে যাচ্ছে। আইন সহায়তার জন্য শাখা অফিস সমূহে যোগাযোগ করুন</mark>

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রাঙ্গামাটি ইউনিট বনরূপা, কোতায়ালি, রাঙ্গামাটি পার্বত্য জেলা।

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লিগ্যাল এইড ক্লিনিকসমূহ

গোপীবাগ লিগ্যাল এইড ক্লিনিক ৮৯/৩/১, রামকৃষ্ণ মিশন রোড, গোপীবাগ, ৮ম গলি, ঢাকা, ফোন: ০২-৭৫২২৭৭৬ ই-মেইল: blastgc@aitlbd.net চউপ্রাম লিগ্যাল এইড ক্লিনিক ২৫৭/এ, বায়েজীদ বোস্তাামী রোড (মেয়র গলির মুখ), যোলশহর, ২নং গেট ফোন: ০৩১-৭২৬৩১১ এক্স: মোহাম্মদপুর লিগ্যাল এইড ক্লিনিক ৬/৪, হুমায়ুন রোড, মোহাম্মদপুর ঢাকা, ফোন: ০২-৯১২৭৯২২

ঢাকা, ফোন: ০২-৯১২৭৯২২ ই-মেইল: nahida@bttb.net.bd ব্যাজশাসী লিগুয়াল এইড়ে কিনি

রাজশাহী লিগ্যাল এইড ক্লিনিক মাস্টার পাড়া, কাটাখালী মতিহার, রাজশাহী - ৬২১২ ফোন: ০৭২১-৭৫১৫১৮ ই-মেইল: blastlcr@bttb.net.bd মিরপুর লিগ্যাল এইড ক্লিনিক বাড়ী নং ৪৫, লেন - ১, সেকশন - ১১ ব্লক -বি, মিরপুর ঢাকা, ফোন: ০২-৯০১২৮৫৩ ই-মেইল: blastmc@aitlbd.net

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প্রধান কার্যালয়

বাংলাদেশ লিগ্যাল এইড এন্ড সার্ভিসেস ট্রাস্ট (ব্লাস্ট)

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