

PUBLIC INTEREST LITIGATION IN BANGLADESH: A CASE STUDY

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This case study is about a public interest litigation that was brought before the Supreme Court of Bangladesh for enforcement of the rights of the consumers of edible salt. The case study indicts how public interest litigation (PIL) is being adopted and developed in Bangladesh to enforce the fundamental rights guaranteed in the Constitution, and how a particular legal aid organization the Bangladesh Legal Aid and Services Trust (BLAST)¹ has tried to provide access to justice while also addressing major legal issues on a systemic level. The other important questions this case study highlights are some of the major barriers to institutionalizing public interest litigation and the role of support organizations in this regard. Finally, it will try to after some guidelines for sustaining public interest litigation. Part one of this case study provides the historical background of the legal system of Bangladesh. BLAST's organizational set up as a national legal aid NGO and its endeavors to provide access to justice are discussed in Part Two. Part Three offers a glimpse of how PIL is being developed distinctively in the context of our legal system. The application of PIL to a particular case seeking enforcement of the rights of consumers of iodized salt is discussed in Part Four, and the problems facing PIL are elicited in Part Five. Part Six is the general conclusion, which outlines the necessary conditions required for PIL to be effective in bringing changes.

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¹ BLAST is a non profit Trust established in 1993 provides legal aid for established valid claims of and protection for the marginalized and the poor through the judicial system of Bangladesh. It has now emerged as the largest free legal aid services organization of the country.

BACKGROUND

Bangladesh emerged as an independent and sovereign state on December 16, 1971, but has a long political and legal history. In ancient times, it was ruled by the local Hindu rulers. The administered justice according to local customary laws based on religion. At the beginning of the 13th century the area was invaded by the Muslims who ruled the country up to the middle of the 18th century. Muslim rules introduced Islamic administration of justice. Later, though the British came to Indian Sub-continent at the beginning of the 17th century, they were not able to establish political authority over Bengal and ultimately over the whole of Indian Sub-continent until the middle of 18th century. The British imposed their legal system and replaced Islamic law in the course of the colonial rule. The British left the Sub-continent in 1947, and the colony became independent states, India and Pakistan, on independence in 1947, Bangladesh that was previously a part of the colonial province of Bengal became a province of Pakistan, named East Pakistan.² It was ruled by Pakistani neo-colonial rulers up to 1971 when it emerged as a sovereign State after a liberation war against Pakistan.

Bangladesh adopted a progressive Constitution in 1972 with a parliamentary system of government, and making the judiciary the guardian of the Constitution to protect the fundamental rights of the people. However, the constitution was suspended several times over the years due to prolonged martial law and military dictatorships. By 1990, the movement for democracy in Bangladesh gained momentum, the military dictator was forced to resign and, following a national election in 1991, the civil government began to operate. It is only a decade now that Bangladesh has been trying to institutionalize democratic values. In October 2001, the country held its eighth national election and an alliance of four political parties led by the Bangladesh Nationalist Party formed the government with an absolute majority in Parliament.

Bangladesh inherited the British common law system. The Judiciary has two tiers. The higher judiciary is composed of the Supreme Court with two Divisions namely, the Appellate Division and the High Court Division. The lower judiciary is located at the district level, and any judgement and order of the Supreme Court is binding upon it. The High Court Division

² A.B.M. Mafizul Islam Patwari (1991) *Legal System of Bangladesh*, Dhaka, Humanist and Ethical Association of Bangladesh, at 1.

of the Supreme Court has the authority of judicial review that preserves the supremacy of the Constitution. The supremacy of the constitution is important because the Constitution itself describes it as the solemn expression of the will of the people. The Judges of the higher judiciary are appointed by the President from a list of lawyers of the Supreme Court and senior judges of the lower district judiciary. The Public Service Commission under a separate judicial cadre appoints the judges of the lower judiciary. Although the judiciary has been trying to uphold and nurture democratic values in the society, its weak institutional capacity poses a huge problem. The Judiciary receives inadequate financial support from the government, it lacks sufficient infrastructure, the judges are not trained regularly, and it has a shortage of judges at all levels. Consequently, delay in justice has emerged as a major problem and there are a huge number of cases pending for speedy and effective disposal.

Thirty years have elapsed since the independence of Bangladesh. The governments over this period have received a tremendous amount of foreign aid, to eliminate the extreme poverty. Although Bangladesh has achieved some success in reducing poverty, such as, self-reliance in food production. At the same time, a number of complex problems have arisen, such as confrontational and violent politics, pervasive corruption at all levels, and mismanagement of government agencies. All these have resulted in inefficiency of government services and officials, and a lack of accountability, transparency, and responsiveness by the government. Soon after independence, a number of NGOs began to help the government with building the nation and today, their number has increased significantly, though only a few of them provide legal services. Besides the traditional legal aid services, these organizations are also active in advocacy for various issues to make the government more responsive.

PROVIDING ACCESS TO JUSTICE

BLAST is among a very few NGOs in Bangladesh which were established to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. It has now emerged as the largest legal services organization in the country with proven, documented expertise in protecting the fundamental and legal rights of the marginalized. Given the multiple demands for resources to meet competing needs in Bangladesh, legal services are far from being a priority area for the government. However, it can be argued that more than any other service such as education, health, or food, it is justice which people

expect the state to ensure most.³ Therefore, when a national conference of senior lawyers, jurists, and legal activists was held in 1992 under the auspices of the Bangladesh Bar Council,⁴ the idea of establishing a separate entity to provide legal aid was proposed by the progressive senior lawyers. Later, steps were taken to establish BLAST as a non-profit Trust and in December 1993, the Trust was registered as an NGO with the NGO Affairs Bureau.

Today, BLAST's strength as a national legal aid organization can be found in its strong support from all levels of the legal community. A Board of Trustees is the apex body of BLAST and most of the Trustees are senior lawyers and retired Judges of the Supreme Court of Bangladesh. BLAST operates through its Head Office in Dhaka and Unit Offices in nineteen (greater) districts across the country.

BLAST's Public Interest Litigation Project (PIL Project) is another strength of the organization. In 1996, the USAID, the Asia Foundation, and BRAC⁵ made a number of small grants to twenty-three Bangladeshi NGOs through the Democracy Partnership Program. BLAST was a recipient and used the funds to start the PIL Project with three young lawyers. This Project was generally perceived as an extended but pro-active and innovative form of legal aid. The PIL Project initiated, filed and

³ BLAST, Annual Report (1999) Dhaka pp 2-6.

The government has sporadically introduced legal aid schemes, but due to the inefficiency and lack of enthusiasm among the government officials and judges involved, they were not successful. In 2000, the government enacted a new legal aid law that established a Legal Aid Committee with supervisory authority in each district to encourage the people as well as the lawyers to utilize the legal aid funds that were set aside. The District Judges were to serve as Chairperson of the local committees, and the members of the local bar were to provide services. But in practice, it is barely possible for poor people to gain access to District Judges' offices and ask for legal aid assistance. In addition, local lawyers do not seem to be much interested in providing legal aid assistance because of the cumbersome bureaucratic process required for recouping their normal fees. Therefore, the district legal aid funds are not utilized and almost all of the districts funds are regularly returned to the Ministry of Law, Justice and Parliamentary Affairs, at the end of the fiscal year.

⁴ The Bangladesh Bar Council is the statutory national autonomous institution that licenses and regulates lawyers.

⁵ The Bangladesh Rural Advancement Committee (BRAC) is one of the world's largest NGOs with more than four million direct stakeholders in Bangladesh. Currently, BRAC is working on a new income generating and education program for the women and children in Afghanistan.

intervened in litigation to enforce rights which have not traditionally been brought to the attention of the highest court.

EMERGENCE OF PUBLIC INTEREST LITIGATION

Unlike India where PIL was primarily initiated by judges, PIL in Bangladesh is a result of relentless efforts by legal and social activists. Development of PIL has been gradual. Success of PIL in the U.S.A. in the 1960s and 1970s influenced other jurisdictions, including England and India. First English judges and later lawmakers gradually liberalized the rule of locus standi (or “standing”) enabling concerned citizens to approach the court in the public interest. However, the more remarkable development of PIL took place in India in the early 1980s. The primary and most important factor that prompted the development of PIL in India was the strong social consciousness of a number of judges. Extreme poverty, lack of access to the judicial system, failure of the legislature, and the inefficiency of the executive led the Indian judges to be responsive. They constructed a PIL jurisprudence through a number of cases involving issues of prisoners rights, bonded labor, abuse of inmates in shelter homes, environment pollution, independence of the judiciary, rights to health, and etc. today, PIL not only has become a permanent feature of Indian Law, but the Indian developments have immensely influenced PIL in a number of other common law based legal systems such as those of SRI Lanka, Pakistan, Bangladesh and South Africa. PIL in Bangladesh is a part of the process of democratic transition that began in 1990. Earlier, judicial intervention had been invoked against the worst excesses of Bangladesh’s autocratic or military regimes with respect to illegal detention, arbitrary arrest, torture, ill treatment, and arbitrary executions. These legal strategies formed a part of and arose out of the ongoing movement for democracy. The primary actors in the 1990s were individual lawyers who were active both in the bar and in party politics. In contrast, the recent development of PIL involves different actors who are mainly associated with civil society organizations, and free of any political party affiliations. The shift has come with the growth of rights-based non-profit organizations working for marginalized people with the effective support of coalitions of progressive lawyers.⁶ However, it now appears that the strong support from private lawyers has made the NGOs dependent in too many ways. NGOs are now trying to build the capacity of their own staff to help develop PIL in Bangladesh.

⁶ Sara Hossain and Mirza Hassan (1999) “Public Interest Litigation in Bangladesh: Recent Trends” in *Grameen Poverty Research*, Vol. 5 No. 1 April 1999, pp 4-5.

As mentioned earlier, the development of PIL in Bangladesh began its journey in the 1990s. Initially, it was difficult to overcome threshold procedural problems such as the rule of standing. However, relentless efforts by social and legal activists enabled progressive minded judges to interpret the Constitutional provisions liberally through a series of cases.⁷ When success finally came in 1996 with *Dr. Mohiuddin Farooque V Bangladesh* (hereinafter FAP 20 case),⁸ the Supreme Court declared that PIL is valid under the constitutional scheme.

The Constitution of Bangladesh provides that every person is entitled to equal protection of the law (Article 27) and is to be treated only in accordance with law (Article 31). The jurisdiction of the High Court Division of the Supreme Court can be activated under Article 102 of the Constitution for enforcement of these rights “on the application of any person aggrieved”. In order to appreciate the underlying nuances of the expression “a person aggrieved” it is necessary to understand the object of Article 102 in the context of the constitutionally guaranteed fundamental rights,⁹ the mechanism for their enforcement, and the conditions under which the writ jurisdiction under Article 102(2) may be invoked. Article 102(2) provides:

The High Court Division, may, if satisfied that no other equally

⁷ Naim Ahmed (1999) *Public Interest Litigation: Constitutional Issues and Remedies*, Dhaka, BLAST, at 3.

⁸ In FAP 20, the Government of Bangladesh was trying to implement a huge development project know as Flood Action Plan 20, funded by a number of European governments. This project adversely affected more than a million people and natural resources including flora and fauna in a district nearby Dhaka. In formulating and implementing the scheme, the plight of the local community people was not taken into consideration. Late Dr. Mohiuddin Farooque, an activist lawyer and the founder and the Secretary General of Bangladesh Environmental Lawyers Association (BELA) challenged the government implementation of the FAP 20 project. Following the judgment, the initial project was suspended and the government and the donors reformulated the project. In addition, they also introduced an environmental impact assessment plan, which consulted the local people in the project area. This case also influenced greatly the government to adopt the National Environment Management Action Plan.

⁹ Fundamental rights enshrined in the Constitution protect mainly civil and political rights and are judicially enforceable. Part II of the Constitution contains social, economic and cultural rights under the heading of the Fundamental Principles of State Policy. These fundamental principles are not judicially enforceable, but should be applied by the state when making laws and carrying out state functions. They also are intended to serve as a guide for the Court when interpreting the Constitution.

efficacious remedy is provided by law.

a. on the application of any person aggrieved make an order

It thus, provides a remedy in cases where the law does not provide for an “equally efficacious” remedy. It is thus manifestly intended to expand available remedies and should not be construed restrictively.¹⁰ But until FAP 20 the Court repeatedly rejected PIL petitions brought under Article 102 on the ground of lack of sufficient standing. Although PILs had been initiated earlier, the FAP 20 case resulted in the first judgement establishing the expended notion of standing. It recognized PIL as a special type of constitutional litigation under the Bangladeshi legal system. In the judgement, the conceptual and constitutional basis of PIL was discussed in detail and the rule of standing was explicitly expanded. It was held that rights-based civil society groups or advocacy organizations with a demonstrated track record could initiate actions for the redress of the rights of those unable to access the courts for reason of poverty or other disadvantage.¹¹ Following FAP 20, a wide-ranging set of civil society concerns, relating to individual rights and the broader development agenda have been addressed via a series of other cases.

Finally, two important features of the development of PIL are worth mentioning. First, although initially the focus was on classic civil and political rights and liberties, PIL has now been expanded to address environmental questions, the rights of local communities, forced evictions, consumer rights, medical malpractice, development schemes and government contracts, etc. Second, different legal organizations have set their priority issues for PIL and have systematically brought violations regarding these issues to the notice of the courts. For example, BELA’s main concern is environmental pollution, and *Ain O Salish Kendra* (Law and Mediation Center) and Bangladesh National Women’s Lawyers Association focus on legal aid and women’s rights. These organizations have filed a number of important PIL cases and the positive outcome of those cases (many of which are still pending) would be a crucial legal development in

¹⁰ M. Amir-ul-Islam (1997) “ A Review of Public Interest Litigation Experiences in South Asia” in Sara Hossain, Shahdeen Malik and Bushra Muse (eds.) *Public Interest Litigation in South Asia: Rights in Search of Remedies*, Dhaka, University Press Limited, at 66.

¹¹ Initially the High Court Division rejected the case, finding that Dr. Mohiuddin Farooque did not have standing nor did the represent the local people. However, on appeal, the Appellate Division not only approved the standing in the case, but also for the first time declared that the Constitution of Bangladesh allows a PIL approach.

Bangladesh. However, the PIL Project of BLAST was initiated to file a number of test cases on a variety of key issues to ensure and enhance public awareness of the duties and obligations of governmental agencies and to increase accountability and transparency in state action. BLAST's PIL initiatives are not confined to any single issue, but have emphasized violations of consumer rights.¹² Now let us move on to BLAST's first consumer rights case that sought to ensure adequate iodine content in edible salt.

IODIZED SALT AND ENFORCEMENT OF CONSUMER'S RIGHTS

On the main reasons why BLAST took up the iodine issue for its first consumer case was the serious health implications of the selling of non-iodized salt in retail markets. Iodine is an essential micronutrient for growth and development of the human body. The development of the brain and the nervous system that controls physical ability are dependent on a daily availability of iodine, which is especially crucial during the months before and soon after birth. A healthy human adult needs 150-microgramm iodine per day, and salt is the best vehicle for iodine. Bangladesh is particularly vulnerable to the problem of iodine Deficiency Disorders, known as IDD. In 1993, an IDD survey undertaken in Bangladesh revealed that 47.1% of the population have goiter, 0.5% are cretins and 68.9% are victims of iodine deficiency. The leading newspapers regularly published this information, but the government took very few steps to address the problem.

GOVERNMENT'S INITIATIVE

In 1985, a number of ministries and agencies of the government of Bangladesh and UNICEF jointly undertook an IDD control program. Under this program, UNICEF provided Salt Iodization Plant (SIP) to all salt producing factories free of cost. Later, the government enacted the iodine Deficiency Disease Prevention Act (hereinafter IDDP Act) and the iodine Deficiency Disease Prevention Rules in 1989 and 1994 respectively. By the end of 1994, machines were installed in all 267 salt factories to ensure that all licensed manufacturers of salt produce, pack and sell salt

¹² Until now, Bangladesh has not had a unified law on consumer rights. There are a number of separate laws in particular areas that affect consumers. But these outdated laws do not adequately protect the rights of the consumer due to their procedural flaws. A unified consumer protection law was first drafted in the early 1990s. The government has sought an opinion from the Law Commission on the draft law, but as of yet has not placed it in Parliament.

with adequate iodine content.¹³ Due to delay in installing machines in all factories, the laws were not put into effect until January 1995. These laws make all citizens of Bangladesh legally entitled to have edible iodized salt.

PLIGHT OF CONSUMER

Despite the government's various efforts to control IDD, different brands of edible salt are still available in the markets today, some of which have no iodine content and some of which contain excessive iodine. In addition, iodized salt is often not properly packed, with the legally required IDD logo¹⁴ is absent, and the required IDD message is missing. It is widely believed that there are many unlicensed and fake manufactures who are producing iodized salt in absence of an effective monitoring system.

In 1997, the print media started to publish a series of news items on the selling of non-iodized salt all over the country. The plight and insecurity of the consumers and the negligence of the respective governmental agencies were also the focus of many articles and reports. Consumers frequently made complaints to different organizations working to protect consumer rights and expressed interest in taking legal action against the respective agencies of the government for their failure to perform their statutory duties. Similarly, BLAST received requests from both individual consumers and from other human rights organizations to take legal action to vindicate consumers rights on this issue. Since the IDDP Act prevented consumers from making an official complaint with the government about indiscriminate selling of non-iodized salt, they had no alternative but to complain to the Consumer Associations Bangladesh (CAB),¹⁵ BLAST and other concerned organizations.

According to Section 11 of the IDDP Act, complaint for trial of any

¹³ Meanwhile, the government formed the National Salt Committee (a Statutory Authority constituted under Section 3 of the IDDP Act, 1989), entrusted with the power of granting licenses to the salt manufacturers.

¹⁴ The IDDP Act makes it mandatory for manufactures of iodized salt to put a logo on each salt packet stating that it contains iodine and stating the date of manufacturing and expiration.

¹⁵ CAB is a non-profit organization active since the mid 80s. It has been engaged in dissemination of information on consumer rights aiming at raising awareness among consumers. CAB undertakes advocacy and lobbying for the purpose of protecting consumer rights and is also actively tests samples of consumer supplies in laboratories. Media campaigns are one of the key activities of CAB. They frequently use the print media to work against any mischief or fraud done by producers, manufacturers and sellers with respect to the quality and quantity of goods and services.

offence done under the IDDP Act can only be made by the government or by a person who is authorized by the government. This authorized person includes the appointed inspectors of the Ministry of Health and Family Welfare. Thus, no consumer or citizen can make any complaint to any court for violations of their right to have iodized salt. Only the inspectors can file a complaint before a civil court of lower judiciary. Due to the inefficiencies and corrupt practices of these inspectors and lack of resources and adequate support staff, not a single case has been filed by them inspection though the violation of this law is rampant. Therefore, there was no “efficacious remedy” available to the consumers. This procedural limitation put the consumers in a better position to file a PIL seeking a High Court order for the government to implement the IDDP Act, since they had no remedy under the IDDP Act.

BLAST’S INTERVENTION

The complaints from the consumers prompted BLAST to compile news reports on the selling of non-iodized salt around the country. By the end of 1997, in a regular-monthly meeting BLAST made the decision to address the issue of non-iodized salt. In its first phase, the PIL Project of BLAST had identified the violation of consumer rights as one of the key areas where virtually no NGOs were effectively working except the CAB.

At the beginning of 1998 BLAST decided to bring a PIL along with CAB before the High Court Division of the Supreme Court of Bangladesh for some specific directions upon respective agencies of the government. Two practical aspects led BLAST to choose CAB as a co-petitioner. First, CAB had a substantial track record on the issue that BLAST did not have at that time. In order to address the issue of non-iodized salt, CAB was regularly observing and documenting the selling of non-iodized salt in retail markets. CAB also published findings of the laboratory reports in the newspapers indicating iodine deficiencies in salts in order to generate public opinion. Along with these efforts, CAB was receiving a lot of complaints from consumers regarding non-iodized salt but it could not take any legal steps against the spurious manufacturers of iodized salt under the law. Second, this was going to be the first consumer rights case filed by BLAST and the organization had to be cautious about any negative ruling from the Court on the standing issue.

BLAST’s salt case involved the following stages: i) fact-finding; ii) drafting of the petition and filing; iii) preliminary hearing and show cause order; and vi) waiting for the show cause hearing.

i) Fact-finding

Access to information is very limited. In particular gaining access to any government information, reports, documents and studies is difficult. However, as part of the pre-filing fact-finding letters were sent to the relevant government agencies¹⁶ asking for information regarding the number of licensed salt producers, their locations, inspection reports, etc. Before the filing of the PIL they did not reply to any of the communications, which is a rather common practice. BLAST's fact finding also included interviewing consumers and contacting different NGOs for information about IDD. Newspaper clippings, and scientific papers on the adverse affects of iodine deficiencies from medical research institutions were collected and consultation nutritionists and doctors were undertaken and collected samples of salt from the retail market were tested in different laboratories. Findings of these test reports were alarming as these indicated that most of the iodized salt producers were not conforming to the provisions under the law.

ii) Drafting of the Petition and Filing

After analyzing the evidence collected during fact-finding a Demand of Justice Notice was served¹⁷ on June 24, 1998 upon several agencies including the Secretary of the Health and Family Welfare Ministry, Chairman of the National Salt Committee, Director General of the Bangladesh Standards and Testing Institute and the Chairman of the Bangladesh Small and Cottage Industries Corporation (BSCIC). A number of manufactures were also named whom was tested. In the beginning of 1999, the draft of the petition was prepared by the PIL Project. The case was filed and conducted in March 1999.

iii) Preliminary Hearing and Show Cause Order

After a preliminary hearing, the High Court Division of the Supreme Court on March 25, 1999 issued Rule Nisi¹⁸ on the government and others to

¹⁶ They are the Ministry of Health and Family Welfare, Ministry Commerce and Industry, and other subsidiary organs that deal with the implementation of the IDDP Act.

¹⁷ A formal notice of a petitioner to the government of the respondent for compliance with the demand made in the notice.

¹⁸ A *Rule Nisi* is a kind of *show cause* notice issued on the government or a respondent to appear before thee Court and explain why the directions sought in a petition should not be granted. On appearance of the respondents, a formal hearing

show cause as to why necessary action should not be taken to ensure proper iodine content in edible salt sold in the market. The *Rule Nisi* also called upon the concerned authorities to explain why they should not be directed to take action against manufacturers and sellers of iodized salt for not complying with the law. In addition, the *Rule Nisi* also asked why the government should not be ordered to identify unlicensed and take manufacturers of edible salt.

iv) Waiting for the Show Cause Hearing

The issuing of the *Rule Nisi* was a major achievement for BLAST, but it has been followed by a period stagnation. The court has not yet set a date for the *Rule Nisi* hearing, despite several attempts by the BLAST staff lawyers. When we went to court to request a hearing date to be set, we were told that there were too many cases pending. Because we suspected that the senior lawyer would be more successful, we asked him to come to court to make the request, but he refused. It has now been nearly three years since the case was brought. Since the case is still pending for final hearing and it is not predictable when the Court will hear the case and deliver judgment, the whole initiative has basically come to standstill.

BLAST was successful in filing the salt case nearly three years ago with the cooperation of CAB and other professionals. Soon after filing the case, BLAST received considerable response from government agencies, but later they returned to their old ways and ignored BLAST's attempts to get information and call attention to the problem of IDD. Looking back, BLAST failed to publicize adequately the government's reluctance to address the problem of IDD after the suit was filed. We also failed to adequately push the court to initiate a full hearing of the case, due to various institutional barriers including the use of senior lawyers. Thus, since January 1999 what has been achieved can be best termed a paper victory, because the case has not yet been decided. In practice, this means that the relevant government agencies can continue to ignore their responsibility to monitor the actions of manufacturers who sell non-iodized salt without complying with the provisions of the IDDP Act. If BLAST could have gotten a favorable judgment, it would have been a successful step to help create a positive environment for the safeguarding and preservation of consumer rights against businesses and enterprises

of the case begins which may continue on several dates following up either by dismissal or judgment for the petition.

who are over powering in terms of influence and resources.

There is no doubt that PIL has great potential to enforce the rights of the poor and the marginalized, but the salt case shows that the successful outcome of PIL in Bangladesh depends on a number of factors. These factors include: i) access to information, ii) democratic values and professionalism of government officials, iii) court delay, iv) legal staffing, and v) resources. The factors discussed below help to explain why the use of PIL in Bangladesh has not been more successful in this particular case and to point to some systemic challenges that activist lawyer in Bangladesh will need to address in the future.

i) Access to Information

Filing a PIL requires a lot of information, but access to information, documents and records are the most difficult, expensive and time-consuming part of PIL activities in Bangladesh. In this salt case there were no specific clients that could provide information to BLAST. On the basis of news reports BLAST took up the issue and brought it to the court. This is probably the first consumer case in the country in which the Court did not ask the NGO to prove standing as a petitioner; the reason, we believe, was that making CAB was a co-petitioner. A number of important documents we received from CAB, particularly laboratory reports, helped greatly to prove BLAST's track record on the issue. Before going to litigate, we tried to communicate with relevant governmental offices and ministries and visited the offices for various reports and the list of licensed private manufacturers of iodized salt, but they never responded. After filing this case, a number of government agencies started to respond and informed us that they had located the licenses and were going to take action. Although this positive outcome did not last long, it was a small step forward for PIL in Bangladesh and a move towards the responsiveness of government agencies.

One of the barriers to information is the misinterpretation of Bangladesh's Official Secrets Act of 1923 by bureaucrats. The Official Secrets Act only prohibits government officials from giving information that is classified. Classified information is that which relates to state sovereignty and war. But the law has been applied indiscriminately to all sorts of government information. This practice paves the way for government officials to hide their misdeeds on the one hand, and it is a major obstacle for lawyers seeking access to information for PIL cases on the other hand. However, through networking and consultation with CAB and other NGOs and research institutions, BLAST was able to get relevant

reports, documents and other information for the salt case.

It should be mentioned that Bangladesh's Constitution does not explicitly provide the right to information nor is there any law on it. Therefore, like other organizations, BLAST regularly asks the Court to direct the government to produce relevant reports and studies on the litigated issues. Asking for this relief is always deliberate. It has three purposes. First, by asking for this relief we seek information that the government has which is otherwise impossible to get. Second, it pushes the concerned government agencies to start looking into the issue, which is almost impossible by any other advocacy initiatives in Bangladesh. Third, it helps to identify the level of transparency and accountability in specific government initiatives. But it is rare for Bangladeshi courts to actually issue such relief. Similarly, in the salt case the Court did not issue Rule Nisi upon the Respondents to produce any reports before the Court regarding the measures and actions taken against spurious, unlicensed and illegal manufacturers and traders of iodized and non-iodized salt.

ii) Democratic Values and Professionalism of Government Officials

Lack of professionalism and a restrictive attitude among government officials and judges is a major barrier to the development of PIL in Bangladesh. Although the Constitution of Bangladesh is based on economic and social justice and guarantees fundamental rights, thirty years have elapsed since independence and the government has failed to provide basic human rights and fundamental freedoms to the people. In addition, there is a serious lack of accountability and transparency in governmental actions or inactions. Thus, PIL in Bangladesh is perceived as a potential legal tool to make the government responsive and it seeks to represent segments of the people who are ignorant of their rights, unorganized and do not have the resources to vindicate their legal rights as individuals. But under most Bangladeshi law the authority to make complaints has been delegated to the relevant administrative agencies only. Likewise, the IDDP Act does not allow an aggrieved citizen to file a complaint regarding the illegal production, marketing and selling of iodized salt. Needless to say, this is a continuation of the typical legal rules of the colonial period, which dominated the Indian Sub-continent for nearly two hundred years.¹⁹

¹⁹ During the colonial era (1757-1947) the British rulers deliberately retained all state power in their hands. It was part of their superiority complex to believe that they better understood the needs of the native subjects. Although Bangladesh has achieved its independence and people have been transformed from "subject" to "citizen" the bureaucratic administration continues to practice this kind of

Further, although the FAP 20 case of BELA opened the door for PIL and allows individuals or organizations to bring PIL actions on behalf of others, it is still a difficult task to convince the Court that standing exists. Courts tend to focus more on procedural and technical rules rather than looking to the constitutional mandate of PIL and its potential impact in making the government more responsive to the public.

Due to the prolonged military dictatorships in Bangladesh, democratic values were not institutionalized and a demoralized public administration resulted which gave rise to pervasive corruption at all levels of the government. Government officials are not trained and lack the capability of handling complex socio-economic problems. They are poorly paid and are not given proper incentives to work effectively. Moreover, it has become a practice that the ruling political party uses the administration for their partisan and political purposes. This is also a great threat to sustenance of democratic values. Further, government officials often perceive and characterize the NGOs as the opponent of the state and they fail to realize that challenging government actions is part of the democratic approach to nation building.

The Judiciary is also not an exception. In recent days, it has been losing its credibility too due to corrupt practices particularly in the lower judiciary. Although the judges of the Supreme Court are more independent and can perform their judicial function, they tend to not entertain PIL cases or deliver progressive judgments, which might make the executive hostile to the judiciary. All these factors make PIL case in Bangladesh more difficult and feed the cycle of a government that fails to be responsive, transparent and accountable.

iii) Court Delay

PIL has often been perceived among activists as the least expensive and quickest method for enforcement of the rights of marginalized people, but this case shows that delay and the restrictive attitude of judges pose a serious threat to the effectiveness of PIL in Bangladesh. Like many PIL cases filed by BLAST and other organizations, the salt PIL has been pending for nearly three years. As mentioned earlier, BLAST tried several times to push the Court to hold a final hearing of the case. Unfortunately, the court

hierarchy. As Gandhi precisely said it is "English rule without the Englishman." See for details Gandhi and the Critique of Civil Society, Subaltern Studies Vol. 3, at p. 157.

would not entertain our request for disposal of the case. Most of the time, courts reply that they are over burdened with thousands of cases.²⁰ It is worth noting, however, that this barrier could likely have been overcome had the court been more sympathetic to the salt case. This is similarly true for other PIL cases pending for disposal. Therefore, considering their greater importance, I think, PIL cases in Bangladesh should get priority over other cases.

iv) Legal Staffing

As noted earlier, PIL in Bangladesh mainly resulted from efforts of prominent senior lawyers and social activists with a little support from a few progressive judges of the Supreme Court. BLAST has its own staff lawyers to handle individual legal aid cases and to initiate PIL cases. BLAST also engages its (nominally paid) volunteer panel lawyers both at the Supreme Court and the district courts for legal aid cases. In PIL cases in Bangladesh, in-house NGO lawyers generally provide logistical and other support including collecting information, performing legal research, and drafting petitions.

Organizations typically involve or hire prominent senior lawyers of the Supreme Court to conduct and argue the cases in court, and to take subsequent legal steps in the case. But, as the salt case illustrates, this practice makes the public interest NGOs dependant on the senior lawyers to move the case along.

The senior lawyers of the Supreme Court are being deliberately engaged by legal NGOs in PIL and other complicated cases for several practical reasons. First, although PIL has emerged in Bangladesh as an alternative way of compelling the government to take certain steps, most judges of the Supreme Court are very reluctant to entertain a PIL petition. Therefore, NGOs engage prominent senior lawyers and their influence to help bring PIL issues to the attention of the court. Second, despite their expertise in drafting and formulating PIL petitions, some judges do not believe that

²⁰ A recent report reveals that nearly 135,000 cases are pending in the Supreme Court; whereas there is only 50 Judges in this court to dispose of these cases. Last year, the Government of Bangladesh has begun to implement the Legal and Judicial Capacity Building Project supported by the World Bank. It has several components of judicial infrastructure development, management of court cases to reduce delay in disposing cases, judges training, building legal aid mechanism, etc. This high ambitious and huge project is expected to be accomplished by year 2008.

staff lawyers from NGOs should be arguing such cases. They think that PILs involve a lot of policy questions, which should be better addressed by senior lawyers. Third, when the issues in the case are very complicated or involve an extensive interpretation of law, it is pragmatic to engage a senior lawyer. Finally, it should be remembered that although PIL has a constitutional mandate in Bangladesh, it is not easy to convince judges that standing exists. Therefore, every PIL case involves a lot of risks, and involving prominent senior lawyers serves to increase the chance of success.

BLAST originally engaged a prominent senior lawyer to conduct the salt case. Although his involvement was primarily positive, when he has needed to force the court to give a date for the show cause hearing, he refused to help. He felt that simple tasks such as getting a court date were the provenance of junior or NGO lawyers. He was later appointed the Attorney General. Although BLAST approached other senior lawyers to take over the salt case and other PIL cases, they did not show much interest. One of the reasons is that activist senior lawyers are extremely busy with political cases filed following the 8th National Election held in October 2001.²¹ In addition, BLAST has very few skilled staff lawyers to pursue the PIL cases vigorously at the moment. Due to resource constraints, new lawyers are not being hired. Thus, despite the benefits of this staffing model, the dependency on senior lawyers has given rise to frustration about the progress of the PIL in Bangladesh. Before PIL can be more successful, Bangladeshi NGOs will need to confront such legal staffing issues.

The salt PIL shows how the development and maturing of PIL in Bangladesh has suffered in the absence of laws ensuring the right to information, training for the judiciary, adequate resources, and sufficient skilled lawyers. It also shows how focus on violations of other human rights can impede the enforcement of consumer rights, and explores the perennial problem of how NGOs cope with the donors' priority agendas.

PIL in Bangladesh is generally perceived as part of the legal aid movement. Therefore, developing, nurturing and sustaining PIL is crucial to this movement. Providing legal aid to the poor and the needy is one of the primary responsibilities of the state. Bangladesh, we believe, will eventually take up this role gradually as indicated in the government legal aid scheme that has yet to be implemented effectively. However, until the

²¹ Political cases are a major source of abuse of human rights in Bangladesh.

state does take upon itself the responsibility for ensuring access to justice for the poor, organizations like BLAST will have to continue the onerous task of ensuring that the poor and marginalized are not condemned to live a life beyond law and without the benefit of a functioning of legal system.²² Legal aid, in a narrow sense, can be seen to be confined to representing the poor and the disadvantaged in court proceedings. But in its broader sense, legal aid includes legal literacy, legal awareness, law reform, campaigns, availability- of legal advice, redress for violations of human rights, alternative dispute resolution, and public interest litigation. BLAST and other legal services organizations have been successful in introducing legal aid services, legal awareness, and alternative dispute resolutions. Dedication and contributions of a variety of lawyers and activists has helped to develop and domesticate PIL in Bangladesh. During the last few years, there has hardly been any constitutional question of significance that has not been brought to the court. On the other hand, although the success rate of PIL cases that involve social justice matters is much higher than the cases of a political nature, PIL does not work in isolation. Thus, in order to make PIL successful, the necessity of adequate financial support, strong networking and consultation among civil society organizations, constructive interaction between the private bar and NGO staff lawyers, cooperation from efficient and trained government agencies, a proactive judiciary, and a vigorous and friendly media cannot be ignored.

²² As above note 3 at 6-10.