Bangladesh Legal Aid and Services Trust: Activities, Strategy, and Vision

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1. Introduction

The legal system of Bangladesh is old and structurally stable.

1.1 History of the Law in Bengal

Bengal, the original name of what is now Bangladesh, was the first British colony in India. The British expanded their colonial empire in India from Bengal. Calcutta (now Kolkata) was the capital of British India until 1911. Prior to British colonialism, Bengal had robust trade links with a number of European and Arab countries to the west, and with China to the east. Bengal also had one of the longest traditions of contact and transactions with European countries.

The fact that India was a British colony for almost 200 years (mid-eighteenth to mid-twentieth centuries) means that common law is deep-rooted. Furthermore, preceding British colonization, the centralized and bureaucratic Moghul Empire in India had already created conditions for centralized administrative practices. In that historical milieu, the English legal system found fertile ground in which to transplant.

High courts with limited power of writs had began to function in India from the mid-nineteenth century. The major areas of law became codified from the second half of the nineteenth century, and most of the codes from that period are the primary laws of not only Bangladesh, but India and Pakistan as well.[1] No less importantly, the broadly two-tiered structure of the judiciary–under which cases are tried in the district courts and the high court is the court of appeal, with exceptional matters going up to the Supreme Court–has remained unchanged, as have even the court working hours (from 10 am to 4:30 pm), fixed more than a hundred years ago.

Formal higher education in law was well entrenched from the mid-nineteenth century, and an established bar with formal legal qualifications and requirements for lawyers has been in place for almost a century and a half. Many of the important independence leaders from the second quarter of the twentieth century had qualified as Barristers of English courts.[2]

1.2 Current Context

However, this legal tradition has to be situated in the context of present-day Bangladesh, a country of more than 130 million people, crammed in little over 54,000 square miles, giving Bangladesh, by far, the highest density of population in the world (except city-states such as Singapore) with endemic poverty, malnutrition, illiteracy, compounded by climatic and natural disasters; and other difficult characteristics. Moreover, after independence from

[1] Penal Code, 1860; Contract Act, 1872; Civil Procedure Code, 1908; Criminal Procedure Code, 1898, Law of Limitation, 1908; Sale of Goods Act, 1925; and Transfer of Property Act, 1882 are some of the many primary laws from the British Colonial period that are still the applicable laws, with some modification and amendments, in these countries. The exceptions are that India has enacted a new Criminal Procedure Code in 1974, although substantially based on the older one; and Company Law, 1913 has been replaced by newer ones in all the countries.

[2] Mahatma Gandhi, Jawaharlal Nehru, Md, Ali Jinnah, and Hossain Saheed Sharwardy, to cite some of the most prominent examples, were all English Barristers.

Pakistan in 1971,[3] a series of bloody military coups and counter-coups meant that the country was virtually ruled by the army from 1975 to 1990, with detrimental effect on the legal system.

Since the return of the army to barracks, forced by a popular movement in 1990, Bangladesh has had three general elections. A constitutional amendment in 1996 provides for a neutral caretaker government for three months, after the end of the term of the Parliament, to conduct general elections. The last retired Chief Justice heads this caretaker government, assisted by 10 advisers (ministers) who have to be neutral and apolitical persons of repute. General elections conducted under this mechanism have been free and fair, with parliamentary governments running the country since 1991.

With the functioning Parliament and the Supreme Court held in high esteem, along with the long-standing tradition of a formal legal system, the prerequisites of a regime of rule of law, equality, and natural justice are in place. However, the lower (trial level) judiciary is perceived as one of the most corrupt institutions.[4] Governance is marked more by mal-practices, abuse of power, and endemic bribery than public service. Criminalization of politics increasingly has meant that guns and money have pervasive influence over the democratic process and "development" endeavors have often been misdirected for personal or group enrichment.

Legal service organizations (LSOs) have to act in this sociopolitical context, in which legal and political issues often get entangled and recourse to the courts is frequently regarded as a means to settle a score rather than to resolve a legal dispute.

Nevertheless, a vigorous and vociferous civil society is beginning to exert considerable pressures on the ruling groups (politicians and bureaucrats) and is generating momentum for change and reform. The groups that make up civil society–associations of artists and literary figures, both white-collar and blue-collar professional groups, academics and scholars, bodies of entrepreneurs and business, environmental groups, bar associations, and foreign-aid-funded nongovernmental organizations (NGOs),[5] along with relatively free print media[6]–are

[3] The end of British Colonialism of India led to the creation of two independent countries; India and Pakistan in 1947. Bangladesh was the eastern province of Pakistan and seceded from Pakistan in 1971 through a nine-month bloody civil war, costing hundreds of thousands of lives. During the war of liberation in 1971, almost 10 million Bangladeshis had to take shelter in India as refugees.

[4] As reported by the various recent surveys of Transparency International (TI), which now ranks Bangladesh as the most corrupt country in the world, with police and the lower judiciary as the two most corrupt institutions.

[5] Under the Foreign Donation (Voluntary Activities) Regulation Ordinance, 1978, an organization has to be registered with the Bureau of Non Government Organizations (NGO) Affairs, following a complicated and cumbersome process. (The NGO bureau is directly under the Prime Minister.) Only those organizations registered with the NGO bureau are permitted to receive "donations" from foreign sources. Each proposal for such "donations," with details of intended use, the possible beneficiaries, and financial breakdown has to be submitted to and approved by the bureau before any "donation" can be received for voluntary activities. NGO is the legal term used to denote these organizations, the number of which is approximately 1,750. However, only 7 to 8 of these NGOs receive approximately 70 percent of all foreign donations from private and official Western sources. For recent quantitative details of NGOs, see Mohiuddin Ahmed, *An Introduction to the Non-Profit Sector in Bangladesh* (London: 2002). Most of these NGOs are involved in microcredit (small loans to poor and marginalized women's group, usually advanced without any collateral security), popularized, now worldwide, by a leading NGO, Grameen Bank.

seen as very important vehicles for transformation of the relatively poor and resource-constrained society.

1.3 Bangladesh Legal Aid and Services Trust

This paper looks into the workings of the largest legal service organization of Bangladesh–Bangladesh Legal Aid and Services Trust (BLAST)–with which I was involved practically from its beginning in 1995 until 2002. To situate the activities of BLAST in the larger context of our legal system, the second section briefly describes the legal system ("The Legal World"). The next section, "Legal Services for the Poor," gives an account of BLAST. The fourth section, "Funding Issues," critically examines recent initiatives of BLAST in terms of their current and (possible) future impacts, to emphasize that funding issues cannot but be intricately connected with the result and outcome of BLAST's activities. The last section, "Conclusion," discusses the larger issues of the nature and role LSOs generally and the impact of Western ideas on these LSOs in Bangladesh.

During the last yeas of their operations in Bangladesh, the LSOs have already had major impact in some arenas, particularly in bringing gender discrimination and human rights issues to the center of political discourse, raising awareness about human rights, successfully lobbying for stringent criminal laws for crimes against women, initiating environmental litigation, and, above all, introducing legal aid for the poor. These successes can now be the bedrock on which endeavors for fashioning systematic and structural changes in laws and courts can be strategically initiated and realized.

2. The Legal World

Along with the broader sociopolitical and economic context indicated in the Introduction, the legal services are intricately connected with the nature and parameters of the legal system as well. This section, therefore, situates the legal system of Bangladesh in terms of the broad structures and key persons engaged in the system, as a background for the issues of legal services. This brief outline is intended only as an indicator of the system, rather than a critical account or detailed description.

The endemic poverty of the populace and the general lack of formal legal education limiting the number of lawyers mean that the courts are not readily accessible to the poor. In addition, the perception that it takes years for a case to meander through the judicial system to reach a final verdict and the notion that corruption is widespread, particularly at the lower echelons, have discouraged meaningful engagement to reform of the legal and judicial systems.

2.1 Judiciary

The formal judicial system is composed of 61 district courts, one each for the 61 administrative units (districts) of the country, with the Supreme Court of Bangladesh at the apex. The district courts are the primary courts for trial, with the first (Court of Assistant District Judge) of the two lower echelons taking up cases of limited pecuniary jurisdiction,

[6] There are approximately 10 widely circulated national daily newspapers (two in English and the rest in Bangla), while local newspapers number in the hundreds.

while the second one (Court of Joint District Judge) has unlimited pecuniary jurisdiction. The third and the highest tier (the Court of District Judge) hears appeals from the decisions of the first tier and decides certain categories of cases as the court of first instance. Typically, a district court would consist of 10 to 15 Assistant Judges, 5 to 7 Joint District Judges, 2 to 3 Additional District Judges, and 1 District Judge who is the head of the district judiciary. Some of these judges hear civil cases while others hear criminal cases.

An appeal against a judgment of the court with limited pecuniary jurisdiction is heard by the District Judge while appeals against judgments of trial courts with unlimited pecuniary jurisdiction are filed in the High Court Division, which is one of the two divisions of the Supreme Court in Dhaka. Similarly, appeals in petty criminal cases are heard by the District Judge or Additional District judges while appeals against long-term convictions are heard by the High Court Division of the Supreme Court.

The Supreme Court comprises two divisions: the High Court Division is the court of appeal and, for certain matters such as constitutional and corporate, the court of first instance. The Appellate Division is the court of last instance which, usually, hears only matters involving important legal issue or interpretation of laws as appeal from judgments of the High Court Division.

On the criminal side, magistrates try "minor" criminal cases, although increasingly magistrates' jurisdictions are being enhanced. More serious offenses are tried by the court of District Judge or Special Criminal Courts. Again, appeals against magistrates' convictions lies with the District Judge, while convictions in more serious criminal cases are appealed to the High Court Division.

Increasingly, a good number of specialized courts are being set up. There are separate Administrative Tribunal, Labour Court, Income Tax Court, Loan Court, Commercial Courts, even special courts for electricity, marine accidents, and more recently, Environmental Court.

2.2 Legal Profession

The legal profession is regulated by in three locales: district bar association in each district, Supreme Court bar association in the Supreme Court and the central statutory Bangladesh Bar Council. The Bangladesh Bar Council is the licensing, disciplining, and welfare organization of all the lawyers. After fulfilling the requirements such as a degree in law and pupilage under a senior lawyer for a year and successful completion of the Bar Council Entrance Examination, one is enrolled to practice as an Advocate. Thereafter, an Advocate has to register herself with any district bar, and she can practice law only in the district in which she is registered unless she becomes an Advocate of the Supreme Court, for which one has to have two years of experience at the district level and pass another examination. An Advocate of the Supreme Court can argue a case in any district court. The right to appear as a lawyer in the highest court–the Appellate Division of the Supreme Court–is "by invitation only," in the sense that the Chief Justice confers the designation of "Senior" Advocate after a minimum of 20 years of legal practice. Only these Senior Advocates have the automatic right to argue cases in the Appellate Division. The number of Senior Advocates is fewer than 50. Others, however, can also argue a case with the permission of the Appellate Division.

Currently, Bangladesh has approximately 28,000 advocates. Professional regulation does not allow one to engage in any other business or profession in addition to being a lawyer. Hence, all lawyers are assumed to be working as full-time as lawyers. Of these, a little more than 2,000 are advocates of the Supreme Court, and approximately 5,000 are registered with the Dhaka District Court since the capital, as in every country, generates most business for lawyers. There are approximately 5 major districts with about 1,000 lawyers each, and the rest, on average, have 300 advocates each on their rolls.

Most advocates with 20 or so years of legal practice can make a decent living in a district town, while the novice are often economically hard pressed.

Only 4 public universities offer law degrees, and the total number of yearly law graduates of the public universities is approximately 400. There are approximately 50 law colleges that also offer law courses. However, these law colleges are poorly equipped, with part-time lawyer-teachers and infrequent evening classes. Hence, the legal education in these private law colleges is not conducive to producing highly skilled lawyers. The graduates of the four public universities are in good demand, but many venture into nonlegal professions, further diminishing the supply of well-qualified lawyers. A few venture to the "West" for post-graduate studies, but the actual number of law graduates who return to the area is dreadfully low.

The advocates of each district bar association elect its leadership for a year. The older of these elected bar associations date back more than 100 years. However, the district bar associations are more social clubs, focusing on the social and financial well-being of lawyers, rather than professional bodies in the strict sense of the term, that is, taking an active role in legislation and reform.

2.3 Legal Education

As indicated, the 4 public universities and approximately 50 private law colleges offer 2 different type of law degrees: a 4-year post-high school course given by the universities and a 2-year post-graduate course given by the law colleges.

The universities are well equipped. However, the educational content and methods are archaic. The law colleges are less qualified to adequately prepare students for a legal career. For the last few years, approximately 2,000 law graduates appeared at the Bar Examination for enrolments as Advocates each year, and approximately 500 succeeded.

Legal research is hardly pursued, and there are fewer than half a dozen law reports in the whole country and even fewer academic/scholarly law journals. Legal scholarship is mostly confined to the publication of "handbooks for lawyers."

3. Legal Services for the Poor

It is in the context and milieu outlined above that one has to locate the issue of legal services for the poor and the broader issue of access to justice. *Pro bono* legal service has long been provided by lawyers, but mostly as charity rather than an organized and consistent behavior shaped by professional ethics.

For litigants, "going to court" has traditionally been seen as the absolute last resort, partly due to the perceived costs and partly due to the inordinate delay in resolving disputes in the formal judicial system. Most disputes are resolved locally through mediation by the local elite.

In recent years, this local dispute resolution process has been much maligned. Occasionally, some decisions reached through the local mediation process have certainly been unjust, and women have not been treated equally and fairly. These instances of injustice have been seen to reflect the entrenched patriarchy and gender biases, engendered by orthodox interpretation of Islam, the religion of the majority. However, despite these lacunae, local mediation is the only available option for the poor, although the mediation process can itself perpetuate their poverty and lack of access to resources.[7] Having recourse to the formal judicial system is a luxury that fewer than 5 percent of the population can ever afford.

3.1 Beginning of Legal Services for the Poor

The issue of access to justice and legal services for the poor has drawn public attention only since the early 1990s, primarily due to the ending of military rule. More recently, a newer understanding of the rule of law and access to justice as important variables for the failure of development efforts of the last quarter of a century has emerged, propelling renewed interest in legal and judicial issues.

Traditionally, social activism and charitable services encompassed medical, education, religious and even cultural activities, and sports. In that view, legal services were not seen as essential enough to generate voluntary contributions for such services by the affluent. Hence, legal services were not offered to the poor, except as charity by individual lawyers working alone.

The first NGOs to focus on legal issues emerged in the mid-1980s, and it was only from the early 1990s that a number of NGOs became actively involved in legal and human rights issues. However, the larger and more prominent NGOs continue to offer "economic" services, primarily microcredit and heath-education-related services, although empowerment of women and access of the poor to official resources are also emerging as important concerns of the social service and microcredit NGOs.

Because NGOs have to operate under strict government scrutiny and every "program and activities" and budget requires prior permission, legal and human rights NGOs could not but tread a cautious path in the beginning. Two factors–increasing press freedom and tolerance of opposition in political activities–have gradually emboldened the NGOs to engage the government in critical terms and begin to criticize governmental actions that were seen as detrimental to human rights.

3.2 Beginning of Bangladesh Legal Aid and Services Trust

Bangladesh Legal Aid and Services Trust (BLAST) formally started its activities in 1993, although an initial period of uncertainly meant that it took awhile to gather speed. In

[7] See Conclusion below on other aspects of mediation.

addition, persons with institutional experience in providing legal services to the poor and engaging the government and others in human rights issues were somewhat limited, resulting in a gestation period of about two years before BLAST became fully and actively functional in 1995.

At the initial stage, BLAST posited *two organizational goals for itself:*

1. Set up legal aid services for the poor
2. Involve the leading lawyers at the district level in the legal aid service movement.

It needs to be mentioned that for various sociocultural reasons, the legal community had not previously been involved in NGO activities and there seems to have been an ingrained distrust of NGO activities in the legal community. Earlier, a few organizations had attempted to provide legal aid with their own in-house lawyers, but this did not prove very effective as these organizations could not afford to hire experienced and effective lawyers, and for the novice-lawyers of these organizations, the complicated world of litigation was too intimidating.

In this context, BLAST posited two interrelated tasks: (1) to involve the district court level lawyers in legal aid activities and (2) to have the leadership of the bar own these legal aid services.

The legal profession is perceived by the lawyers as *fiercely independent,* and, as mentioned, the code of professional conduct prohibits lawyers from engaging in any other activities in addition to lawyering.[8] As a result, lawyers traditionally have been reluctant to be associated with any organization, even to provide legal services. Most lawyers carry on their profession as independent practitioners; there were no large law firms until the mid-1990s. Although recently a few law firms with 20 or so lawyers have been set up in Dhaka (the capital), the vast majority of the legal practice is made up primarily of individual lawyers with one or two junior lawyers as assistants dealing with their individual clients.

Hence, for BLAST, one of the initial challenges was to attract district lawyers to the activities of the organization. The primary goal of setting up of legal aid services in different districts could not be accomplished without the active support and involvement of the local-level lawyers.

My initial tour of the districts to meet and explain the aims and objectives of BLAST to the local lawyers, including the sources of funds and how these are allocate, was met with considerable apathy and, sometimes, even hostility. However, the emphasis on the purely charitable nature of the activities proposed by BLAST, that is, legal aid to the poor, gradually helped to win over the lawyers, as charitable legal services were something that the lawyers understood and accepted easily and willingly. Second, the fact that the Board of Trustees of BLAST was composed of the most renowned and respected lawyers and judges was an

[8] For example, as they are in full-time employment with the university, law teachers in universities are not allowed to appear as lawyers in courts.

important factor in inducing involvement of the district lawyers with the activities of BLAST.[9]

The lack of success of other legal aid initiatives of other organizations meant that BLAST had to involve not only the local lawyers but also the leadership of the local district bar associations. It was decided that elected Presidents and Secretaries of the last three years of bar associations could constitute the core of the Management Committees of the district-level offices of BLAST. Involvement of the local elected leadership of the bar associations gradually made BLAST acceptable to the local bar, and local lawyers willingly began to take up "legal aid" cases of BLAST for nominal fees. To ensure quality service to the legal aid applicants, it was decided that no one with fewer than five years of lawyering experience would be engaged as a lawyer by BLAST.

Initially, the challenge was perceived more in organizational terms. This perception stemmed primarily from the fact that, in the virtual absence of any legal aid service for the poor in the past, we did not have any institutional and very little personal experience to rely on. Based on individual understandings of our legal world, the perceived demand for free legal services, and the nature of lawyering, certain decisions were taken to further the cause of establishing a legal service organization, and these decisions were, per force, organizational. The first challenge was to establish an organization acceptable to lawyers and recipients of legal services, and then to re-structure it in response to emerging challenges, need, and demands.

The broad *substantive goals* were laid down in general terms**:** to promote access to justice for the poor and to offer legal aid services to poor clients. The broader mission was "to make the legal system accessible to the poor and the disadvantaged," which was seen as "central to the rule of law, participatory good governance and for redress for violations of human rights."

By 1998, the organizational goals were deemed to be, or least on the way to being, realized. After initial hesitancy, more and more local-level lawyers and their leadership came to accept the primary initial goal of providing legal aid for litigation to the poor. In many districts, the bars enthusiastically supported BLAST and its activities. This came to be reflected in the fact that, while initially there were hardly any responses to job advertisements for positions in BLAST Unit offices, the number of such applicants surged from 1997.

With setting up the network among lawyers all over the country,[10] from 1998, the substantive goal of systematic and institutional change to enhance access to justice generally, and making the legal system more accessible to the poor specifically, came to the forefront of the organization's policy discourse. Increasingly, in terms of realizing the substantive goals, two

[9] Including the Chairman of the Constitution Drafting Committee and the first law minister of the country, a subsequent Speaker of the Parliament, renowned women rights activists, and retired judges of the Supreme Court.

[10] BLAST Unit Offices in districts were set up gradually–3 to 4 each year–because managing these increasing numbers of Unit Offices, consolidating information and data from all offices, and supervising increasingly large numbers of court cases were all a vast learning experience for us at the Head Office. Hence, a cautious approach to expansion of Unit Offices was adopted. The scheme of gradual expansion meant that, in some districts, units had been established in 1996, whereas, in other districts, the Unit Offices were only 2 to 3 years old, having been established in 1999–2001.

types of interventions emerged: (1) filing public interest litigation[11] and (2) advocating to set up public institutions of check and balance.

Public interest litigation (PIL) is an emerging avenue for seeking redress for violations of rights that detrimentally affect an indeterminate number of persons who are poor and without access to the courts. BLAST began to file PIL cases that sought protection from abuse of power by police and jail authorities and cases against discriminatory legislation. These litigations are an effective means not only of seeking redress for a large number of affected persons, but also of promoting the rule of law by emphasizing the centrality of law in administration and exercise of governmental power. The advocacy component, as indicated below, focused on several public institutions that the government was deemed to be willing to establish.

3.2.1 Organizational Structure

BLAST has its head office in Dhaka, and 18 district Unit Offices[12] and 3 legal aid clinics. While most of the 18 Unit Offices are located on the courts' premises, the 3 clinics were meant to be associated with law departments of universities to facilitate the participation of law students and law teachers in BLAST's legal aid activities. One of these 3 clinics retained the initial character, in which the students and teachers run 1 clinic in Chittagong while the other 2 clinics subsequently have been fashioned to respond to the local demands for legal advice and legal awareness services.

The location of the Unit Offices on the court premises was dictated by the fact that that the very poor, without any social network or understanding of the legal system, would come to the court premises in search of lawyers and legal advice, and the lawyers can easily direct these clients to the BLAST office in the court premises.[13] The Unit Offices consist of a unit coordinator, one or two staff lawyers and/or paralegals, and support staff. The Unit Offices operate under the direction of a management committee that consists of, as indicated earlier, elected local bar leaders, other prominent members of the legal community and other representatives. The primary functions of the Unit Offices are mediation, litigation, investigation, networking, and conducting seminars and workshops.

[11] On public interest litigation, which is somewhat akin to class action suits in U.S. jurisdictions, see Sara Hossain, Shahdeen Malik, and Busra Musa, eds. *Public Interest Litigation in South Asia: Rights in Search of Remedies* (Dhaka: 1997); and Naim Ahmed, *Public Interest Litigation: Constitutional Issues and Remedies* (Dhaka: 1999).

[12] Until the mid-1980s, administratively, the country was divided into 18 districts, with a district court in each district. Most of these district courts, with large bars, are around 100 yeas old. From the mid-1980s, each these 18 "old" districts have been subdivided into 3-4 districts each. The country now has 64 administrative districts, each with a district court. BLAST's initial aim was to have offices (Unit Offices) in each of original 18 districts, and this goal was achieved in early 2000.

[13] This location on the court premises means that most of BLAST's clients are those who can afford to travel to the court premises. Most of BLAST's clients come from within a 20-kilometer radius of the court premises. as the court premises is too far to travel for the very poor from the more distant parts of the district.

3.2.2 Services Offered

Initially, the focus was on "service delivery," that is, providing legal aid to the poor. The Unit Offices were geared to ensure that anyone who came through the doors was provided with a lawyer. There were some initial apprehension about whether someone would abuse the facilities offered, that is, would come to BLAST even if s/he could afford to pay a lawyer. Experience soon indicated that only the absolute poor who were not in a position to pay any fees whatsoever came through the doors of the Unit Offices. The initial apprehension proved groundless as it was realized that anyone who could afford a lawyer, even an inexperienced one at a relatively lesser fee, would do so if s/he could.

Second, we also realized that the clients of BLAST had already exhausted all other locally available recourses to dispute resolution. If *shalish* (mediation) was available locally, they would have already tried that. Either the local mediation did not produce the result they expected and their sense of "justice being done" remained unfulfilled; or no one had bothered to initiate local mediation on their behalf.

In addition to providing legal aid, BLAST gradually became involved in legal reform issues. There were a number of areas that were generally perceived as being ripe for reform, as a means to redress the injustices perpetuated. One of these issues was the establishment of a national human rights commission. Other issues such as the role of "inquiry commissions"; an Office of Ombudsman; a separate, independent judiciary–primarily issues of institutional reform–became the focus of BLAST's advocacy activities.

Again, this focus was shaped by a number of organizational and practical considerations. The need for these institutions was officially recognized, and different governments promised to put the need in their election manifestos–and had to do so–because advocacy on such issues was not deemed to "challenge" the government. BLAST was, after all, advocating on issues that the governments themselves had promised to do or establish. Advocacy on these scores was carried out primarily and effectively by publishing briefing papers; writing in the opinion columns of national newspapers; and organizing seminars and ensuring that these seminars found newspaper space and, hence, drew the attention of the populace.

4. Funding Issues

Funding is a delicate issue for BLAST, as it is with most other similarly situated NGOs. For funding, the overall socioeconomic and cultural contexts, as well as perception about NGOs, are important.

Traditionally, mosques, religious and primary education, and sports were the primary foci of charity.[14] The scale and impact of charity, needless to say, is also dependent upon the general level of affluence of the society. The fact that Bangladesh is one of the poorest countries in the world means that most affluent people (whose numbers are limited) have to spend the

[14] *Waqf (Wakf)* is the most common form of charitable endowment, regulated by Muslim law. Income from *Waqf* endowments, usually with some part of the income reserved for the descendants of the giver, are spent for mosques and *madrashas* (religious schools), upkeep of local graveyards, orphanages, and occasionally for literary activities, but hardly ever for legal aid and related issues.

charitable part of their resources to help relatives and acquaintances who are poor. Institutional charity is also a function of large businesses and wealthy entities, which are very limited in number. Consequently, the "charitable sector" in Bangladesh is a limited one.

The emergence of foreign-funded NGOs since the 1980s has meant that local charity is channeled toward activities that are not encompassed by these NGOs. Legal aid and the human rights sector is primarily a domain of foreign-funded NGOs; hence, local charity in these activities is practically unknown.[15] The NGO sector is generally perceived to be involved in "secular activities," but charity in the local context is understood as pious activities that, naturally, are channeled to sectors with religious overtones, such as mosques and orphanages, hence, not to the secular NGO sector.[16]

In the 1990–91, 6.2 percent of overseas development assistance (ODA) was channeled through NGOs. This figure gradually rose to 11 percent in 1993–94, 16.7 percent in 1997–98,[17] and approximately 20 percent in 2001–02.[18] More than 70 percent of these funds actually go to the main 7 to 8 largest NGOs whose primary concern is microcredit.

4.1 Initial Funding for BLAST

BLAST was set up with grants from the Ford Foundation. "In the 1990s, the Foundation launched a public interest initiative to expand NGO legal services, engage the bar in such work, and establish clinical legal education programs at the country's three leading law schools."[19] As part of this initiative, Ford Foundation supported the establishment of BLAST and provided ongoing support to two other established NGOs: Ain O Shalish Kendra (ASK) and Madaripur Legal Aid Association (MLAA). These two were practically the only legal aid and human rights NGOs in the country from the 1980s.

In 1966, at the close of its activities in Bangladesh, the Ford Foundation gave US$450,000 to each of these three organizations. As BLAST was relatively new in 1996, and most of its energies were still directed towards setting up its organizational structure in slow and painstaking negotiations with local bars of different districts, other sources of funding support could not be tapped at the time of Ford's decision to leave Bangladesh. Thus, this fund was used for routine activities until 1997, when NOVIB (Oxfam Netherlands) offered grants to BLAST. More recently, DANIDA, the official Danish foreign assistance program administered by the local Dutch Embassy, became a funding partner of BLAST. During 1996–99, USAID under its Democracy Partnership Program supported three specific activities.

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[15] See Mohiuddin Ahmed, note 5 above, for an overview of charitable activities and NGOs.

[16] For a good reflection of issues of concern for the NGO sector, see Mizan R. Khan and Mohammad Humayun Kabir, eds., *Civil Society and Democracy in Bangladesh* (Dhaka: 2002).

[17] Tasneem Siddiqui, "NGOs in Bangladesh: Challenges on the Threshold of the New Millennium," in A. M. Chowdhury and Fakhrul Alam, eds., *Bangladesh: On the Threshold of the Twenty-first Century* (Dhaka: Asiatic Society of Bangladesh, 2002), 411, table 2 on 413 for figures up to 1997–98.

[18] See Mohiuddin Ahmed, note 5 above, for more recent figures.

[19] Mary McClymont and Stephen Golub, eds. *Many Roads to Justice: The Law-related Work of Grantees around the World* (New York: Ford Foundation, 2000), see "Introduction," 1, also chap. 4, S. Golub, "From the Village to the University: Legal Activism in Bangladesh," 127–58, particularly 143–46 on BLAST.

In 2002 an ambitious diversification and expansion of BLAST activities over the next five years were proposed. At this point, consolidated funding, as opposed to the earlier program-specific funding by individual funding agencies, was sought from a consortium of funding agencies. In the near future (2003–07), a number of funding agencies, with substantial contribution from the UK's Department for International Development (DFID), with DANIDA and NORAD (the official Norwegian development assistance program), is envisaged to support the activities of BLAST.

4.2 Constraints

As is evident from the above account, to date, *BLAST's resources have been generated exclusively from grants by bilateral funding agencies*, although initially it was the Ford Foundation that made the establishment of BLAST possible. Three considerations, however, do not augur well for long-term sustainability of BLAST. *First* is that legal aid is justifiably seen as an endless undertaking because the demand for legal aid is universal, even more so in a resource-constrained country such as Bangladesh, and foreign bilateral agencies are not meant to support activities *ad infinitum*. Besides, providing legal aid is not cheap.

Second, the government has now set up an official legal aid scheme with the enactment of the Legal Aid Act, 2000. Understandably, the demand for legal aid and the consequent political will to transform legal aid into a mainstream social welfare activity of the state is missing. Yet, it is not improbable that in the long run (5 to 10 years), the official program would become viable. Then, as elsewhere, mainstream routine legal aid would be perceived and delivered as a routine social welfare activity of the state.

Third, there is policy-level reluctance at BLAST to generate funds from local sources through "income-generating" activities for its legal aid and related activities. Many of the larger "microcredit" NGOs have been able to generate a substantial portion of the funds needed for their "welfare" activities from commercial ventures. Needless to say, providing microcredit is an economic activity, and these microcredit NGOs are well suited by the very nature of their primary activity to venture into the "commercial" sector, which some of them have done most successfully? BRAC (formerly known as the Bangladesh Rural Advancement Committee), the leading NGO in the country, now dominates a substantial portion of the handicraft and dairy products market of the country. It has even set up a commercial bank to generate income for its welfare activities. Although BRAC originated as a disaster-relief organization in the wake of the country's most devastating cyclone in 1970, it is now estimated to generate 80 percent of its financial resources from its own commercial activities.

At the level of perception, lawyers do not see legal aid as an income-generating activity, and income-generating business by legal organizations is perceived as anathema. This may be understood partly in terms of the illegality of "contingency" fee practice. Lawyers in Bangladesh work on a fixed-fee-per-case basis, irrespective of the outcome of the case. Hence, there is a cultural abhorrence for risk-taking, profit-making ventures by lawyers. As a rule, a lawyer who is involved in any business venture (even as an owner of substantial shares of a public limited company) is looked down on. This complex host of factors suggests that BLAST and similar other organizations would not engage, unlike many other NGOs, in income generation.

Needless to say, given the level of its current resource needs– projected to be nearly US$1 million per year over the next five years– generating income by BLAST to sustain its legal aid activities would be next to impossible. This is so even if BLAST were to engage in "commercial" activities such as providing legal services for a fee from rich clients, conducting training and courses for fees, engaging in legal publication, and offering management consultancy to similar organizations.[20] Nevertheless, the backdrop of the policy decision not to engage in income-generating activities means that BLAST would be dependent on the generosity of its funding partners with a number of consequences, which can not but limit the scope and sphere of BLAST's activities.

The above first set of constraints can be compounded by another: human resources. The bigger NGOs in Bangladesh are now able to attract personnel with a wide range of skills, competence, and expertise. However, the smaller NGOs, particularly those engaged in legal aid and human rights, generally are not seen as attractive and challenging sites of employment by the young professionals, and more so by young lawyers for several reasons. The first reason is that these NGOs do not appear to offer a sustainable career path. The second is that many of the legal aid and human rights NGOs are not seen to be engaged in policy issues, as opposed to "service delivery" issues. "Service delivery," that is, offering legal aid on a case-by-case basis, is certainly rewarding. Nevertheless, policy-level engagement to reform and refashion macro aspects of the legal system often offer more challenge and job satisfaction to young and aspiring professionals.

Nevertheless, with the emerging emphasis on legal and justice issues as core components of the development paradigm, it is likely that legal aid and human rights concerns will be at the center of development endeavors and that funds for these activities will continue to flow for at least the next decade.

4.3. Possibilities

The constraints outlined above in terms of finance and human resources must not detract from the fact that the role of BLAST and other similar legal services organizations can and are most likely to evolve in the near future in a manner that will re-emphasize their impact and importance and thus will lead to the overcoming of the constraints.

The strategic intervention by BLAST and other legal services organizations for focused outcomes will change the perception about the role and impact of these organizations. Three 2003 cases clearly indicate the possible contours of the role and impact of these organizations.

The first case concerns children in jail. The 1974 Children's Act provides that any child below the age of 16 years who stands accused of any crime (a) cannot be kept in jail but must be housed in a children's correctional home, (b) must be tried in the Juvenile Court, and (c) must serve his or her sentence, if any, in a correctional home, not jail. The enactment of this

[20] For example, BLAST, as a component of a consortium with CARE Bangladesh as the lead partner, was successful in a bid to manage DFID's almost US$20 million fund to be channeled to local NGOs for activities under "Human Rights and Good Governance." In addition, BLAST was engaged by a most prominent British law firm to do field work for its Bangladesh class action suit clients for a "per case" fee, generating substantial "income" for BLAST.

Act more than a quarter of a century ago did not lead to implementation of the special provisions for children in conflict with law. However, in recent years, the activities of a number of organizations on children's rights, ratification by Bangladesh in 1989 of the Convention on Rights of Children, and other developments have led to a vigorous focus on the rights of children. In the last two years, BLAST and other organizations took up individual cases of convicted children imprisoned in jail, in contravention of the 1974 Children's Act, and had these children transferred to correctional homes or overturned convictions on appeal. All these culminated in a *suo moto*[21] case, following from the enhanced concern about the rights of children and the growing realization that most children are deprived of the special treatment mandated for them by the Children's Act, 1974.

In January, 2003, a leading daily newspaper published a news report, "1200 Children Are in Jail." As no children under 16 are supposed to be in jail, this news report by a credible newspaper was brought to the notice of a Bench of the High Court Division, and the Court was asked to direct for clarification from the government as how so many children were in jail, in violation of the Children's Act, 1974. In this *suo moto* case, that is, there was no case filed on behalf of the children, but news report was brought to the notice of the Court, which though it important enough to intervene on its own. The Court directed the Inspector General of Prisons for a report specifying the age, name, and other details of each and every child in all of the jails, and the reasons for her or his being in jail (on conviction or awaiting trial). This direction, subsequent submission of the report, the content of the report, followed by measures taken by the government about these children in jail brought the issue of children being in jail into the public discourse as newspapers prominently reported each development in this *suo moto* case. Finally, in the first week of April 2003, the Court directed the government to undertake specific measures to gradually transfer all of these children to correctional homes, recognizing the fact that there were inadequate facilities to implement this direction immediately. Nevertheless, these children were to be transferred out of jail, and the government was to eventually enhance correctional facilities for children.[22]

Bringing the issue of the plight of juveniles in jails to the public focus with a "semi-litigation" also led to steps by UNICEF, Save the Children, and other similar organizations to offer help to redress the issue.

It is important to point out that the responsibilities of legal services organizations do not end with an order or verdict by the court. Rather, the court's order is only the beginning, as this

[21] The High Court Division of the Supreme Court can take up a legal issue on its own motion, that is, without the application or petition by a plaintiff/petitioner, and ask lawyers to assist the Court to deliver a judgment. This is done very rarely and only on matters of public concern and interest. A lawyer can bring an issue of public interest in which rights are being violated and ask the court to take steps–not in the form of filing a case, but seeking court's intervention. These procedures are known as *suo moto* cases. It needs to be emphasized that the High Court Division rarely exercises this power.

[22] More specifically, in the case, *Suo Moto Order No. 248 of 2003*, by Mr. Justice Amirul Kabir Chowdhury and Mr. Justice Nizamul Huq, the Court considered various aspects of children in jail, including the report of the prison authorities. The Court then directed, in its order dated April 9, 2003, that (a) trial of juvenile prisoners be expedited, (b) juveniles who have been charged with minor offenses and have already spent considerable period in jails as under-trial prisoners be discharged, (c) government legal aid committees be directed to take up the cases of unrepresented juveniles, (d) juveniles in jail be kept away from adult prisoners, (f) jail visitors should include human rights activists, and (g) juvenile accused are to be transferred to correction homes and other approved homes with utmost expedition.

case clearly indicates. Now it will be up to these organizations to (a) assist the government to implement these directions as, for example, the government does not have enough correctional homes while some NGOs do have these facilities; (b) coordinate efforts of various agencies, bodies, and associations to facilitate implementation, including legal aid to end specific cases against children who are in jail. A concentrated effort to realize and implement these directives will lead to a situation in which juveniles, after arrest, are not automatically, as is the case now, sent to jails, but to correctional homes and then tried under the Children Act, 1974, instead of under the general criminal act.

In another landmark judgment delivered on the April 7, 2003 by a Division Bench of the High Court Division in a public interest litigation filed in 1998, the court set out Bangladesh's "Miranda" principles for arrest and interrogation by the police. Our police are notorious for arbitrary and whimsical arrests, often on the behest of the political party in power, as well as for extracting bribes to release after such arrests.
The general power to arrest stems from section 54 of the Code of Criminal Procedure, which provides that police can arrest on the suspicion of someone's being connected with a crime. Until this judgment, "suspicion" was not defined or limited by any criteria of reasonableness, and no one questioned why police arrested a particular person. If police could not come up with evidence of the person's involvement in any criminal activity, the person normally would be released after spending a few days in jail, or sooner by offering a bribe, or be discharged if a lawyer is engaged promptly.

Bangladesh Legal Aid and Services Trust and others vs Bangladesh[23] was argued on March 24 and 30 and April 2, 2003 and the judgment delivered on April 7, 2003. In this judgment, the Court went into elaborate detail on the legal basis of police power, its abuse, and the resultant conflicts with fundamental rights of the Constitution and international human rights norms, leading to laying down of a number of procedural safeguards for the arrested person.

The safeguards include recording the reason for suspicion, which has to be reasonable and based on concrete facts and knowledge about the alleged involvement in crimes. Second, the constitutional right to consult and be defended by a lawyer, which previously had not been exercised before the arrested person was sent to the court, can now be exercised at the police station immediately upon arrest. Often, an arrested person would confess to crimes at the court after being tortured and without knowing his or her right not to be compelled to be a witness against her- or himself, that is, forced confession. A number of other safeguards have been detailed in the judgment, including directions to the government to suitably amend the relevant provisions of the law.

Again, as in the children's case, the court fulfilled its mandate. Obviously, the police, the government, and the legislature would not rush to implement these directions as they would

[23] Writ Petition No 3806 of 1998. It was filed in 1998, soon after a much publicized (and condemned by the media and civil society) case of death in police custody of a young university student. Unlike other such instances of death in police custody, police in this particular incident had started to beat the victim right in front of his house and in front of his relatives and neighbors. Hence, the criminal behavior of the police was witnessed by a number of persons. The public condemnation, as so many people had seen the beating, led to prosecution of the concerned police personnel.

Unlike this incident, police inflict torture only within the confines of police stations; hence, there is hardly ever any eye witness, and our court proceeding criminal cases are rarely proven without eye witnesses.

put an end to the long-standing police practices in dealing with "criminals," of "making money," as well as of harassing the political opponents of the party in power. Only sustained and meaningful pressure and advocacy to implement the directives of this judgment will, in the long run, bring about the desired changes initiated by the judgment.[24]

The obstacles to get a desired verdict from the court are often painfully long, needing substantial research, collective legal acumen, and patience as well as the support of various sections and segments of society including the media (both of these judgments were prominently reported in the front page by almost all the national dailies). However, the point of these examples of cases and judgments is that after getting the desired verdict, there is a need for a long-term commitments to see that these judgments are implemented. By their very nature, most public interest judgments are not and cannot be implemented without consistent engagement of civil society, particularly the LSOs, over a long period.

However, some of our public interest litigation did *not* require sustained, post-judgment engagement, as in the case of putting a stop to the eviction of slum-dwellers by the government. In that case, the prohibition order of the court was sufficient.

The value of the engagement of the LSOs, particularly in situations such as ours in Bangladesh, is that the LSOs have come a long way from initiating and setting up the first provisions for legal aid to poor litigants to the situation in which legal aid is becoming an accepted actor in the legal system, at least for some poor litigants. Second, the government has, at least notionally, accepted that legal aid is a service it should provide–with the enactment of the Legal Aid Act, 2000, being the first step. Hence, the future impact and contribution of LSOs can now be focused more meaningfully on charting a rights-oriented legal system, through public interest litigation (impact litigation) and, more importantly, following up on the implementation of these judgments, as cited above.

As mentioned, institutional reform has been another area of BLAST's engagement. A reflection of this continued engagement was the filing of the third recent case, *Irdisur Rahaman vs Bangladesh* in February, 2003.[25] It came up for motion hearing on the May 4, 2003. The Court issued an order to the government to explain why the recommendations of the Chief Justice of Bangladesh regarding confirmation of judges of the High Court Division should not be abided by.[26]

This case stemmed from the fact that, disregarding the long-standing practice of confirming the appointment of judges on the recommendation of the Chief Justice, a number of judges in the recent months had not been confirmed as permanent judges, disregarding the recommendations of the Chief Justice; hence the writ case. Considering the constitutional import of this case, a special bench comprising the three senior most judges of the High Court Division was formed–a practice not resorted to more than once every two years or so–to hear

[24] My comments, in two parts, on the case, "Judgment on Sections 54 and 167–The Onus Is on Civil Society Now," was published in the *Daily Star* on May 4 and 11, 2003, initiating, as I see it, the process of generating pressure and advocacy for implementation of the directives of the judgment.

[25] Writ Petition No 1543 of 2003.

[26] The Constitution, in Article 94, designates the Chief Justice as the Chief Justice of Bangladesh, instead of the Chief Justice of the Supreme Court of Bangladesh.

the case. The Court, as indicated, directed the government to explain why it did not adhere to the Chief Justice's recommendations.[27] This direction of the Court upon the government was the main front page headline in almost all the national newspapers the next day. Ultimately, a verdict in favor of the mandatory nature of the Chief Justice's recommendation for appointment of judges of the Supreme Court would be one of the most important steps for the complete separation of the judiciary. Already, newspaper editorials have began to urge the government to respond positively to the Court's query, that is, concede that the Chief Justice will have the final say in matters of appointments of judges.

These recent cases indicate the possibilities of the evolving role of LSOs in shaping rights and the system of governance. [28] An LSO that establishes its standing, reputation, and role as a champion of rights, first in individual cases and instances, then gradually evolving to take on larger societal or structural issues, may become a very important player in fashioning a right-based society. Support for research and understanding of the macro issues, that is, issues that could be presented as legal disputes or claims but that have larger ramifications in terms of legal system, rule of law, and governance needs engagement from both academicians as well as activists.

Engagement in these larger issues, much more than in individual instances of legal aid, also enhances the role and impact of LSOs in public esteem. This enhanced esteem, in turn, may make a career in an impact-oriented LSO more challenging and rewarding for young lawyers and academics.

There are many other law-related services offered by LSOs. My focus has been more on the services provided in the courts, rather than awareness, advice, mediation, and similar services provided by LSOs outside the court.

5. Linkages

The most positive aspect of BLAST's work of the last eight years is that BLAST has emerged as the leading legal aid and related services organization, with the widest geographic coverage.

Second, BLAST has the most sustained and meaningful relationship with the legal community. One of the early and important decisions was to engage as many lawyers with the legal activities of BLAST as possible. Therefore, it was decided that a lawyer would not be hired for more than five cases a year. This, in practical terms, translated into the participation of approximately 50 lawyers in each district in the legal aid activities of BLAST. As indicated in the "Legal Profession" section above, with 300 or so lawyers in a district bar, this policy of not engaging a lawyer for more than 5 cases a year has meant that,

[27] The procedure for these types of writs of mandamus is that if the court is initially satisfied, sometimes after lengthy hearing involving both the parties, about the *prima facie* validity of the claim, it issues direction on the opposite to justify/validate its position or the steps taken by it, and this response would lead to the final hearing for judgment.

[28] The actor was actively involved in all of these cases: the first one regarding police power of arrest as the petitioner on behalf of BLAST; and in the other two as a filing and assisting lawyer as the cases were argued by the senior most lawyers, who are, traditionally, expected to "argue" the "very big cases."

over the years, a substantial number of lawyers of any given district bar (except the larger bars of main cities such as Dhaka and Chittagong) have now been involved with activities of BLAST.

Third, a number of widely published public interest litigation and substantial number of seminars, workshops, and publications have made BLAST a well-known and recognized organization in the legal community of the country.

Thus, in terms of networking–being an organization with which others would want to collaborate and, conversely, being an organization that is in a position to collaborate with others–BLAST is on the threshold of extensive linkages and cooperation, at both national and international levels.

However, these linkages have not been pursued, strengthened and used effectively. Advocacy, particularly on issues of rights, which are perceived by governments as confrontational, and criticism of governmental actions both at policy and implementation levels,[29] can sometimes lead to pressures from the government to desist from too much "activism." It is the networking among similar groups that can resist governmental pressures. Similarly, networking with international organizations, groups, and bodies is another well-tested method for achieving results locally. This is an area in which BLAST's actions have not been as robust as they might. Recently, BLAST initiated a comprehensive training program, in collaboration with Penal Reform International, London, to sensitize jail officials about the best prison practices. A number of regional efforts for strengthening human rights and resist violations of human rights in South Asia are underway, but BLAST's participation in these is piecemeal.

National and international dimensions of networking also largely depend on the familiarity with the relevant issues, concerns, and organizations. These arenas are crying out for additional expertise and skill in BLAST.

Legal and human rights are perceived, as indicated, in confrontational terms by the government. *My experience in dealing with the last government indicates that often the government's negative perception can be mitigated by various means, such as working with the government on some concerns while taking issues with it on other scores*. It is a delicate balance that has to be juggled carefully, for, after all, the government can withdraw the permission to work or the registration of a LSO/NGO. In the current democratic environ, the government is not expected to do so, but one always runs that risk.

[29] Such as one of the major and successful PILs by BLAST, which challenged the government's effort to force large-scale eviction of slum dwellers of Dhaka, arbitrarily and forcibly. A PIL filed by BLAST on the second day of this eviction "drive" became a sensational one as government leaders went on the offensive in the media, characterizing slums as being dens of criminals and smugglers, in addition to being usurpers of state land. The court, however, put a number of procedural restrictions on the eviction "drive," which is being still used in other instances of continued, although on a smaller scale, efforts to evict the poor without providing them with any alternatives. See *Ain O Shalish Kendra vs Bangladesh*, 4 (1999) Bangladesh Law Chronicles 604. BLAST filed this case in collaboration with Ain O Shalish Kendra, a legal- and gender-focused NGO, and this landmark case was argued by Dr. Kamal Hossain, Chairperson of the Board of Trustees of BLAST. Similarly, BLAST has successfully challenged the constitutionality of a local-level elected-body law, which was central to the government's reorganization plan of the local level elected bodies. On the policy front, BLAST has organized a number of discussions and workshops to scrutinize governmental plans for setting up the National Human Rights Commission and other similar initiatives.

6. Conclusion

In an environment that was characterized by a total absence of legal aid as a systematic and structured endeavor, BLAST has, over the years, demonstrated the demand for legal aid services and, at the same time, ways and means of responding to this demand. Unlike in the early 1990s, the legal community in Bangladesh is now familiar with legal aid as an institutional behavior.

Involvement of the legal community not only as provider of legal aid but also at the management level largely explains the success of BLAST. It needs to be underscored that management capacity on legal issues and organization is a skill that is not readily available. In such a milieu, the legal community took upon itself the task of managing BLAST voluntarily and successfully.

The government's recent scheme of legal aid has yet to take off. This delay is due largely to the bureaucratic structure of managing this scheme, which involves the participation of a host of bureaucrats at the district level. Bureaucracy in Bangladesh, as in most developing countries, manages public resources more for its own aggrandizement than for ensuring public services to the poor. In such a context, legal aid run by an official bureaucratic structure is unlikely to succeed, at least in the short run.

The alternative model–using the bar in the leadership role–as demonstrated by BLAST, could be the path to follow.

In terms of more effective interventions to enhance equal access to justice, the civil society organizations' role as a pressure group, based on research and policy advocacy, is the weakest aspect of BLAST and other similarly situated organizations.

Moreover, aspects and issues of justice are sometimes shaped by the paradigms advanced in the West, which may not be exactly relevant to our concerns. Enthusiastically siding with such paradigms without the required critical scrutiny may marginalize the role and impact of these organizations, as such stances may be deemed to be too sympathetic to concerns of donors and bilateral partners rather than to the poor in our own surroundings. Alternative Dispute Resolution (ADR) could be a case in point. ADR, locally known as *shalish,* has been a collective mode of dispute resolution in rural Bangladesh for centuries. Any method or model of dispute resolution–formal and official, or informal and consensual, or adversarial and inquisitorial–has its own advantages and disadvantages, and none is fool-proof.

The traditional *shalish* on many counts is not only a mode of dispute resolution but also a mechanism for maintaining cohesion and social integrity in rural settings of Bangladesh. In the recent past*, shalish* came under attack by a few NGOs with foreign funding as oppressive; biased; inequitable, particularly in terms of gender relationships; and inegalitarian. These allegations led to a massive campaign to undermine *shalish* and branding everyone involved in it as quasi-culprits. While there is no denying that "compromise" or "verdicts" of *shalish* can sometimes be inequitable, unfair, or plainly oppressive, these occasional instances of improper dispute resolution cannot detract from the fact that *shalish* is a time-honored practice of alternative dispute resolution that can not be displaced by campaigns of a few NGOs with foreign funding. *Shalish* is, and in the foreseeable future will continue to be,

practically the only available mode of dispute resolution (not alternative but primary) in rural Bangladesh. The reasons include the poor's lack of confidence in the outcome of court proceedings, the perceived corruption and inordinate delay in getting any result or verdict from the courts, and the simple fact that for most of rural people–half of whom still live on incomes of less than one US dollar a day–the district court is literally too far even to travel, leaving aside the costs of accessing justice in these courts.[30] This anti-*shalish* campaign, launched by primarily Dhaka-based NGOs, is a prime example of a donor-driven agenda.

Furthermore, now, after almost a decade of decrying ADR, the civil courts have embarked on an almost mandatory mediation procedure after cases have been filed in courts–a turn to the other extreme.[31] Mediation or arbitration in courts, instead of litigation for which people are supposed to approach the courts, is the new flavor of the month. Recently, the Code of Civil Procedure has been amended to persuade litigants to opt for mediation. However, the assumptions about the working of *shalish* (mediation) in formal settings; or the effectiveness, acceptability, and other related factors of the imposed mediation in the court process have all been undertaken *without* any inquiry, assessment, or broader understanding that could have been generated by research and inquiry. The same is true of the earlier anti-*shalish* campaign, which was not based on any empirical findings or understanding of the working of *shalish*.[32] Thus, one important role of LSOs easily could be in undertaking research, both empirical and theoretical, into these legal issues. Sometimes, LSOs are ideally suited for such research because they have the empirical database. They have filed hundreds of cases, as in the case of BLAST, and have interacted with the poor and the very poor. They possess the practical experience that can be harnessed by the legal academicians to produce comprehensive analyses.

Second, LSO attorneys experience constant pressure for "service delivery," that is, for providing legal aid to the hundreds and thousands who genuinely and immediately need such services. This pressure may lead them to lose sight of the broader issues of access to justice and the rule of law as a systematic edifice rather than as a piecemeal structure consisting of isolated sections and rules. As indicated in the section on "Possibilities" above, the scope and potential for meaningful engagement by the LSOs in shaping and reforming the legal system are immense, and even more so because there are no other institutional actors, except the government, with an interest in institutional reforms. All of the changes in the legal

[30] See Shahdeen Malik, "Access to Justice: A Truncated View from Bangladesh" in Rudolf V Van Puymbroeck, ed., *Comprehensive Legal and Judicial Development: Towards an Agenda for a Just Society in the 21st Century* (World Bank, 2001), 93–98. Here I do not mean to be understood as an advocate for the traditional *shalish,* glossing over its many limitations. I am only making the point that *shalish*-bashing may have been too one sided.

[31] Cajoled, if not prescribed, by an American institution and supported by a United States government agency and now the World Bank's Judicial and Legal Capacity Building Project in Bangladesh. The local gloss is provided by the Minister of Law and a former Chief Justice of Bangladesh, who is the main advisor to the World Bank's project. Again, the point is not the criticism of the specific step or procedure adopted *per se*, but to emphasize that these, like many other similar initiatives, are driven by (foreign) experts' suggestions and not backed up by local research or engagement of the local legal community.

[32] *Shalish* is "big" in news reports, but there has been no academic exercise at all on *shalish*.

system over the last two decades have been initiatives of the government[33] and, hence, not necessarily rights-oriented.[34]

Third, the nature and character of LSOs is another factor that is often not taken into adequate consideration. The first example is the service-delivery-oriented LSOs. They step into the shoes of the government insofar as they take upon themselves the role of providers of services that the government has failed to provide, that is, legal aid. In this role, these LSOs can exist harmoniously as "do-gooders." This is a role that is increasingly favored by the government. In this model, the advocacy and awareness activities of LSOs can easily and effectively be confined to those areas in which rights are enshrined and guaranteed by law but are not implemented or practiced due to various sociopolitical and other reasons and constraints.

A good example would be women's right to divorce. Prior to the Muslim Family Law Ordinance, 1961, this right was not recognized in Bangladesh by the traditional Muslim law (*sharia*), except on a very few limited grounds. This 1961 ordinance conferred on women the right to divorce on a number of grounds including incompatibility. However, this right to divorce by a wife, although granted and recognized by law almost half a century ago, was hardly used, because women were not aware of this right to divorce as there had been no meaningful efforts to disseminate this right. A good number of NGO/LSO have focused on this right of women to divorce, long provided by law, during the last decade. As a result, increasingly, women are divorcing their husbands on grounds of abuse, beating, and, more recently, of marital incompatibility.

A second type of LSO takes a more assertive and strident stand to engage in larger issues of power, structures, rights and entitlements of the poor or the very poor, and bias of the legal and judicial system. This type of LSO advocates and campaigns for far-reaching changes in fundamental aspects of the legal system. This type of LSO is more problematic as such a role of LSO depends on how the LSO perceives itself and its role. BLAST has established its credibility in terms a successful service provider. For an LSO such as BLAST to move to a new and more strident role in engaging issues of macro and structural changes in the legal system, including the issue of systematic access to justice for the poor, could be more meaningful and effective. In other words, the acceptable service delivery role has given BLAST the standing and reputation that can now be channeled to larger issues of rule of law, governance, and human rights. Such a role would be the challenge that would determine the ultimate impact and *raison d'état* of large LSOs, such as BLAST, in the years to come.

[33] The only practical exceptions are enactment of harsh criminal laws for providing enhanced punishments for crimes against women such as rape, abduction, and killings for dowry, which have been brought about by the pressures of women's groups.

[34] See my overview of changes in the public law over the last 30 years, in S. Malik, "Laws of Bangladesh" in Chowdhury and Alam, *Bangladesh: On the Threshold of the Twenty First Century*, 433–84.

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