

# **ANNEXES**

# ANNEX 1: LEGAL GLOSSARY

<b>Constitution</b>	A constitution is the fundamental, basic document which establishes the government of a nation or state. It is the ultimate legal document. No laws or regulations can be passed that are contrary to constitutional provisions.
<b>Constitutional Provision</b>	Constitutional provisions are provision in a constitution that create binding obligations upon the state and the state must act in accordance with the constitution. See <i>Directive Principle</i> .
<b>Defendant</b>	The defendant, also referred to as the respondent, is the party who the action is initiated against. In public interest litigation cases, the defendant would be the government or a government agency and/or one or more than one industry or infrastructure development project.
<b>Directive Principle</b>	Directive principles appear in the constitution and are separate from constitutional provisions. Directive principles imply the way in which a state should act, but do not create binding obligations upon the state. See <i>Constitutional Provision</i> .
<b>Fundamental Rights</b>	Fundamental rights are rights granted to individuals by a constitutional provision. They are rights that cannot be infringed upon by governmental action. They are equally applicable to every individual. There are very few rights that are considered fundamental rights; most common are the right to life, right to equality, right to livelihood, and right to privacy.
<b>Liability</b>	Liability is the legal responsibility for an act or failure to act. Failure of a person or an entity to meet their legal responsibility leaves them open to legal action. See <i>Strict Liability</i> .
<b>Litigation</b>	Litigation refers to the process of bringing and pursuing a law suit in court to enforce a right. Filing a law suit and any action that occurs during the time the law suit is before a court is litigation.
<b>Locus Standi</b>	See <i>Standing</i> .
<b>Non Self-Executing</b>	Directive principles and treaties can either be self-executing or non self-executing. Non self-executing means that further legislation must be passed to implement the treaty or directive principle. See <i>Self-Executing</i> .
<b>Petitioner</b>	A petitioner is an individual or group of individuals who initiate a court action, whether by filing a petition or a full law suit.
<b>Pro Bono Publico</b>	Pro bono publico means acting in the public interest.
<b>Procedural Law</b>	Procedural laws are the laws that determine what rules must be followed in litigation. These laws focus on what information can be presented to the court and when it can be presented. They do not have any substantive element and only refer to the rules of the litigation process. They are also referred to as civil procedure law.

<b>Public Interest Litigation</b>	Sometimes referred to as social action litigation, public interest litigation describes the body of cases that are brought on behalf of the public interest. This is in contrast to the majority of cases, which are either criminal cases or cases that deal with private issues between citizens. Public interest litigation is directed at governments and targets government actions. For example, public interest litigation can be targeted at governments to ask them to take specific action, such as stopping construction or requiring pollution control measures. It cannot be used against a private individual. However, it can be field against a body corporate such as an industrial facility.
<b>Self-Executing</b>	Directive principles and treaties can be either self-executing or non self-executing. Self-executing means that they are automatically implemented as legislation and immediately binding without further legislation to enact the provision. See <i>Non Self-Executing</i> .
<b>Standing</b>	Standing refers to the legal requirements (also called locus standi) that must be met before a person can bring a law suit before a court. Standing requirements vary from country to country and from court to court. Generally, there must be some right that has been violated and the person filing the petition must be affected in some way. This last requirement is open to some interpretation and more 'third party standing' cases are being allowed for environmental concerns. See <i>Third Party Standing</i> .
<b>Strict Liability</b>	Strict liability imposes legal responsibility on a person without having to establish fault. For example, if an accident occurs in a situation where strict liability is imposed, no fault needs to be proven and the person owning the land or business where the accident occurred is automatically liable. Most hazardous waste industry owners are subject to strict liability. See <i>Liability</i> .
<b>Suo Moto</b>	Suo moto actions are those initiated by the judiciary of its own accord. Suo moto petitions, for example, are petitions that are started by a judge or judicial official, not started by a private individual or organisation.
<b>Third Party Standing</b>	Third party standing refers to cases brought by a third party who may not have been directly affected but who has a substantial interest in the case nonetheless, e.g., environmental NGOs. See <i>Standing</i> .
<b>Writ</b>	A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.
<b>Writ Petition</b>	A writ petition is a request to the court to issue a writ. See <i>Writ</i> .
<b>Writ of Certiorari</b>	A writ of certiorari is filed when the act in question, i.e., the act that is causing the controversy, has already been completed and the petitioner wants the decision to be reviewed by a high court. For example, certiorari would be filed if a building permit had already been issued and the petitioner wants a higher court to review the administrative body's decision. See <i>Writ</i> .
<b>Writ of Mandamus</b>	A writ of mandamus is filed to force a public official to perform an action that s/he is required to do under law and has failed to do. For example, mandamus would be filed to force an environmental protection agency officer to take pollution samples as required under law if the officer refused to do so. See <i>Writ</i> .
<b>Writ of Prohibition</b>	A writ of prohibition is filed when the act in question has not yet been completed. A write of prohibition is issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a non-judicial officer or entity from exercising a power. In contrast to certiorari, prohibition would be filed before a building permit had been issued. See <i>Writ</i> .

# ANNEX 2: PUBLIC INTEREST LITIGATION

## Overview of Public Interest Litigation

### *What is public interest litigation?*

Public interest litigation (PIL) is a non-traditional form of legal action that can be used to protect public fundamental rights and interests. In PIL, the collective rights of the public are at issue and there may not be a direct, specific injury to any one individual.

PIL differs from other, more traditional legal actions in three main ways:

1. PIL focuses only on fundamental rights (such as the right to life) that affect the public interest and cannot be used to resolve private issues.
2. PIL may be filed by any person or organisation as long as it is on behalf of the public interest.
3. PIL may be filed against government agencies or other decision-making bodies and cannot be filed against private individuals. However, it can be filed against a body corporate such as a chemical fertilizer factory.

### *Why is PIL an effective tool?*

PIL was a legal breakthrough for several reasons:

1. PIL immediately increased the public's access to the judiciary because anyone could file a PIL before the judiciary, as long as the matter was one of public interest.
2. Even if unsuccessful, PIL can bring attention to violations of public interests and rights. It can be used as a media tool and also as a community awareness raising tool.

In the area of environmental issues, public interest environmental litigation (PIEL) is a particularly effective tool. PIEL is necessary because:

1. Public officials and agencies may not be able to police environmental systems due to lack of funds, staff, or expertise.
2. The policing agencies may be unwilling to take action against the violators due to political pressure, or the agencies themselves may be promoting the activity they should be regulating.
3. PIEL reduces the government's burden to enforce regulations by employing citizens as monitors of environmental protection.
4. PIEL can be used as to raise issues of environmental justice, including access to and use of natural resources.

### *What are the benefits of PIL?*

1. PIL can be filed by anyone and in some cases, can be as informal as a hand written letter. This helps to 'demystify' the judicial system and make it accessible to many people.
2. PIL can be filed directly with a specific judge. This brings the matter to the court's attention immediately. The time element is particularly important in environmental matters where each passing day can bring increasingly dangerous environmental conditions. This also allows each judge a great deal of independence in deciding the case.
3. PIL can also be filed directly with the Supreme Court or High Court for violations of fundamental rights. In traditional litigation, petitions must first be filed with the District Court, then appealed to the Appellate Court and only after these steps, will the highest court hear a petition. PIL filed for violations of fundamental rights can bypass these steps.

### What are the limitations of PIL?

1. One of the main advantages of PIL is judicial independence. However, it is also one of its greatest limitations. PIL filed before an unsupportive judge can be immediately dismissed if the judge so deems.
2. PIL can only be filed against government or government agencies.
  - PIL cannot be filed against private individuals.
  - Therefore, private industries or private land owners cannot be brought to court with a PIL in some jurisdictions or countries. Instead, a writ must be filed against a government agency, for example, for failing to regulate the industry or stop the private land owner.
3. While PIL can result in great rights gains and environmental protection, PIL is still a form of legal action.
  - As such, PIL can only be effective in systems with recognised, legitimate, functioning judicial systems.
  - PIL cannot be used in corrupt or dysfunctional legal systems. This does not mean, however, that they cannot be used as awareness raising and mobilising tools.

## PIL in India

Public interest litigation has been used by advocates worldwide for issues ranging from fundamental rights violations to the promotion of environmental education. In South Asia, the case of India well highlights the advantages and disadvantages of PIL.

PIL first emerged in India through a series of human rights cases and has primarily been judge-led and, to some extent, even judge-induced. The courts of India have become famous for the active role they played in expanding fundamental rights and PIL.

### Legal basis

The legal basis for the development of public interest litigation in India is found in the Constitution. Under Article 32, the Supreme Court of India has original jurisdiction over all cases concerning fundamental rights and freedoms as listed in Articles 14 to 25 of the Constitution. This means that if a fundamental right or freedom has been violated, the claim can be filed directly with the Supreme Court.

### The expansion of PIL

The Indian judiciary expanded PIL in two very important ways:

1. It liberally expanded the rules that dictate who can bring a PIL before the court.
2. Two, it expanded the fundamental right to life to include a right to live in a clean and healthy environment.

### Standing to sue in India

Standing, sometimes referred to as *locus standi*, refers to the requirements that must be met before a person can bring a case or petition before a court. Traditionally, a person had to be directly affected by the issue at hand before she or he could bring the matter to court.

In India, the judiciary reversed this requirement for cases of PIL. Even though one may not be an aggrieved party, public minded individuals or groups may bring public interest suits to the highest court of India. Specifically, the Indian courts have taken the following view.

- The categories of persons considered 'interested' or 'affected' and, therefore, able to bring legal action against the State should be broadened and expanded.
- Poor enforcement of law and policy by administration can force individuals and groups to turn to the courts with public interest litigation of one kind or another.
- Those that undertake PIL are rendering a public service and should be encouraged, not repelled, by the court on the basis of narrow and technical rules of standing.

It was not just the standing requirements that the court liberalised. At the height of the PIL trend, the courts liberalised the procedural rules that govern legal actions. For example, a postcard addressed to an individual justice would be a considered a proper writ petition and would not require a formal legal document.

## The fundamental right to life in India

Article 21 of the Indian Constitution states, “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. What this means is that every individual has the right to life, which cannot be arbitrarily taken away by the government. Also, because it is listed in the Constitution, the right to life is elevated to the status of a fundamental right.

Fundamental rights are only those rights listed in the Constitution and are afforded the utmost protection. The first indication that the court was willing to expand the right to life to include environmental protection was in the case of *Rural Litigation and Entitlement Centre v. State of Uttar Pradesh*, commonly known as the Doon Valley case.

It is in the *T. Damodar Rao v. S.O. Municipal Corporation* case the Court first explicitly stated that the right to a clean environment was a fundamental right. The Court stated, “The slow poisoning of the atmosphere by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution”. The Court’s statement marked the beginning of the concept that there exists a right to a clean environment as a part of the fundamental right to life.

PIL has also been used to stop the use of diesel fuel in Delhi in a series of cases (the Delhi Air Pollution Cases) from 1994 to 2001.

## Benefits and limitations of PIL in India

There is no question that India has the most developed PIL system regionally, perhaps even globally. There are several benefits to the use of PIL in India; however, there are also some serious limitations.

**Table 4: Benefits and limitations of PIL in India**

Benefits	Limitations
1. Procedural rules were relaxed to: <ul style="list-style-type: none"><li>- allow more people to file public interest petitions</li><li>- allow less formal documents to be admitted as legal petitions.</li></ul>	1. The attitude in the judiciary is changing. Judges are becoming more wary of PIL. Instead of looking upon them as acts of public service, judges may see them as a nuisance. Because PIL is filed before individual judges, one judge’s negative attitude might ruin a PIL.
2. The fundamental right to life was expanded to include a right to a clean environment.	2. Even though PIL is quicker than traditional legal action, the courts in India have so many cases before them that even PIL takes several years to go through the system. The Delhi Air Pollution cases took over 15 years to be resolved.
3. The right to a clean environment has been used to clean air pollution in various cities in India.	3. When the courts have had the chance to make big, sweeping decisions, they have backed down from their usually aggressive stance. In the case of the Narmada Dam project, even in the face of overwhelming evidence that the project would be environmentally disastrous and displace tens of thousands of people, the court refused to block the construction and the dam was built.

## Conclusion

PIL is not a perfect answer, but it is still one of the strongest tools available to communities and individuals. It is a tool that is more easily accessible for communities and individuals than formal legal avenues. PIL breaks the presumption that law is only for the rich and empowered.

However, PIL cannot be the only tool used in a struggle for equitable access to, and use of, natural resources and the right to a clean environment. It is only one element of a larger campaign that should include advocacy, media campaigns, community mobilisation, and national, regional, and international lobbying.

