PUBLIC INTEREST LITIGATION AS AN INSTRUMENT OF ACCESS TO JUSTICE: A COMPARATIVE CONSTITUTIONAL ANALYSIS OF INDIA, SOUTH AFRICA, BANGLADESH AND KENYA

Ashish, PhD Scholar, Vikrant University
Assistant Professor of Law, Asian Law College, Noida

ABSTRACT

Public Interest Litigation (PIL) provides a route through which courts may examine alleged violations affecting groups who face substantial obstacles to bringing claims in their own names. India's experience reflects the expansion of standing, procedural flexibility and remedial experimentation under Articles 32 and 226 of the Constitution. South Africa and Kenya expressly recognise public-interest standing in their constitutional texts, whereas Bangladesh's approach has developed largely through judicial interpretation of Article 102. Using a qualitative doctrinal and comparative method, this article examines these systems across five dimensions: constitutional design, access to standing, judicial methods, institutional accountability and implementation of remedies. It argues that permission to approach a court is only one part of access to justice. Reliable material, genuine representation, participation by affected communities, proportionate relief and compliance by public authorities are equally important. The article proposes an Integrated Constitutional Access to Justice (ICAJ) Framework as an analytical tool developed for this study, not as an existing legal doctrine. It concludes that PIL should remain available to enforce constitutional duties and address structural exclusion, while safeguards should discourage opportunistic claims and preserve the legitimate responsibilities of elected and administrative institutions.

Keywords: Public Interest Litigation; access to justice; locus standi; judicial review; constitutional remedies; comparative constitutional law; India; South Africa; Bangladesh; Kenya.

1. INTRODUCTION

Constitutional rights have limited practical force when people cannot obtain advice, initiate proceedings or secure a remedy that is implemented. Ordinary litigation generally assumes that the person whose rights are affected can identify the wrong, bear the costs and present a claim. That assumption often fails for people facing poverty, detention, social exclusion or geographical isolation. PIL developed in part to respond to the distance between rights recognised in law and the ability to enforce them. Access-to-justice scholarship similarly draws attention to the combined effects of cost, legal representation, procedural complexity and collective-action barriers.[1]

In India, PIL is not a distinct jurisdiction created by a single enactment. It has developed within the writ powers of the Supreme Court and High Courts, principally under Articles 32 and 226. Article 39A adds a constitutional commitment to equal justice and free legal aid.[2] [3] By permitting bona fide public-spirited individuals and organisations to raise issues where affected people cannot effectively approach a court, this approach has enabled scrutiny of matters such as undertrial detention, bonded labour, labour protections and environmental harm.

The Indian experience also requires a careful account of risk. PIL may expose official inaction and provide a voice to groups excluded from ordinary litigation, but it can also be used to pursue publicity, political rivalry or private commercial objectives. Claims based on incomplete evidence may divert judicial resources, while prolonged supervision can delay final relief or blur the boundary between adjudication and administration. The central question is therefore how PIL can be structured to address genuine constitutional injury without weakening institutional accountability.

The comparison with South Africa, Bangladesh and Kenya highlights different routes to public-interest adjudication. South Africa and Kenya place broad standing provisions in their constitutions. Bangladesh's courts have developed access to writ remedies through an interpretation of Article 102. These differences make it possible to examine the relative strengths of express constitutional wording and doctrines shaped through judicial decisions.

[1] Mauro Cappelletti and Bryant Garth (eds.), Access to Justice, vol. I (Sijthoff and Noordhoff 1978).
[2] Constitution of India, 1950, arts. 32 and 226.
[3] Constitution of India, 1950, art. 39A.

This article advances three propositions. First, standing rules must accommodate people who cannot realistically litigate for themselves, but liberal standing does not by itself deliver justice. Second, legitimacy depends on the quality of the evidence, the involvement of affected communities, the design of remedies and the ability to secure compliance. Third, comparative analysis should identify useful principles without assuming that a rule can be transplanted unchanged across constitutional systems. To organise the comparison, the article proposes the ICAJ Framework, built around constitutional design, standing, judicial innovation, accountability and enforcement.

2. RESEARCH QUESTIONS AND METHODOLOGY

2.1 Research questions

The research considers four questions: how each jurisdiction has developed public-interest standing and constitutional remedies; how PIL has assisted groups facing barriers to justice; which procedural and institutional weaknesses limit its impact; and what reforms may improve effectiveness while preserving constitutional legitimacy.

2.2 Objectives and scope

The article compares PIL as a means of obtaining constitutional relief in India, South Africa, Bangladesh and Kenya. Its focus is litigation concerning fundamental rights, socio-economic interests, environmental protection and public accountability. It does not purport to catalogue every relevant judgment or measure outcomes statistically; its conclusions are doctrinal and normative.

2.3 Methodology

The study applies qualitative doctrinal analysis to constitutional provisions and leading judgments, alongside secondary scholarship on access to justice, judicial review and transformative constitutionalism. The comparison is organised by common themes rather than by treating each jurisdiction as an isolated account. The ICAJ Framework is an evaluative proposal advanced by this article. It has not been empirically validated and would require testing against a broader set of cases.

3. CONCEPTUAL FOUNDATIONS OF PIL AND ACCESS TO JUSTICE

Access to justice includes both entry into a legal forum and the practical value of the process that follows. Procedural access concerns whether a person can bring a matter before a competent institution. Substantive access asks whether the process is fair, timely and capable of producing meaningful relief. PIL is particularly relevant where harm affects many people, each individual claim is too small to justify litigation costs, or the affected community lacks the resources or influence to act collectively.

A matter does not become a genuine PIL merely because a pleading describes it as one. A credible claim should identify a legal wrong or public duty, explain who is affected and place reliable material before the court. Public importance does not remove the petitioner's obligation to be candid, nor should it make affected people invisible in proceedings brought in their name. The court must still consider jurisdiction, applicable law, evidence, competing rights and whether the proposed remedy is appropriate.

Indian standing doctrine permits a bona fide person to seek redress where those directly affected are unable to approach the court because of poverty, helplessness or social disadvantage. In S.P. Gupta v. Union of India, the Supreme Court accepted that a person with sufficient interest could challenge a public wrong arising from breach of public duty, while cautioning against proceedings driven by private gain or political motives.[4] Bandhua Mukti Morcha v. Union of India and People's Union for Democratic Rights v. Union of India illustrate the use of PIL to bring alleged bonded-labour and labour-law violations before the Court.[5]

PIL is therefore best understood as a means of reducing exclusion from legal remedies, not as authority for courts to manage government generally. Its strongest justification exists where a properly supported claim identifies a legal breach, seeks relief connected to that breach and allows the people whose interests are involved to participate meaningfully.

4. INDIA: JUDICIAL INNOVATION AND ITS LIMITS

4.1 Constitutional foundations and standing

Articles 32 and 226 form the principal constitutional basis for PIL in India. Article 32 provides

[4] S.P. Gupta v. Union of India, 1981 Supp SCC 87; AIR 1982 SC 149.
[5] Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161; People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235.

a remedy before the Supreme Court for the enforcement of fundamental rights, while Article 226 empowers High Courts to issue writs for fundamental rights and other legal purposes within their territorial and subject-matter jurisdiction. Article 39A reinforces the constitutional objective of equal justice and legal aid, recognising that formal rights may be ineffective when procedural and financial barriers prevent their enforcement.

S.P. Gupta relaxed traditional standing requirements where a person or group had suffered a legal wrong but could not effectively seek judicial relief. In Bandhua Mukti Morcha, information about alleged bonded labour prompted judicial examination; People's Union for Democratic Rights concerned labour conditions and the enforcement of constitutional and statutory protections. Taken together, these cases show how procedural flexibility can help address the mismatch between systemic harm and an individual's capacity to litigate.

A flexible approach to standing still requires safeguards. Courts can consider the petitioner's good faith, disclosure of personal or organisational interests, reliability of supporting material and the likely effects of the requested order. The aim is not to reintroduce technical barriers that PIL was designed to overcome, but to separate genuine public representation from litigation serving private or partisan ends.

4.2 Rights expansion and remedial innovation

PIL has brought a range of systemic concerns including detention, prison conditions, labour exploitation and environmental damage within constitutional scrutiny. Hussainara Khatoon v. State of Bihar drew attention to undertrial prisoners held for extended periods and the constitutional significance of a speedy trial.[6] Sunil Batra v. Delhi Administration examined the treatment and conditions of prisoners.[7] Environmental decisions such as M.C. Mehta v. Union of India and Vellore Citizens' Welfare Forum v. Union of India show how public-interest proceedings can address harm extending beyond an individual claimant.[8]

Courts have used fact-finding commissions, expert assistance, continuing mandamus and compliance reports when a single final order would not adequately address a continuing violation. Such techniques may be justified in systemic cases, but they also carry risks:

[6] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.
[7] Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.
[8] M.C. Mehta v. Union of India, (1987) 1 SCC 395; Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647.

monitoring can continue for too long, technical questions may be inadequately tested, and courts may lack the capacity to administer complex programmes. Effective orders should specify the breach, identify the authority responsible, set achievable steps and timelines, and retain only such supervision as is needed to verify compliance.

4.3 Abuse and institutional legitimacy

The Supreme Court has warned that PIL should not become a vehicle for frivolous or motivated litigation. In State of Uttaranchal v. Balwant Singh Chaufal, the Court stressed scrutiny of a petitioner's credentials, the reliability of the information supplied and whether the claim raises a genuine public-interest concern.[9] These checks should be applied with sensitivity to the very disadvantages such as limited resources and lack of formal organisation that may prevent affected communities from presenting a conventional case.

Respect for institutional boundaries is also necessary. Courts must enforce constitutional duties, but disagreement with a policy does not automatically establish a legal violation. A sound judgment should identify the right or duty in issue, assess the evidence, engage with the public authority's reasons and explain why the chosen remedy is necessary and workable. Judicial intervention is most defensible when it makes constitutional guarantees effective without treating the court as a substitute administrator.

5. COMPARATIVE CONSTITUTIONAL EXPERIENCE

5.1 South Africa: express standing and transformative constitutionalism

Section 38 of South Africa's Constitution of 1996 expressly identifies several categories of persons who may seek appropriate relief for an alleged rights violation. These include people acting in their own interest, on behalf of someone unable to act, as members of or in the interests of a group or class, in the public interest, and associations acting for their members.[10] This wording reduces uncertainty about public-interest standing, although a claimant must still establish a proper constitutional basis for the case.

South African socio-economic-rights decisions demonstrate judicial review that is attentive to rights as well as institutional roles. In Government of the Republic of South Africa v.

[9] State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402.
[10] Constitution of the Republic of South Africa, 1996, § 38.

Grootboom, the Constitutional Court considered whether the State's housing programme was reasonable, including in relation to people in urgent need.[11] In Minister of Health v. Treatment Action Campaign (No. 2), the Court examined restrictions on access to nevirapine for preventing mother-to-child transmission of HIV.[12] These cases illustrate that a court can require a constitutionally adequate response without assuming responsibility for every operational decision.

South Africa suggests that broad standing can operate alongside structured review of government policy. Yet express constitutional recognition does not, by itself, resolve resource limitations or guarantee implementation. The useful lesson is that judgments should clearly state the constitutional standard applied, the deficiency identified and the obligations that remain with political and administrative institutions.

5.2 Bangladesh: judicially developed public-interest standing

Article 102 of Bangladesh's Constitution gives the High Court Division power to issue appropriate orders and directions within its writ jurisdiction. Public-interest standing has developed through judicial interpretation of who may be treated as a 'person aggrieved' and when a claimant may raise a matter affecting the public. Dr. Mohiuddin Farooque v. Bangladesh, a case associated with environmental protection, is a leading authority in this development.[13]

Bangladesh illustrates how judicial interpretation can open constitutional proceedings to public-interest claimants, including civil-society actors challenging environmental harm or public illegality. The practical value of that access nevertheless depends on whether orders are implemented and whether the people whose interests are invoked have a meaningful role. Courts should remain alert to the possibility that an organisation's priorities may not fully reflect those of the affected community.

5.3 Kenya: constitutional standing and remedies

Kenya's 2010 Constitution provides an express basis for public-interest constitutional proceedings. Article 22 permits a claim by a person acting in their own interest, on behalf of

[11] Government of the Republic of South Africa v. Grootboom, 2001 (1) SA 46 (CC).
[12] Minister of Health v. Treatment Action Campaign (No. 2), 2002 (5) SA 721 (CC).
[13] Dr. Mohiuddin Farooque v. Bangladesh, 49 DLR (AD) (1997) 1.

someone unable to act, as a member of or in the interest of a group or class, in the public interest, or through an association acting for members. Article 258 allows proceedings to protect the Constitution; Article 23 addresses remedies, while Articles 42 and 70 concern environmental rights and their enforcement.

In Mitu-Bell Welfare Society v. Kenya Airports Authority, the Supreme Court considered constitutional remedies in a dispute involving evictions and residents' rights. The judgment recognised structural interdicts as one possible remedial response to violations of fundamental rights.[14] The Kenyan framework makes the constitutional basis for public-interest claims clear, but practical success still depends on adequate evidence, procedural fairness, participation by affected people and compliance with the order.

Kenya provides a useful comparison with India, where public-interest standing has largely developed through judicial decisions. The contrast should not be overstated: a constitutional provision cannot ensure justice without effective institutions, and a court-developed doctrine may become sufficiently settled to offer predictability. In either system, remedies must be clear, proportionate and capable of being monitored.

6. THE INTEGRATED CONSTITUTIONAL ACCESS TO JUSTICE FRAMEWORK

The four systems address a shared problem how to make constitutional protection accessible where ordinary litigation is unrealistic but adopt different legal routes. India and Bangladesh have relied substantially on judicial interpretation to widen access to writ jurisdiction, while South Africa and Kenya expressly list categories of eligible claimants. The distinction affects clarity and predictability, but it is not absolute: express text also requires interpretation, and judicially developed rules can become stable over time.

6.1 Constitutional design

Constitutional design concerns the legal foundation for bringing a claim, the reach of judicial power and the remedies available. In this comparison, the relevant provisions are Articles 32 and 226 in India, Article 102 in Bangladesh, section 38 in South Africa, and Articles 22, 23 and 258 in Kenya. Clear standing provisions may reduce disputes at the threshold, but their

[14] Mitu-Bell Welfare Society v. Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae), [2021] KESC 34 (KLR).

value depends on legal aid, accessible procedures, judicial capacity and relief capable of addressing the underlying harm.

6.2 Liberalisation of locus standi

Liberal standing can prevent formal rules from excluding people whose rights are impaired but who cannot litigate effectively. Its application should take account of the character of the harm and the ability of those affected to seek relief. At the same time, a public-interest petitioner should not acquire unchecked control over litigation that affects an entire community. Consultation, conflicts of interest and the authenticity of the claimed public purpose are relevant considerations.

6.3 Judicial innovation

Judicial innovation may involve flexible procedures, structured fact-finding and remedies tailored to continuing or widespread violations. India's acceptance of communications and use of continuing mandamus represent one approach; South African reasonableness review and Kenyan constitutional remedies provide other examples. Innovation should be judged by whether it responds to a demonstrated legal breach. A limited, enforceable order may achieve more than a broad direction that lacks measurable steps or a clearly responsible authority.

6.4 Institutional accountability

PIL can require public authorities to explain decisions, disclose relevant information and fulfil constitutional obligations. Accountability should not stop with the State: petitioners should disclose relevant interests and act honestly, courts should give reasoned decisions, and affected communities should have a fair opportunity to be heard. Transparent processes help maintain the distinction between enforcing constitutional requirements and imposing a court's preferred policy.

6.5 Enforcement effectiveness

A favourable judgment is not the same as effective justice. Orders may be delayed, only partly implemented or disregarded. Evaluation should therefore ask whether the people concerned actually received relief, whether compliance can be checked independently, whether obligations are sufficiently clear and whether follow-up proceedings remain proportionate.

Enforcement is the point at which formal access can become a practical improvement in rights protection.

7. DISCUSSION: PIL AS CONSTITUTIONAL GOVERNANCE

The comparison supports viewing PIL as a form of constitutional governance rather than simply a relaxation of standing rules. The five elements of the ICAJ Framework influence one another: broad standing is of little value if the evidence is weak, and a well-reasoned declaration may have little practical effect if the remedy is not implemented. Conversely, careful examination of good faith and evidence can protect the legitimacy of PIL without recreating the barriers it was intended to remove.

The proposed framework may also assist analysis of newer disputes involving climate-related injury, public health, digital privacy, automated decision-making and environmental degradation. Such cases may involve dispersed harm, unequal access to information and technically complex evidence. Courts should remain open to credible claims of constitutional failure while ensuring that affected parties can contest material evidence. Expert input can help, but it should not prevent parties from questioning a committee's methods or conclusions.

A community-centred process is important because a public-interest claim may be filed by a professional organisation or an individual rather than by the people who bear the consequences. Where practicable, courts should consider notice, representation, consultation and accessible updates. These measures help ensure that relief responds to the needs of affected people instead of relying solely on the assumptions of the petitioner or the court.

The comparison does not establish a single model suitable for every constitutional system. Legal history, judicial structure, civil-society capacity and administrative performance vary. It does, however, support several transferable principles: accessible standing, bona fide claims supported by evidence, participation by affected communities, reasoned and proportionate remedies, transparent monitoring and serious attention to implementation.

8. FINDINGS AND RECOMMENDATIONS

8.1 Principal findings

The study produces five principal findings. First, PIL can widen access to constitutional

adjudication for people facing significant barriers to litigation. Second, the design of standing rules influences clarity, but broad standing alone does not ensure an effective remedy. Third, judicial innovation is most defensible when supported by reliable evidence and a clear remedial rationale. Fourth, misuse and inadequate representation of affected communities remain real risks. Fifth, implementation matters: the value of PIL should be assessed by compliance and practical rights protection, not only by the declaration of a legal principle.

8.2 Recommendations

Indian courts should maintain a liberal but disciplined approach to standing. When deciding whether to entertain a PIL, they should consider the nature of the alleged public injury, the petitioner's good faith, any relevant interests or conflicts, the relationship with the affected group and the quality of the supporting material. These checks should be designed to screen out abuse without disadvantaging people who lack resources or formal representation.

Courts should also strengthen the participation of affected communities. In cases concerning eviction, labour conditions, environmental injury or access to essential services, those directly affected should, where practicable and safe, receive notice and an opportunity to express their interests before relief is settled.

Remedial orders should identify the legal violation, the authority responsible for addressing it, the required steps and a reasonable timetable. Continuing mandamus or structural monitoring should be reserved for situations where ordinary final relief is inadequate, with periodic review of whether supervision remains necessary and proportionate.

Courts and public bodies should make proceedings and compliance information easier to understand and access. Clear public reporting, legal assistance and coordination with relevant statutory authorities may help bridge the gap between a judgment and its implementation. Such measures should reinforce, rather than compromise, judicial independence and accountability.

Comparative lessons should be applied with care. India can examine the express standing provisions of South Africa and Kenya and the public-interest jurisprudence of Bangladesh, but any reform must be assessed against India's constitutional text, court structure, procedural rules and administrative capacity. The ICAJ Framework may help organise that assessment, although further empirical application is needed before its usefulness can be established beyond this

article.

9. CONCLUSION

PIL has helped constitutional courts hear claims that restrictive standing rules might otherwise have excluded. India demonstrates the possibilities of judicially developed procedure and remedies; South Africa and Kenya show the clarity that express constitutional standing provisions can provide; and Bangladesh illustrates the role of constitutional interpretation in opening public-interest proceedings. Across these jurisdictions, access to the courtroom is only the first step towards justice.

The ICAJ Framework proposed here assesses PIL through five connected dimensions: constitutional design, liberal standing, judicial innovation, institutional accountability and enforcement effectiveness. Each dimension is necessary to the overall inquiry. Broad standing without dependable evidence may weaken legitimacy; remedies that are not implemented may remain symbolic; and intervention without community participation can repeat the exclusion PIL is meant to address. A principled system must combine accessibility with fair procedure, participation, proportionate relief and attention to compliance.

PIL should not be treated as a complete answer to structural inequality, nor dismissed as inherently excessive judicial activism. Its constitutional purpose is to make legal duties enforceable when ordinary processes fail, while requiring courts to explain their interventions and respect the proper roles of other institutions. When claims are evidence-based and remedies are implemented, PIL can help turn constitutional commitments into meaningful access to justice.

Research limitation: This article is based on doctrinal and comparative analysis of selected constitutional provisions and cases. It does not claim empirical proof of the overall effectiveness of PIL in any jurisdiction. The proposed ICAJ Framework is an analytical proposal developed for this article and requires further testing.

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