

4B. BOX 3: ENFORCEMENT ACTION BY NON-STATE ACTORS (INDIVIDUALS AND ORGANISATIONS)

(a) France

In France successive tobacco-control laws have given rights to bring enforcement actions for breaches of the law to authorised nongovernmental organizations (NGOs). French NGOs have used this capacity to bring numerous cases relating to tobacco advertising, health warnings and non-smokers' rights.¹ Similarly, the European Union Tobacco Advertising Directive² enables NGOs to take legal action against illegal advertising or bring such advertising to the attention of an administrative body competent either to pronounce on complaints or to institute the appropriate legal proceedings.

(b) India: Public Interest Litigation

Over a number of decades and important rulings the Supreme Court of India has laid the groundwork for a field of litigation designed to protect the fundamental rights of people who would otherwise lack the resources to enforce them. This includes modifying the traditional requirements of locus standi, liberalizing the procedure to file petitions, creating or expanding fundamental rights, overcoming evidentiary problems, and evolving innovative remedies. These legal approaches to protect fundamental rights have become known as public interest litigation (PIL). A fundamental principle of public interest litigation is that *everyone* has the right to petition the court to protect fundamental rights, including litigation to protect the rights of others or the environment. This means any individual or organisation can commence proceedings.

Cases have been filed by public-spirited persons (lawyers, journalists, social activists or academics), and more recently NGOs and lawyers have been bringing lawsuits on a regular basis. Originally, most of the cases related to the rights of disadvantaged sections of society such as child labourers, bonded labourers, prisoners, mentally challenged, pavement dwellers, and women. Overtime, the breadth of issues raised in PIL has significantly expanded to include claims based on the protection of environment, corruption-free administration, right to education, sexual harassment at the workplace, and relocation of industries. Claims have been brought against governments, private individuals and corporations.

The Indian Supreme Court has compiled a set of "Guidelines to be Followed for Entertaining Letters/Petitions Received by it as PIL". The Guidelines provide that ordinarily letter/petitions falling under one of the following 10 categories will be entertained as PIL:

- (1) bonded labour matters;
- (2) neglected children;
- (3) non-payment of minimum wages;
- (4) petitions from jails complaining of harassment, death in jail, speedy trial as a fundamental right, etc.;
- (5) petitions against police for refusing to register a case, harassment by police and death in police custody;
- (6) petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping, etc.;
- (7) petitions complaining harassment or torture of persons belonging to scheduled caste and scheduled tribes;
- (8) petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wildlife and other matters of public importance;

¹ See Annex 1, FCTC/COP/6/8 at para. 20. Note that there are many examples of this across the world; it is not just limited to French litigation.

² See Article 7 of Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (26 May 2003).

- (9) petitions from riot-victims; and
- (10) family pensions.

As noted above, a PIL claim was successfully brought before the Supreme Court of India in 2001 to ban smoking in public places.³

Although the legal source for PIL in India is its own constitution, there is no reason in principle why other countries cannot adopt legislation recognizing that tobacco specific laws (and/or tobacco related litigation) should also be classified as “fundamental”—consistently with the objectives of the WHO FCTC—and give their courts the power to modify rules of procedure, standing, evidence, and remedies to ensure that persons seeking to establish the civil (or criminal) liability of tobacco manufacturers can be heard and the cases fairly determined. While PIL in India has historically been used to obtain injunctive relief (i.e. to force governments and corporations to do or not do something in order to protect fundamental rights) courts have also ordered compensation payable for breaches of fundamental rights.⁴ PIL might be used for both claims for damages or claims for non-monetary relief.

The potential for the PIL principles developed by the Indian Supreme Court to be applied by other jurisdictions is already evident from decisions of other courts in the Asian region. The Indian PIL jurisprudence has contributed to the development of PIL jurisprudence in South and East Asia, including courts in Pakistan, Sri Lanka, Bangladesh and Nepal. Hong Kong courts have also cited Indian PIL cases, in particular cases dealing with environmental issues.

³ *Murli Deora v Union of India* (2001) 8 S.C.C. 766.

⁴ See Deva S, Public Interest Litigation in India: A Critical Review (June 22, 2009). *Civil Justice Quarterly*, Vol. 28, pp. 19-40, 2009.