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Abstract

Public interest litigation (PIL) has become an important institutional response to corporate environmental harm across Asia, but comparative scholarship has not systematically examined how different models perform as mechanisms of accountability. This article addresses that gap by developing a three-dimensional framework based on deterrence, compensation, and transparency, and applying it to four PIL models across Asian jurisdictions: procuratorial PIL in China, judicially driven PIL in India, citizen suit PIL in the Philippines, and victim-led litigation in Japan. Methodologically, the article uses qualitative comparative institutional analysis of legislation, procedural rules, judicial decisions and secondary literature. It examines the structural capacity of each model without measuring litigation outcomes. The models are classified by who controls proceedings once they are admitted and evaluated against a common set of criteria. The analysis shows that each model has a distinct accountability profile and that none performs well across all three dimensions. The article argues that this pattern reflects conditional institutional trade-offs, not an inevitable trilemma. Concentrated state control tends to enhance enforcement capacity but reduces transparency when cases are settled outside open court. Victim control improves compensation when harm is concentrated and victims are organised. Civil society independence promotes public scrutiny but limits coercive power unless supported by state enforcement. As these trade-offs depend on identifiable conditions, institutional design can help mitigate them. PIL reform should therefore address the specific accountability deficit in light of each jurisdiction's institutional conditions.

Keywords: Public interest litigation; Corporate environmental accountability; Institutional typology; Comparative environmental law; Access to remedy.

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Resumo

Os litígios de interesse público (PIL, na sigla em inglês) tornaram-se uma resposta institucional importante aos danos ambientais causados por empresas na Ásia. A literatura comparada, porém, ainda carece de uma análise sistemática do desempenho dos diferentes modelos como mecanismos de responsabilização. O artigo enfrenta essa lacuna com um quadro analítico de três dimensões — dissuasão, reparação e transparência — aplicado a quatro modelos asiáticos: as ações propostas pelo Ministério Público na China, os litígios conduzidos pelo Judiciário na Índia, as ações ajuizadas por cidadãos nas Filipinas e os litígios conduzidos pelas vítimas no Japão. Com base em uma análise institucional comparada de natureza qualitativa, o estudo examina legislação, normas processuais, decisões judiciais e literatura especializada. A análise se concentra na capacidade estrutural de cada modelo e deixa a mensuração dos resultados dos litígios fora de seu escopo. Os modelos são classificados conforme quem controla o processo após a admissão da ação e avaliados segundo critérios comuns. Cada modelo apresenta um perfil próprio de responsabilização e nenhum tem bom desempenho nas três dimensões. Essas tensões decorrem de condições institucionais específicas e podem ser mitigadas. A concentração do controle no Estado tende a ampliar a capacidade de fazer cumprir as normas, mas reduz a transparência quando os casos são resolvidos por acordos fora de audiências públicas. O controle pelas vítimas favorece a reparação quando os danos são concentrados e as vítimas estão organizadas. A autonomia da sociedade civil favorece o escrutínio público, mas sua capacidade de impor o cumprimento das normas é limitada sem o apoio do Estado. Como essas tensões dependem de condições identificáveis, o desenho institucional pode atenuá-las. As reformas dos litígios de interesse público devem, portanto, responder ao déficit específico de responsabilização à luz das condições institucionais de cada jurisdição.

Palavras-chave: litígios de interesse público, responsabilização ambiental das empresas, tipologia institucional, direito ambiental comparado, acesso à reparação.

1 Introduction

Corporate environmental harm has emerged as a central concern in contemporary governance. As industrial activity expands and supply chains become more complex, the gap between the scale of environmental damage and the ability of legal systems to respond has grown increasingly apparent. Domestic legal frameworks have addressed this challenge in different ways, and public interest litigation (PIL) has become one of the mechanisms attracting sustained attention. Across Asia, PIL has developed as an important institutional response, with jurisdictions adopting different approaches to who may bring cases, the legal basis for doing so, and the consequences for corporate actors.

The existing literature on PIL in Asia has made important contributions to understanding how different jurisdictions have developed procedural frameworks for environmental litigation. Scholars have examined, for example, the expansion of standing in India[1], the development of procuratorial PIL in China[2], and the emergence of citizen suit mechanisms in the Philippines[3]. This body of work shows that PIL can function as a meaningful tool of environmental governance and highlights key features of separate systems. What it has not yet offered, however, is a systematic way of assessing how different PIL models perform as mechanisms of corporate environmental accountability across multiple outcome dimensions, or of explaining why some models appear stronger in certain respects but weaker in others. It is this gap that the present article seeks to address.

Against this background, the article asks how different PIL models in Asia function as mechanisms of corporate environmental accountability, and under what

[1] See generally BAXI, Upendra. Taking suffering seriously: social action litigation in the Supreme Court of India. *Third World Legal Studies*, v. 4, 1985, p. 108; SATHE, S. P. *Judicial activism in India: transgressing borders and enforcing limits*. Oxford: Oxford University Press, 2002.

[2] See generally WANG, Fuhua. Jurisprudential foundation of public interest litigation. *Frontiers of Law in China*, v. 19, 2024, p. 299; WANG, Alex. The role of law in environmental protection in China: recent developments. *Vermont Journal of Environmental Law*, v. 8, 2007.

[3] See generally PUNO, Reynato S.; GATMAYTAN, Dante B. Environmental activism by the Philippine Supreme Court: initiatives and impediments. *Asia Pacific Journal of Environmental Law*, v. 27, 2024, p. 10; GATMAYTAN, Dante B. The illusion of intergenerational equity: Oposa v. Factoran as Pyrrhic victory. *Georgetown International Environmental Law Review*, v. 15, 2003, p. 457-485.

conditions strengths in one dimension of accountability come at the expense of others.

This article adopts comparative institutional analysis as its primary method, examining PIL models across selected Asian jurisdictions as expressions of distinct institutional logics rather than as comprehensive representations of individual legal systems. Doctrinal analysis of primary legal sources, including legislation and judicial decisions, is used where necessary to describe the institutional design of each model. The analytical framework set out in Part 2 is developed through a synthesis of existing scholarship across three strands of literature. These methods are appropriate to the article's focus on structural features embedded in institutional design. The article does not seek to measure enforcement rates, compensation outcomes, or levels of transparency in empirical terms, as such analysis would require systematic case-level data beyond its scope. Empirical testing of the findings presented here remains an important direction for future research.

The article makes two related contributions. First, on the analytical level, it develops a three-dimensional framework for assessing PIL-based corporate environmental accountability which captures different aspects of how accountability operates: deterrence concerns the ability to generate expected costs that shape corporate behaviour in advance of violations; compensation relates to the provision of meaningful remedies to affected communities; and transparency focuses on the extent to which proceedings enable public scrutiny and participation. Second, the article applies this framework in a comparative analysis of four PIL models across Asian jurisdictions, namely procuratorial PIL in China, judicially driven PIL in India, citizen suit PIL in the Philippines, and victim-led litigation in Japan. On that basis, the article develops a typology that classifies these models according to their underlying institutional logic rather than their formal legal structure and identifies the conditions under which strengths in one dimension tend to come at the expense of the others.

The article proceeds in five parts. Part 2 sets out the three-dimensional analytical framework and three conditional propositions about trade-offs between the dimensions. Part 3 develops the institutional typology, classifying the four PIL models according to their underlying logic. Part 4 assesses the four models against common criteria and examines whether the expected trade-offs appear. Part 5 then considers the implications of these findings for comparative scholarship and for approaches to PIL reform. Part 6 concludes.

2 An analytical framework for assessing corporate environmental accountability through PIL

2.1 Conceptualizing corporate accountability in the context of PIL

Before developing the analytical framework, it is useful to clarify a basic conceptual distinction that is not always consistently addressed in the literature, namely the difference between *corporate accountability* and *corporate responsibility*. Corporate responsibility generally refers to the internal, forward-looking commitments of corporations to regulate their own conduct in line with broader social expectations. By contrast, corporate accountability is concerned with external mechanisms of control, through which corporations are required to explain their conduct, are subject to scrutiny, and may face consequences imposed by actors outside the firm[4].

On this basis, the article adopts Bovens's more institutional and relatively narrow conception of accountability as its analytical starting point. Under this approach, accountability is framed as a structured relationship between an actor and a forum. The actor is under an obligation to explain and justify its conduct; the forum is entitled to question that conduct and to reach a judgment; and, where appropriate, consequences may follow[5].

Within this framework, PIL, regardless of whether it is initiated by procuracies, non-governmental organizations, affected communities, or courts, is more appropriately understood as a mechanism of accountability rather than responsibility. It functions through external, judicialized processes and produces legal and social consequences that corporations cannot simply

[4] MORGERA, Elisa. *Corporate environmental accountability in international law*. 2nd ed. Oxford: Oxford University Press, 2020, p. 16-22.

[5] BOVENS, Mark. Analysing and assessing public accountability: a conceptual framework. *European Governance Papers (EUROGOV)*, 2006, p. 9-10. Available at: https://dspace.library.uu.nl/server/api/core/bitstreams/f2e58a42-6dac-44e4-8c51-161fb27324df/content. Access on: 26 Mar. 2026.

avoid through unilateral action. In environmental cases, the corporation acts as the accountable actor, while the court or a comparable adjudicatory body serves as the forum. The resulting consequences may include legal sanctions, compensation obligations, and reputational effects. The focus of this article, therefore, is not on whether corporations are willing to assume environmental responsibility, but on whether, and in what ways, PIL can require them to do so.

2.2 Limitations of existing frameworks for assessing corporate accountability in PIL

Existing frameworks provide useful analytical tools, but each was developed for a governance context that limits its application to comparisons of domestic PIL models. Gupta and van Asselt distinguish five elements of accountability including relations, standards, judgments, sanctions and redress, with the first three concerning answerability and the last two enforceability[6]. Their framework addresses state-to-state accountability in multilateral climate governance, where the identity of accountable actors and the scope of obligations remain contested. In domestic environmental PIL, however, relations and standards are generally established by law and serve as preconditions for litigation. Differences between PIL models therefore arise mainly from the outcomes they produce once proceedings begin.

Pillar III of the UN Guiding Principles on Business and Human Rights affirms that States must ensure access to effective remedy for business-related harm[7], but expresses a general normative commitment rather than providing criteria for comparing domestic mechanisms. Schlosberg's framework of distribution, recognition, capabilities and participation[8] evaluates the overall justice of governance systems rather than the performance of particular procedural mechanisms. None of these frameworks is designed to compare how domestic PIL models produce corporate environmental accountability across distinct outcome dimensions. This article develops such a framework by drawing on all three strands.

2.3 A three-dimensional analytical framework

This article develops a three-dimensional analytical framework, informed by insights drawn from three strands of scholarship. Each strand highlights a particular outcome dimension as central to the functioning of environmental accountability mechanisms. The selection of these dimensions is not intended to be exhaustive. Rather, they are chosen because they capture the most relevant points of variation among PIL models in the Asian context, as will be illustrated in Parts 3 and 4.

2.3.1. Deterrence

The first dimension draws on law and economics scholarship on the public enforcement of law. Building on Becker's rational choice model[9], later developed by Polinsky and Shavell, this literature suggests that the effectiveness of an enforcement mechanism depends on its ability to generate an expected cost that is sufficient to deter potential violators[10]. In simple terms, a rational actor will choose to violate the law when the expected benefits outweigh the expected costs, calculated as the probability of detection multiplied by the severity of the sanction. From this perspective, effective deterrence requires more than the existence of severe penalties. It also depends on the likelihood that violations will be detected and sanctioned in a consistent manner. Where enforcement is irregular or unpredictable, firms may underestimate the real risk of being penalized and adjust their behavior accordingly. In such situations, even relatively strong sanctions on paper may have a limited deterrent effect in practice.

In the context of PIL, the deterrence dimension focuses on whether a given institutional design can generate expected costs that are both sufficiently high and reasonably predictable, so as to influence corporate behaviour before violations occur. Two criteria are

[6] GUPTA, Aarti; VAN ASSELT, Harro. Transparency in multilateral climate politics: furthering (or distracting from) accountability? *Regulation & Governance*, v. 13, n. 1, 2019, p. 18-34. Available at: https://doi.org/10.1111/rego.12159. Access on: 28 Mar. 2026.

[7] UNITED NATIONS. Human Rights Council. *Guiding principles on business and human rights: implementing the United Nations 'Protect, Respect and Remedy' Framework*. UN Doc A/HRC/17/31, 21 March 2011, Principle 25.

[8] SCHLOSBERG, David. *Defining environmental justice: theories, movements, and nature*. Oxford: Oxford University Press, 2007, p. 5-6.

[9] BECKER, Gary S. Crime and punishment: an economic approach. *Journal of Political Economy*, v. 76, n. 2, 1968, p. 169-217. Available at: https://www.nber.org/system/files/chapters/c3625/c3625.pdf. Access on: 28 Mar. 2026.

[10] POLINSKY, A. Mitchell; SHAVELL, Steven. The economic theory of public enforcement of law. *Journal of Economic Literature*, v. 38, n. 1, 2000, p. 45-76.

central to this assessment, namely the ability of the enforcement authority to identify and address violations consistently (D1), and the predictability of enforcement outcomes (D2). Even where a PIL model is formally empowered to address environmental violations, weaknesses in either of these aspects may limit its deterrent effect in practice. The assessment focuses on deterrence potential, not actual deterrent effects, which would require evidence of corporate behaviour.

A third criterion (D3) concerns the design of sanctions, including the types of sanctions and remedies available to the enforcement actor under the legal framework, such as restoration costs, punitive damages or closure orders. The assessment focuses on the legal framework itself. The amounts imposed in individual cases depend on judicial discretion and the financial position of defendants. These amounts are not examined here because doing so would require case-level data beyond the scope of the article.

2.3.2. Compensation

The second dimension draws on the access to remedy framework articulated under Pillar III of the UNGPs. Guiding Principle 25 sets out the basic obligation that, as part of their duty to protect against business-related harm, States must take appropriate measures to ensure that affected individuals have access to effective remedies through judicial, administrative, legislative, or other appropriate mechanisms. Guiding Principle 26 further clarifies that this obligation includes ensuring the effectiveness of domestic judicial systems, in particular by addressing legal, practical, and other barriers that may hinder access to remedy.

Within the context of PIL, this dimension focuses on the extent to which a given model can deliver meaningful compensation to affected communities and, where relevant, to damaged ecosystems. Drawing on the barriers identified in the Commentary to Guiding Principle 26[11], the analysis applies four criteria. First (C1), it considers whether the model reduces the financial and procedural burdens associated with accessing enforcement. Second (C2), it examines whether the enforcement actor is equipped with adequate resources, legal standing, and institutional independence to pursue claims effectively on behalf of those affected. Third (C3), it assesses whether the design of the model takes into account existing power asymmetries between affected communities and corporate defendants. Fourth (C4), it distinguishes between two forms of remedy, namely the restoration of ecological damage (C4a) and redress for affected individuals and communities (C4b). These are assessed separately because a model may perform well in one area but poorly in the other.

2.3.3. Transparency

The third dimension draws on environmental justice scholarship. Schlosberg suggests that a comprehensive understanding of environmental justice must go beyond distribution to include recognition, capabilities, and participation, and that these dimensions are closely interconnected[12]. In particular, participation, understood as inclusion in decision-making processes and the ability to exercise political agency, is not simply a means to an end, but an integral element of just governance[13]. Extending this perspective to the context of PIL, meaningful participation implies, at a minimum, that affected communities have access to information about enforcement processes and are able to engage, in some form, with the proceedings through which corporate accountability is pursued, rather than relying entirely on an intermediary actor.

On this basis, and using participation as the substantive foundation, the article conceptualizes transparency as a key dimension for analysis in the PIL context. Three criteria are used to assess this dimension. The first (T1) concerns whether proceedings and their outcomes are accessible to affected communities. The second (T2) examines whether the institutional design of the model allows for some degree of participation by affected parties, or instead tends to exclude them structurally. The third (T3) considers whether the PIL process generates sufficient public scrutiny of corporate conduct to give rise to reputational forms of accountability beyond formal legal outcomes. Unlike deterrence, which operates primarily before violations occur, and compensation, which follows from them, transparency

[11] UNITED NATIONS. Human Rights Council. *Guiding principles on business and human rights*, above cited, Commentary to Principle 26.

[12] SCHLOSBERG, *Defining environmental justice*, above cited, p. 12.

[13] SCHLOSBERG, *Defining environmental justice,* above cited, p. 4-9.

is relevant throughout the entire process, from initiation to enforcement.

2.3.4. Rating the dimensions

Each criterion is assessed through institutional design, focusing on what the legal framework enables or constrains instead of measured outcomes. A dimension is rated strong when the model's design meets all relevant criteria. It is rated moderate when the design meets some criteria or meets them only through certain procedures available within the model. It is rated weak when the design structurally limits most criteria. Where a rating depends on factors beyond institutional design, such as victim organisation or defendant solvency, it is marked as condition-dependent, with the relevant conditions specified. Table 2 refers to the criteria by these labels.

2.4 Expected trade-offs between dimensions

The three dimensions are interdependent. This article puts forward three conditional propositions about their interaction. Each is expected to hold only under specified conditions and can be challenged by identifiable evidence. The term "trilemma" serves only as shorthand for the pattern in which no examined model performs strongly across all three dimensions. The article does not argue that such a combination is institutionally impossible.

Proposition 1: enforcement concentration and visibility. Where enforcement authority rests with a state organ that can resolve cases through non-public channels and is not subject to independent external review, stronger enforcement capacity tends to come at the cost of transparency and community participation. An alternative explanation is that limited transparency stems from the broader political system rather than the design of PIL. If so, the same pattern should be evident in other forms of litigation within the same jurisdiction. The proposition would be challenged by a state-led model that combines investigative powers with institutional independence and mandatory disclosure of pre-trial settlements.

Proposition 2: victim control and organisational capacity. Where affected persons control proceedings, compensation and participation tend to be strong only when harm is concentrated and identifiable, victims are organised and the defendant is solvent. An alternative explanation is that compensation results from administrative schemes introduced after litigation, instead of coming from litigation itself. The proposition would be challenged by a victim-controlled collective redress model that secures compensation for diffuse harm.

Proposition 3: independence and compulsion. Where civil society actors independently control proceedings without state direction, transparency tends to be strong but enforcement capacity limited, unless procedural rules connect private initiative with state action under judicial supervision. An alternative explanation is that weak enforcement results from insufficient resources rather than independence itself. The proposition would be challenged by citizen-led models in which fee-shifting or public funding supports consistent enforcement.

Because each proposition depends on specific conditions, these trade-offs are not fixed. Changing one condition, such as introducing publicity requirements in a state-led model, may reduce the trade-off. This provides the basis for the reform discussion in Part 5.

3 An institutional typology of Asian PIL models

The diversity of PIL models across Asia cannot be captured by a simple classification. This article categorises these models using a single variable: who controls the proceedings after a case has been admitted, namely, who determines the claims pursued, the remedies requested and whether a settlement is reached. This variable is selected because each dimension of accountability depends more on control over the proceedings than on who initiates the case. In state-led models, control rests with a public body, whether a procuratorate or a court. In society-led models, control remains with citizens, organisations or affected individuals. Initiation, defendant identity, available remedies and enforcement are examined as distinct variables in Table 1. This approach also allows a distinction between direct corporate liability and accountability pursued indirectly through proceedings against public authorities.

The examples used within each category are not intended to provide a comprehensive account of the respective national systems. Instead, they are selected because they illustrate, in a relatively clear way, the ins-

titutional logic associated with each type. In practice, a single jurisdiction may accommodate more than one PIL model. However, for the purposes of analysis, the focus is placed on the model that most clearly reflects the institutional characteristics under examination.

This article adopts a functional understanding of PIL as litigation in which the interest pursued, or the effects produced, extends beyond the private interests of the litigants to serve an environmental public interest. Japan is included as a boundary case. Its procedural law does not recognise open standing, meaning that environmental public interests reach the courts through aggregated individual tort claims. Pollution litigation in the late 1960s and early 1970s, including the Minamata case, falls within this functional definition because its effects extended beyond the parties involved. The Japanese model thus illustrates how accountability operates at the closed-standing end of the spectrum rather than constituting PIL in the formal sense. Table 1 summarises the main institutional features of the four models.

Table 1. Institutional features of four Asian PIL models

Variable	Procuratorial PIL (China)	Constitutional PIL before the Supreme Court (India)	Citizen suit and special writs (Philippines)	Victim-led litigation (Japan)
Initiation	Procuratorate; civil PIL only where no eligible organisation sues after public notice; administrative PIL after an unheeded pre-litigation recommendation	Any public-spirited person or organisation; letter petitions; suo motu action by the Court	Any citizen, including on behalf of future generations (citizen suit); natural or juridical persons and NGOs (writ of kalikasan)	Persons whose own legal interests are affected
Control after admission	Procuratorate (state-led)	Court (state-led)	Petitioners, with court supervision under continuing mandamus (society-led)	Plaintiffs and victim groups (society-led)
Defendant	Polluting firms in civil PIL (direct); regulatory agencies in administrative PIL (indirect)	Mainly governments and pollution control boards (indirect); firms joined in some cases (direct)	Firms or public authorities (citizen suit, writ of kalikasan); public authorities only (continuing mandamus)	Polluting firms (direct)
Available remedies	Cessation; ecological restoration or its costs; compensation for loss of ecological service functions; punitive damages for intentional violations; no individual compensation	Directions; closure and relocation orders; continuing mandamus; compensation under absolute liability and the polluter pays principle	Environmental protection and rehabilitation at the violator's cost, trust funds (citizen suit); no damages for individual petitioners (writ of kalikasan)	Compensatory damages; no punitive damages

Variable	Procuratorial PIL (China)	Constitutional PIL before the Supreme Court (India)	Citizen suit and special writs (Philippines)	Victim-led litigation (Japan)
Enforcement	Court judgment and procuratorial follow-up; most administrative cases resolved before trial	Dependent on executive authorities; prolonged judicial supervision	Court enforcement; periodic reporting under continuing mandamus	Civil execution

Source: authors' elaboration based on the legal sources cited in Parts 3.1, 3.2 and 4.1.

3.1 State-led PIL models

State-led PIL models share an institutional logic in which a state organ controls the conduct of environmental litigation, regardless of whether it also initiates the proceedings. The authority of the enforcement actor is derived from statutory or constitutional provisions, and thus reflects a public mandate rather than the interests or voluntary action of non-state actors. Correspondingly, the incentive structure is largely top-down. Decisions to pursue enforcement are shaped by institutional responsibilities, political direction, or judicial initiative, rather than by the independent motivations of affected communities or civil society organizations.

China's procuratorial PIL system is widely regarded as the most fully developed example of state-led PIL in Asia. Its legislative framework was introduced in stages. A decisive turning point came in 2014, when the Communist Party of China formally endorsed the establishment of a procuratorial PIL mechanism as part of its broader legal reform agenda[14]. In July 2015, the Standing Committee of the National People's Congress authorised a two-year pilot of this mechanism in thirteen provincial-level regions[15]. It was subsequently formalised in 2017 through amendments to the Civil Procedure Law of the People's Republic of China and the Administrative Procedure Law of the People's Republic of China, thereby providing a clear statutory basis for procuratorial PIL. In particular, Article 58(2) of the current Civil Procedure Law (Article 55(2) after the 2017 amendment) authorises people's procuratorates to initiate civil PIL where no eligible actors have acted, or where such actors have failed to do so. At the same time, Article 25(4) of the Administrative Procedure Law enables procuratorates to bring administrative PIL against government agencies that have abused their powers or neglected their environmental responsibilities.

The institutional logic of this model reflects a deliberate design choice. The procuratorate is equipped with investigative powers that are not available to non-state actors, including the ability to obtain information from administrative bodies and access official data. It is also subject to fewer financial constraints than civil society organisations. Its position within the party-state structure further strengthens its capacity to act. In practice, this allows procuratorial bodies to require administrative agencies to disclose evidence, issue pre-litigation recommendations, and pursue cases that would be difficult for private actors to initiate or sustain[16].

On the other hand, this model also raises a number of related concerns. Its high success and compliance rates, which the Supreme People's Procuratorate reports for PIL across all fields rather than for environmental cases alone[17], often presented as indicators of effectiveness, may also reflect patterns of selective enforcement. In particular, there is evidence that procuratorial bodies tend to focus on less complex or lower-risk cases, while avoiding disputes that involve politically sensitive ac-

[14] CHINA. Decision of the CPC Central Committee concerning several major issues in comprehensively advancing governance according to law, 23 October 2014. Available at: https://www.chinalawtranslate.com/en/fourth-plenum-decision/. Access on: 30 Mar. 2026.

[15] CHINA. Decision of the Standing Committee of the National People's Congress on authorizing the Supreme People's Procuratorate to launch the pilot program of initiating public interest litigations in certain areas, 1 July 2015. Available at: https://en.spp.gov.cn/publicinterestlitigationprosecution1.html. Access on: 31 Mar. 2026.

[16] WANG, Yueduan; XIA, Ying. Judicializing environmental politics? China's procurator-led public interest litigation against the government. *China Quarterly*, v. 253, 2023, p. 90-96. Available at: https://doi.org/10.1017/S0305741022001709. Access on: 2 Apr. 2026.

[17] SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA. *Public interest litigation grows steadily*, top procuratorate says, 10 February 2026. Available at: https://en.spp.gov.cn/2026-02/10/c_1160488.htm. Access on: 1 Apr. 2026

tors, including entities with strong state connections[18]. This suggests that case selection may be influenced by strategic or political considerations. Questions also arise regarding institutional independence, as prosecutorial action remains closely embedded within the broader party-state structure and may depend on central direction and local political support rather than a fully autonomous mandate[19]. In addition, the expanding role of the procuratorate, while formally conceived as supplementary, may in practice reduce the space for participation by civil society organisations. Taken together, these features indicate that the strengths of the model in terms of centralised enforcement may be accompanied by trade-offs in relation to neutrality, independence, and pluralism in environmental governance[20].

From a different perspective, India's judicially driven PIL model represents a distinct but, in some respects, institutionally comparable approach, grounded in a particular constitutional logic that places the judiciary at the centre of environmental governance. This development builds on the expansive interpretation of Article 21 of the Constitution of India, through which the Supreme Court has linked the right to life with environmental protection, read together with Articles 32, 48A, and 51A(g)[21]. The landmark M.C. Mehta v. Union of India[22] illustrates this approach. In that case, the Court relaxed traditional rules of standing by allowing public-spirited individuals to act on behalf of affected communities. It also accepted informal modes of access, including petitions submitted by letter, giving rise to what is often described as epistolary jurisdiction. More broadly, the Court framed its role in terms of a constitutional obligation to protect fundamental rights, which in turn supported the development of more flexible procedural tools and remedies. These included the recognition of compensation within constitutional proceedings and the articulation of doctrines such as absolute liability for hazardous activities. Over time, this approach has been further developed through the incorporation of core environmental principles, including the precautionary principle and the polluter pays principle, into constitutional reasoning[23]. This article focuses on constitutional PIL before the Supreme Court. Established in 2010, the National Green Tribunal has statutory authority to order relief, compensation and restitution for damage to property and the environment[24]. Its inclusion would strengthen the compensatory dimension of the Indian system, so the assessment below is limited to constitutional PIL. A similar rights-based judicial approach has emerged elsewhere in South Asia, where courts have reinterpreted constitutional rights to oversee governmental responses to environmental and climate-related harm[25].

From an institutional perspective, the Indian model operates through a layered and increasingly judicialised structure, which explains its classification as a state-led model: standing is open, but the Court controls the proceedings once a petition is admitted. At the initial stage, proceedings may be triggered by individuals or civil society actors. However, once a petition is admitted, the Court assumes effective control over the direction of the case, exercising broad discretion over admissibility, the design of remedies, and the supervision of enforcement. This is most clearly reflected in the use of the *continuing mandamus*, under which the Court does not dispose of a case through a single final judgment, but instead retains jurisdiction, issuing ongoing directions, requiring periodic reports, and monitoring compliance over time[26]. This institutional logic has been further extended through the development of *suo motu* jurisdiction, which allows the Court to initiate proceedings on its own initiative in response to environmental issues identified through media reports or other sources. In doing so, it reduces the reliance on private litigants as

[18] CAMPBELL, Nicholas. Individual rights and the environmental public interest: a comparison of German and Chinese approaches to environmental litigation. *Review of European, Comparative & International Environmental Law*, v. 32, n.1, p. 113-114, 2023.

[19] WANG, Yueduan; XIA, Ying. Judicializing environmental politics? China's procurator-led public interest litigation against the government, above cited.

[20] CAMPBELL, *Individual rights and the environmental public interest*, above cited, p. 111.

[21] INDIA. *The Constitution of India*, 2020. Available at: https://www.indiacode.nic.in/bitstream/123456789/16124/1/the_constitution_of_india.pdf. Access on: 3 Apr. 2026.

[22] *M.C. Mehta And Anr v. Union of India & Ors*, 20 December 1986. Available at: https://indiankanoon.org/doc/1486949/. Access on: 3 Apr. 2026.

[23] *Vellore Citizens Welfare Forum v. Union of India & Ors*, 28 August 1996. Available at: https://indiankanoon.org/doc/1934103/. Access on: 3 Apr. 2026.

[24] INDIA. The National Green Tribunal Act, 2010, s. 15

[25] CARVALHO, Délton Winter de. Constitucionalismo climático como fundamento transnacional aos litígios climáticos. *Revista de Direito Internacional*, Brasília, v. 19, n. 1, p. 192-205, 2022. DOI: 10.5102/rdi.v19i1.7883. Access on: 20 Oct. 2026

[26] *M.C. Mehta v. Union of India & Others*, 22 September 1987. Available at: https://indiankanoon.org/doc/1208005/. Access on: 3 Apr. 2026.

the primary trigger for judicial action[27]. Overall, these characteristics reveal a model in which the judiciary functions not merely as an adjudicator of disputes but as an active supervisor of environmental governance. While this design has been widely praised for enhancing access to justice, addressing administrative failures, and generating immediate public visibility and pressure[28], it also raises enduring concerns about judicial overreach, institutional balance and long-term effectiveness[29]. In particular, while the model is effective at drawing constitutional attention and securing short-term compliance, this does not always lead to lasting environmental outcomes[30], which ultimately depend on the willingness and capacity of executive authorities to implement and maintain the Court's directives.

3.2 Society-led PIL models

Society-led PIL models are based on a different institutional logic, in which non-state actors, such as civil society organisations or affected communities, assume primary responsibility for initiating and directing litigation. The authority to act is grounded in rules on legal standing, which may be established by statute, developed through judicial practice or recognised through constitutional interpretation. At the same time, the impetus for enforcement does not originate from the state, but from the interests, priorities, and resources of these actors. As a result, the incentive structure operates from the bottom up, with enforcement shaped by the concerns of those directly affected by environmental harm, or by organisations acting on their behalf.

The Philippines provides one of the more developed examples of a society-led PIL model in the Asian context. Its framework is based on a combination of constitutional recognition, statutory provisions, and procedural rules developed by the courts. Its constitutional foundation lies in 1987 Constitution of the Philippines, which recognises the right of the people to a "balanced and healthful ecology"[31]. However, the transformative step came through judicial interpretation in Oposa v. Factoran[32], where the Supreme Court of the Philippines treated this provision as a self-executing and enforceable right. In doing so, the Court significantly expanded traditional rules of standing by recognising intergenerational representation, allowing petitioners to act not only for themselves but also for future generations. This marked a shift away from classical standing requirements based on direct and personal injury, toward a broader conception of environmental rights as collective and public in nature. At the statutory level, this openness is further reflected in sector-specific legislation such as the Clean Air Act[33] and the Ecological Solid Waste Management Act[34], which authorise "any citizen" to initiate proceedings, although the scope and design of such provisions remain uneven across different environmental domains.

The model was further elaborated by the 2010 Rules of Procedure for Environmental Cases, which established three distinct mechanisms. The citizen suit enables any Filipino citizen, including those acting on behalf of future generations, to enforce environmental laws through an ordinary civil action[35]. Remedies in citizen suits focus on environmental protection and rehabili-

[27] *In Re: Kancha Gachibowli Forest, State of Telangana*, April 2025. Available at: https://api.sci.gov.in/supremecourt/2025/17597/17597_2025_2_13_60673_Order_03-Apr-2025.pdf. Access on: 3 Apr. 2026.

[28] GILL, Gitanjali Nain. Environmental justice in India: the National Green Tribunal and expert members. *Transnational Environmental Law*, v. 5, n. 1, 2016, p. 175-205. Available at: https://www.cambridge.org/core/services/aop-cambridge-core/content/view/2E26B50742FFB8BB743557132DC7DD66/S2047102515000278a.pdf. Access on: 3 Apr. 2026.

[29] GILL, Gitanjali Nain. Mapping the power struggles of the National Green Tribunal of India: the rise and fall? *Asian Journal of Law and Society*, v. 7, 2020, p. 85-126. Available at: https://www.cambridge.org/core/services/aop-cambridge-core/content/view/CB60FE6258D273938062A5898BD997B7/S2052901518000281a.pdf. Access on: 3 Apr. 2026.

[30] Supreme Court closes suo motu case on polluted rivers after five years of near-inaction. *The Hindu*, Feb. 2026. Available at: https://www.thehindu.com/news/national/supreme-court-closes-suo-motu-case-on-polluted-rivers-after-five-years-of-near-inaction/article70672501.ece. Access on: 3 Apr. 2026.

[31] PHILIPPINES. *The Constitution of the Republic of the Philippines*, 1987, Article II, Section 16. Available at: https://www.officialgazette.gov.ph/constitutions/1987-constitution/. Access on: 4 Apr. 2026.

[32] *Oposa v. Factoran*, GR No. 101083, 30 July 1993. Available at: https://lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html. Access on: 4 Apr. 2026.

[33] PHILIPPINES. *Clean Air Act 1999* (R.A. No. 8749), Section 41. Available at: https://lawphil.net/statutes/repacts/ra1999/ra_8749_1999.html. Access on: 4 Apr. 2026.

[34] PHILIPPINES. *Ecological Solid Waste Management Act 2001* (R.A. No. 9003), Section 52. Available at: https://lawphil.net/statutes/repacts/ra2001/ra_9003_2001.html. Access on: 4 Apr. 2026.

[35] PHILIPPINES. *Rules of Procedure for Environmental Cases 2010* (A.M. No. 09-6-8-SC), Rule 2, Section 5. Available at: https://lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html. Access on: 5 Apr. 2026.

tation, including rehabilitation programmes funded by violators and contributions to a special trust fund[36]. The writ of kalikasan provides a special remedy for environmental damage of such magnitude that it threatens the life, health or property of inhabitants in two or more cities or provinces. It may be brought directly before the Supreme Court or the Court of Appeals against public or private actors, but does not permit damages to be awarded to individual petitioners[37]. The writ of continuing mandamus, in contrast, applies only to government agencies or officers that unlawfully fail to perform environmental duties, allowing courts to monitor compliance over time[38]. The broad approach to access is balanced by stricter requirements at the merits stage, with courts requiring applicants to satisfy evidentiary thresholds and establish a scientific basis for the alleged harm[39]. The Philippine model can therefore be characterised as "access-friendly but merits-disciplined". Its bottom-up design promotes transparency and enables claims against both public authorities and private actors, but its effectiveness depends on the capacity, resources and expertise of civil society actors.

Japan's environmental PIL model reflects a markedly different institutional logic from more expansive systems such as the Philippines. Rather than adopting a broad, citizen-based approach, the Japanese model remains anchored in a more restrictive framework centred on the requirement of a "legal interest" held by the plaintiff. This structure is grounded in the Administrative Case Litigation Act, which provides that actions for the revocation of administrative decisions may only be brought by those who can demonstrate a concrete and legally protected interest[40]. Although the law allows courts to interpret "legal interest" with some flexibility, it does not establish a generalised citizen suit mechanism for environmental protection. As a result, environmental claims are not typically framed as open-ended public interest litigation. Instead, they are pursued through administrative challenges to permits, environmental impact assessments, or regulatory decisions, or through tort claims under Article 709 of the Civil Code[41] based on individual rights such as health, bodily integrity, or the right to a stable living environment[42]. In this sense, environmental concerns must generally be translated into specific, individualised harm in order to be justiciable.

A comparison with the Philippines highlights the difference in underlying approach. In the Philippines, environmental litigation is structured around the protection of the public interest, and access to the courts is correspondingly broad. Citizens, civil society organisations and even representatives of future generations may bring claims without needing to demonstrate direct personal injury. By contrast, the Japanese model follows a more traditional, rights-based approach, requiring plaintiffs to show that their own legal interests have been directly affected. Broader environmental issues can therefore only be addressed through litigation where they are closely connected to identifiable harm suffered by particular individuals, often local residents or affected groups[43]. Put differently, the Philippine model prioritises openness and collective interests, whereas the Japanese model emphasises individual legal rights, with collective concerns entering the system through aggregated individual claims.

4 Assessing the four models across the three dimensions

4.1 The deterrence dimension

Each model is assessed against the three deterrence criteria set out in Part 2.3.1 including enforcement capacity (D1), predictability (D2) and sanction design (D3).

[36] PHILIPPINES. *Rules of Procedure for Environmental Cases 2010*, above cited, Rule 5, Section 1.

[37] PHILIPPINES. *Rules of Procedure for Environmental Cases 2010*, above cited, Rule 7, Sections 1 and 15.

[38] PHILIPPINES. *Rules of Procedure for Environmental Cases 2010*, above cited, Rule 8, Section 1.

[39] *Water for All Refund Movement, Inc. v. Manila Waterworks and Sewerage System, Maynilad Water Systems, Inc., and Manila Water Company, Inc.*, GR No. 212581, 28 March 2023. Available at: https://lawphil.net/judjuris/juri2023/mar2023/gr_212581_2023.html. Access on: 6 Apr. 2026.

[40] JAPAN. *Administrative Case Litigation Act 1962* (Act No. 139), Article 9. Available at: https://www.japaneselawtranslation.go.jp/en/laws/view/3781/en. Access on: 8 Apr. 2026.

[41] JAPAN. *Civil Code* (Act No. 89 of 1896), Article 709.

[42] NISHIKAWA, Yumeno Grace. Japanese climate litigation and the development of personal rights. *Chinese Journal of Environmental Law*, v. 7, n. 2, p. 220-225, 2023. Available at: https://doi.org/10.1163/24686042-12340106. Access on: 10 Apr. 2026

[43] *Yokosuka Climate Case*, 2019. Available at: https://www.climatecasechart.com/document/yokosuka-climate-case_2ff2. Access on: 12 Apr. 2026.

Procuratorial PIL has the strongest capacity under the first criterion, supported by the investigative powers discussed in Part 3.1. Empirical work by Wang and Xia on China's procuratorial PIL system suggests that the procuratorate's position within the political structure, combined with a degree of autonomy from local pressures and substantial institutional resources, allows it to strike a practical balance between holding administrative agencies accountable and managing resistance at the local level[44]. In relation to the second criterion, predictability, the assessment is more qualified. The procuratorate's formal mandate contributes to a certain level of consistency in enforcement. At the same time, however, its position as an insider within the political system may give rise to selective enforcement dynamics. As discussed below, this can affect the predictability of outcomes, particularly in cases involving politically sensitive defendants.

Available data further illustrate this underlying tension. A notable feature of the Chinese model is the pronounced imbalance between the two forms of proceedings, with administrative PIL accounting for an overwhelming majority of cases compared to civil PIL. The Supreme People's Procuratorate reports that prosecutors filed over 1.24 million PIL cases between the 2015 pilot programme and November 2025, including approximately 1.12 million administrative cases and nearly 124,000 civil cases. These figures cover all areas of procuratorial PIL, not environmental cases alone, and are cited here solely to illustrate the relative prominence of administrative and civil proceedings[45]. This distribution reflects the institutional advantages of the procuratorate in engaging with administrative bodies and resolving issues within the state system. At the same time, it suggests that enforcement operates predominantly through administrative channels rather than through public court proceedings. From a deterrence perspective, this has implications for predictability. Where enforcement outcomes take the form of administrative intervention rather than publicly articulated judicial decisions, corporate actors may find it more difficult to anticipate the likely consequences of non-compliance.

Judicially driven PIL in India has a more moderate deterrent capacity. With respect to enforcement capacity, the model remains structurally dependent on the executive branch for the implementation of judicial directions. This is the same set of institutions whose failures in environmental enforcement often give rise to PIL in the first place. As reflected in the M.C. Mehta line of cases, the Supreme Court has repeatedly noted that the problem is not an isolated instance of inaction, but a more persistent pattern of weak implementation across different administrations. The development of the *continuing mandamus* can be understood as a response to this limitation, allowing the Court to retain oversight and issue ongoing directions. However, this mechanism does not remove the underlying dependence. The need for prolonged judicial supervision over extended periods suggests that the gap in enforcement cannot be fully addressed through judicial intervention alone. In terms of predictability, the model also presents certain limitations. The Court's use of *suo motu* jurisdiction, together with its broad discretion in selecting and shaping cases, introduces a degree of uncertainty into the enforcement process. For corporate actors, this makes it difficult to anticipate whether proceedings will be initiated, and if so, in what form and at what point. As a result, the model provides a less stable basis for anticipating the consequences of non-compliance.

Citizen suit PIL in the Philippines has a relatively weak deterrent capacity under the first two criteria. In terms of enforcement capacity, individual litigants, civil society organisations, and community groups typically operate with more limited investigative powers and fewer resources than corporate defendants. While the 2010 Rules of Procedure for Environmental Cases reduce some barriers, such as by deferring or waiving filing fees and broadening standing, they do not eliminate the underlying imbalance in resources. This asymmetry can be further exploited through strategic litigation against public participation (SLAPP)[46], which places additional pressure on plaintiffs and may deter or constrain their ability to pursue claims effectively. With respect to predictability, enforcement is largely contingent on the initiative of private actors. The decision to bring a case depends on the motivation, capacity, and resources of particular individuals or organisations, and therefore varies across situations. As a result, corporate

[44] WANG, Yueduan; XIA, Ying. *Judicializing environmental politics*, above cited, p. 90.

[45] SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA, *Public interest litigation grows steadily,* top procuratorate says, above cited.

[46] PHILIPPINES. *Rules of Procedure for Environmental Cases 2010*, above cited, Rule 6.

actors may find it difficult to form consistent expectations about enforcement exposure, since the likelihood of proceedings depends less on the occurrence of violations as such, and more on whether a capable actor chooses to initiate litigation.

Victim-led litigation in Japan, as illustrated by the Minamata case, presents a more mixed picture. In situations where certain conditions are met, such as clearly identifiable harm, a well-organised group of affected individuals, and a defendant with sufficient financial capacity, the model is capable of producing meaningful financial consequences. The 1973 judgment of the Kumamoto District Court in the Minamata litigation[47], which required Chisso Corporation to pay substantial compensation, illustrates how this form of litigation can impose significant costs on a polluter when these conditions are in place. At the same time, this effect is closely tied to the specific circumstances of the case. The impact observed in Minamata depended on a combination of factors that are not always present in other contexts. In terms of predictability, this model performs more weakly than the others. While it can impose significant costs in individual cases, it does not create a consistent pattern of enforcement. As a result, corporate actors are less able to form stable expectations about potential liability across their routine environmental activities.

The third criterion, sanction design, differs considerably among the four models. In China, the legal framework permits procuratorates to seek the costs of ecological restoration, compensation for the loss of ecological service functions and, in cases of intentional violations causing serious consequences, punitive damages[48]. In India, the Supreme Court has established absolute liability for hazardous activities and the polluter pays principle, and can order polluting facilities to be closed or relocated[49]. In the Philippines, remedies in citizen suits focus on environmental rehabilitation at the violator's expense, whereas the writ of kalikasan does not allow damages to be awarded to individual petitioners[50]. In Japan, victim-led litigation provides compensatory damages only, since Japanese tort law does not recognise punitive damages. Sanction design thus strengthens the deterrent capacity of the Chinese and Indian models while constraining that of the Japanese model.

Overall, models in which a state organ controls proceedings, particularly procuratorial PIL, have the greatest deterrent capacity because of their investigative powers and the sanctions at their disposal. However, this advantage is qualified by the risk that these same features may enable selective enforcement with limited public visibility. Society-led models face resource constraints that weaken their deterrent capacity, regardless of how broadly standing is defined. Victim-led litigation can impose substantial costs in individual cases, but it does not generate the sustained pressure needed to ensure that firms internalise expected costs in their routine activities.

4.2 The compensation dimension

Each model is assessed against the compensation criteria set out in Part 2.3.2 (C1–C4), with ecological remediation (C4a) assessed separately from redress for individuals and communities (C4b).

Procuratorial PIL presents a more complex picture when assessed against the compensation criteria. With respect to the first criterion, the model does alleviate certain barriers faced by affected communities. Because proceedings are initiated and conducted by the procuratorate, individuals are not required to bear litigation costs directly, which can facilitate access in a limited sense. However, more substantial limitations arise in relation to the second and third criteria. In terms of independence, the procuratorate remains a state organ operating within the same institutional framework as many of the agencies and enterprises it may be required to challenge. This position raises questions about the extent to which enforcement decisions can be separated from broader political considerations, particularly in cases involving actors with close links to the state. A further concern relates to the role of affected communities in the process. The model provides certain opportunities for consultation, including public announcements

[47] FUNABASHI, Harutoshi. Minamata disease and environmental governance. *International Journal of Japanese Sociology*, v. 15, n. 1, p. 7-25, 2006. Available at: https://doi.org/10.1111/j.1475-6781.2006.00082.x. Access on: 14 Apr. 2026.

[48] CHINA. *Civil Code of the People's Republic of China (2020)*, arts. 1232, 1234 and 1235.

[49] *M.C. Mehta And Anr v. Union of India & Ors*, 20 December 1986, above cited; *Vellore Citizens Welfare Forum v. Union of India & Ors*, above cited.

[50] PHILIPPINES. *Rules of Procedure for Environmental Cases 2010*, above cited, Rule 5, Section 1; Rule 7, Section 15.

before civil PIL proceedings are initiated and hearings that procuratorates may conduct while handling cases[51], but the procuratorate retains control over whether to bring a case, which claims to pursue and what remedies to seek. As a result, communities are positioned primarily as beneficiaries rather than as participants. Regarding outcomes, remedies in procuratorial PIL are generally aimed at environmental restoration or ecological rehabilitation rather than financial compensation for individuals or communities[52]. This reflects the broader institutional role of the procuratorate as an actor tasked with protecting the public interest in general terms, not just representing specific victims. The model is therefore effective in addressing ecological damage but offers limited redress for individuals and communities, who must bring separate claims to seek compensation.

Judicially driven PIL in India presents a moderate profile on the compensation criteria. The relaxation of standing requirements and the acceptance of informal petitions do lower formal barriers to initiating proceedings. In practice, however, such cases often extend over long periods, sometimes spanning years or even decades, as seen in the M.C. Mehta litigation. For affected communities, this means sustaining engagement over an extended timeframe, without any clear assurance of receiving direct financial compensation at the conclusion of the process. With respect to the second criterion, the model is institutionally independent from the executive. However, this independence does not necessarily translate into strong compensatory outcomes. The Court has established a legal basis for compensation through doctrines such as absolute liability for hazardous activities and the polluter pays principle. However, its most frequently used remedies, including injunctions, policy directions and continuing mandamus, focus on future conduct instead of harm already suffered. As a result, while communities may benefit from improved regulatory compliance over time, they do not always receive compensation for losses already incurred. In relation to the third criterion, the constitutional grounding of environmental rights under Article 21 provides an important normative basis for judicial intervention. At the same time, the structure of the model places the Court at the centre of the process. It is the Court, rather than the affected communities, that determines the scope of claims and the nature of remedies. Consequently, although communities may benefit from the outcomes, they have limited influence over how those outcomes are defined.

Citizen suit PIL model in the Philippines performs at a moderate level across the compensation criteria, although with several important qualifications. The deferral of filing fees for citizen suits, the exemption of petitions for the writ of kalikasan from docket fees[53], and the broader rules on standing under the 2010 Rules of Procedure for Environmental Cases do reduce barriers to access in a meaningful way. In relation to the second criterion, civil society actors operating within this framework retain a degree of independence from state institutions, which allows them to pursue cases that public authorities may be less willing to initiate. At the same time, this independence is usually accompanied by resource limitations, which can limit their ability to sustain complex or prolonged litigation. In terms of remedies, the model is effective in addressing ecological damage but offers limited redress for individuals. This limitation stems from the design of the remedies instead of the outcomes of specific cases: the writ of kalikasan expressly excludes damages for individual petitioners, while reliefs in citizen suits primarily aim to protect and restore the environment. Oposa v. Factoran is important for recognising intergenerational standing[54], but as the case did not involve a claim for compensation, it offers little insight into the model's capacity to provide financial redress.

Victim-led litigation in Japan, as illustrated by the Minamata case, shows the strongest performance on the compensation dimension among the four models considered, although this strength depends closely on the conditions in which the model operates. In terms of access, it does not reduce formal costs in the same way as state-led mechanisms. Affected communities must organise and finance proceedings themselves. What the

[51] SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA. *Rules for People's Procuratorates in Handling Public Interest Litigation Cases*, 29 June 2021, arts. 44 and 91. Available at: https://www.chinajusticeobserver.com/law/x/rules-for-handling-of-public-interest-litigation-cases-20210629/chn. Access on: 20 Oct. 2026

[52] YANG, Lei. China's marine environmental public interest litigation: current situation, challenges, and improvement approach — analysis based on 339 cases. *Frontiers in Marine Science*, v. 10, 2023, p. 1302190. Available at: https://doi.org/10.3389/fmars.2023.1302190. Access on: 16 Apr. 2026

[53] PHILIPPINES. *Rules of Procedure for Environmental Cases 2010*, above cited, Rule 2, Section 12; Rule 7, Section 4

[54] *Oposa v. Factoran*, above cited.

model provides instead is a greater degree of substantive control as those who have suffered the harm are directly involved in shaping the litigation, without reliance on an intermediary whose priorities may differ from their own. Comparative studies of transnational corporate litigation show that victim-initiated damages claims can establish direct corporate liability, although their availability depends largely on procedural requirements, including jurisdiction, standing and claimants' capacity[55]. With respect to independence, victim-led litigation performs particularly strongly. Victim groups act outside the state structure and are not subject to the same institutional limitations that may influence public enforcement actors. This allows them, in principle, to pursue claims even where defendants are politically or economically significant. In relation to outcomes, where certain enabling conditions are present, the model is able to address power imbalances in a more direct way. The Minamata litigation, conducted over an extended period, resulted in substantial compensation for a large number of victims, with affected communities retaining control over key decisions, including whether to settle or continue proceedings. Because tort claims are limited to the plaintiffs' own losses, however, the model does not in itself provide a mechanism for remediating ecological damage beyond those losses. Concurrently, these outcomes are closely tied to certain demanding conditions. The effectiveness of the model depends on the presence of clearly identifiable harm, a sufficiently organised group of victims, and a defendant with the financial capacity to provide compensation. Where these conditions are not met, for example, where harm is diffuse, victims are dispersed, or defendants lack resources, the model is less likely to produce satisfactory results.

Overall, the compensation dimension reveals a pattern different from that of deterrence. Procuratorial PIL performs well in ecological remediation but offers limited redress to affected individuals. Victim-led litigation provides the strongest individual redress, but its effectiveness depends on conditions that are uncommon and difficult to replicate through institutional design alone. Constitutional PIL in India and citizen suits in the Philippines occupy an intermediate position. Both provide a legal basis for remediation, but their ability to deliver individual redress is constrained by the remedies most commonly used or, in the Philippines, by the design of the writ of kalikasan.

4.3 The transparency dimension

Each model is assessed against the three transparency criteria set out in Part 2.3.3 (T1–T3).

Procuratorial PIL performs relatively weakly on the transparency dimension across all three criteria. With respect to the first criterion, a defining feature of the model is that more than 95% of administrative PIL cases, across all fields, are resolved before trial, mainly through pre-litigation recommendations[56]. As noted earlier, this administrative pathway may be efficient from an enforcement perspective, but it typically operates without public hearings, without adversarial processes, and without a publicly accessible record. Where cases are handled in this way, affected communities may have limited, if any, visibility as to whether enforcement action has taken place. Regarding the second criterion, the consultative mechanisms discussed in Part 4.2 enable affected persons to submit information and express their views, but the procuratorate retains control over whether to initiate proceedings, which claims to pursue and whether to accept the outcomes. This is a structural feature of the model, not a procedural shortcoming. With respect to the third criterion, the predominantly administrative character of enforcement also limits the extent to which corporate conduct is subject to public scrutiny. Cases resolved through internal recommendations do not produce publicly reasoned judgments, tend to attract less media attention than court-based proceedings, and therefore generate less reputational pressure. As a result, the broader transparency effects commonly associated with public litigation are more limited in this model.

Judicially driven PIL model in India performs relatively strongly on the transparency dimension among state-led models, and in some respects compares favourably with society-led approaches. With regard to the first criterion, proceedings before the Supreme Court

[55] MORAES, Patricia Almeida de; PAMPLONA, Danielle Anne. Os significados dos casos Kiobel e Vedanta para a proteção de direitos humanos. *Revista de Direito Internacional*, Brasília, v. 16, n. 3, p. 9-22, 2019. DOI: 10.5102/rdi.v16i3.6603. Access on: 20 Oct. 2026

[56] SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA. *Public interest litigation grows steadily*, top procuratorate says, above cited.

are public and often receive sustained media coverage. The availability of mechanisms such as letter petitions, together with a broad approach to standing, allows cases to be initiated without requiring significant financial or professional resources. In relation to the second criterion, the model formally allows any public-spirited individual or organisation to bring a case, and the Court's use of suo motu jurisdiction further reduces reliance on private actors to initiate proceedings. At the same time, once a case is admitted, control over the process largely shifts to the Court. The role of the initiating party in shaping the direction or outcome of the proceedings is therefore limited. Participation is thus more readily enabled at the entry stage than maintained throughout the litigation process. With respect to the third criterion, the M.C. Mehta case illustrates how this model can generate sustained public attention to environmental issues over extended periods. By framing environmental protection as part of the right to life under Article 21 of the Constitution, and through the visibility of high-profile cases, the Court's approach contributes to a form of reputational accountability that affects not only the parties to the case, but also a wider range of actors.

Citizen suit PIL in the Philippines performs strongly across all three transparency criteria, and its institutional design reflects a clear emphasis on accessibility and participation. On the first criterion, public accessibility is strengthened by two key features. The Writ of Kalikasan allows cases involving large-scale environmental harm to be filed directly before the Supreme Court or the Court of Appeals, ensuring that such matters are addressed at a high judicial level from the outset. Concurrently, the broad standing doctrine, under which any individual, non-governmental organisation, or public interest group may initiate proceedings without demonstrating direct damage, ensures that corporate environmental conduct can be brought into a public forum even where affected communities lack the resources to litigate independently. Regarding the second criterion, participation is embedded in the design of the model. Because the enforcement actor is the citizen or organisation that chooses to initiate proceedings, access to the process does not depend on the discretion of a state authority. This creates a structural connection between the motivations of the enforcing party and the concerns of those affected by environmental harm, and distinguishes the model from state-led approaches, where decisions to pursue cases may be influenced by broader institutional considerations. On the third criterion, the Rules of Procedure for Environmental Cases 2010 provide an explicit safeguard against SLAPP under Rule 6. When this defence is invoked, the party raising it must present substantial evidence that its conduct constituted a legitimate effort to protect the environment, while the party bringing the action must establish by a preponderance of the evidence that the case is not a SLAPP. If the defence is upheld, dismissal is with prejudice. This mechanism limits the use of counter-litigation as a means of discouraging public interest claims, and helps preserve the conditions for sustained public scrutiny of corporate environmental conduct.

Victim-led litigation, as illustrated by Japan, presents a more uneven profile across the three transparency criteria than the other models examined. On the first criterion, victim-led litigation before ordinary civil courts produces a formal public record through the proceedings themselves. Evidence is presented, witnesses are heard, and judgments are issued, which makes the process publicly accessible in a basic sense. Nevertheless, the model does not incorporate specific institutional features aimed at broadening access when standing is generally limited to directly affected parties. As a result, the extent of public accessibility depends largely on the capacity and persistence of the damaged community, as well as on the level of attention the case receives from media and civil society, rather than on features built into the legal framework. On the second criterion, victim-led litigation performs most strongly among the four models. Because affected individuals act as the enforcement actors, participation is both direct and self-determined. Decisions about whether to settle, continue proceedings, or define the nature of the harm are made by the victims themselves. This results in a closer alignment between the enforcement process and the interests of those directly affected than in any of the other models considered. In terms of the third criterion, the transparency potential of victim-led litigation follows a similar pattern to its performance on compensation. It can be strong where certain conditions are present, but cannot be assumed in their absence. What distinguishes this model is the self-directed nature of participation. Because affected individuals control the proceedings, the visibility generated reflects their own account of the harm, rather than an interpretation framed by a state authority. The Minamata case illustrates this dynamic, although its particular circumstances limit the extent to

which it can be generalised as a broader structural feature.

Overall, the findings on transparency broadly contrast with those on deterrence. Procuratorial PIL performs weakest because enforcement takes place mainly through administrative channels. Constitutional PIL in India performs better in terms of accessibility and reputational pressure, although participation becomes more limited once proceedings begin. Citizen suits in the Philippines are strong by design, while victim-led litigation offers the greatest scope for participation but depends on case-specific conditions. Transparency therefore depends less on who initiates a case than on the role that the legal framework allows affected communities to play throughout the proceedings.

4.4 Cross-dimensional analysis: conditional trade-offs

The findings from Parts 4.1 to 4.3 are summarised in Table 2.

Table 2. Structural accountability profiles of four Asian PIL models

Model	Deterrence	Compensation	Transparency
Procuratorial PIL (China)	Relatively strong (D1 strong; D2 moderate; D3 strong)	Mixed: strong ecological remediation, weak individual redress (C1 strong; C2 moderate; C3 weak; C4a strong; C4b weak)	Relatively weak (T1 weak; T2 weak to moderate; T3 weak)
Judicially driven PIL (India)	Moderate (D1 moderate; D2 weak; D3 strong)	Moderate (C1 strong; C2 moderate; C3 moderate; C4a moderate; C4b moderate)	Relatively strong (T1 strong; T2 moderate; T3 strong)
Citizen suit and special writs (Philippines)	Relatively weak (D1 weak; D2 weak; D3 moderate)	Moderate (C1 strong; C2 moderate; C3 moderate; C4a strong; C4b weak)	Strong (T1 strong; T2 strong; T3 strong)
Victim-led litigation (Japan)	Weak; strong only under conditions (i)–(iii) (D1 weak; D2 weak; D3 weak to moderate)	Strong individual redress, weak ecological remediation; condition-dependent (C1 weak; C2 moderate; C3 condition-dependent; C4a weak; C4b strong)	Uneven (T1 moderate; T2 strong; T3 condition-dependent)

Note: Ratings refer to the institutional capacity of each model under the criteria set out in Part 2.3, not to measured outcomes. Conditions: (i) identifiable harm; (ii) organised victims; (iii) a solvent defendant.

Source: authors' assessment based on Parts 4.1–4.3.

The table reveals a consistent pattern across all four models: no model performs strongly across all three dimensions simultaneously. More notably, models with stronger deterrent capacity tend to perform less well on transparency, while those that perform better on compensation and transparency tend to be less effective in deterrence terms. This pattern aligns with the three propositions outlined in Part 2.4, although a comparison of four models alone cannot establish that the pattern is inevitable. The analysis instead identifies how each model's design shapes its accountability profile and the conditions under which this relationship holds.

Strong deterrence typically relies on concentrated enforcement authority, including investigative powers, institutional leverage, and the ability to compel compliance. However, these features often lead enforcement to operate through administrative channels rather than public proceedings, which limits transparency. They also tend to orient outcomes toward state-defined objectives rather than remedies shaped by affected communities, which constrains compensation. Procuratorial PIL re-

flects this dynamic particularly clearly as the factors that facilitate its enforcement capacity are closely linked to the opacity and state-controlled enforcement that affect its performance on the other two dimensions. This relationship applies where pre-litigation settlements are not subject to disclosure requirements, as is currently the case in China.

Adequate compensation generally depends on damaged communities having a certain degree of control over the proceedings, including decisions about the claims pursued, the remedies sought, and the acceptance of outcomes. In practice, however, this level of control is closely tied to the organisational capacity and resources of those communities, which are often more limited than those of corporate defendants. Where such capacity is lacking, the compensatory strengths of society-led models are correspondingly reduced, along with any deterrent effect that effective compensation might otherwise produce. Victim-led litigation in Japan reflects this dynamic because its strongest compensatory outcomes arise under conditions that are relatively demanding and not consistently present across cases. This relationship holds when harm is widespread, victims are dispersed or defendants lack sufficient resources. When these conditions do not apply, victim control can provide substantial redress.

Meanwhile, a high degree of transparency generally depends on open proceedings and the active involvement of independent civil society actors. These features, however, tend to operate outside the administrative channels that often support efficient enforcement. The same independence that allows civil society to bring corporate conduct into the public scrutiny also limits its ability to compel compliance when compared with state-based enforcement. The experience of citizen suit PIL in the Philippines demonstrates that its relatively strong performance on transparency is accompanied by more limited enforcement capacity and less consistent compensatory outcomes. This relationship is less pronounced where procedural rules link private initiative to state action under judicial supervision, as partly occurs through the writ of continuing mandamus.

These trade-offs depend on specific conditions rather than being fixed. They arise when the conditions identified in Part 2.4 are present, and the comparison suggests that these conditions, not the dimensions themselves, create the tension. None of the models examined has altered these conditions sufficiently to perform strongly across all three dimensions, but this does not mean that such a model is impossible. The fact that these trade-offs are conditional provides the basis for the design-oriented approach developed in Part 5.

5 Implications for PIL-based corporate environmental accountability

5.1 Rethinking PIL-based corporate environmental accountability

The analysis in Parts 3 and 4 suggests several implications for how PIL-based corporate environmental accountability is approached in comparative legal scholarship. As the typology in Part 3 shows, PIL does not constitute a single, uniform mechanism with a shared institutional logic. Rather, it comprises a set of models that differ in terms of who controls proceedings, the source of their authority, and the structural effects these features have on accountability outcomes. Approaching PIL as a single category, for example, by asking whether it is an effective tool for corporate environmental accountability, assumes a level of consistency that the analysis does not support. A more useful approach is to assess particular models against specific dimensions of accountability, recognising that stronger performance in one dimension may be associated with weaker performance in others.

A related implication concerns how accountability gaps are understood. Policy discussions on PIL reform often frame these gaps as matters of implementation such as arising from limited resources, weak sanctions, or procedural obstacles that could be addressed through improved institutional design. The analysis indicates that some gaps stem from the conditions in which each model operates, not merely from implementation problems. This distinction guides the reform agenda, as measures targeting one dimension without changing these conditions may simply shift the gap to another dimension instead of closing it.

5.2 Designing PIL for context: A sequential approach

The conditional trade-offs identified in this analysis suggest that no single PIL model is best suited to ensuring corporate environmental accountability in every context. Proposals that seek to replicate a particular model, without considering the trade-offs built into its institutional design, are unlikely to achieve the expected results. The more relevant question is not which model is best in general, but which model is most appropriate given the specific accountability gap and institutional setting in question.

A context-sensitive approach to PIL design begins with two preliminary questions. The first is to identify the primary accountability deficit in a given setting. Different institutional contexts present different patterns of weakness. Where state enforcement capacity is relatively strong but space for civil society is limited, deterrence may be comparatively effective, while transparency and compensation remain underdeveloped. In such cases, reforms that expand opportunities for community participation in enforcement processes, or that introduce mechanisms for more direct compensation alongside ecological restoration measures, may address the most immediate gaps without undermining existing enforcement capacity. By contrast, where civil society is active but state enforcement remains weak, the main deficit is more likely to concern deterrence. In these contexts, strengthening the connections between civil society litigation and state enforcement, for example, by requiring regulatory authorities to respond to successful civil PIL judgments, may be more effective than attempting to replicate a state-led model in full.

The second question concerns the institutional conditions that are actually in place. As the typology in Part 3 indicates, different models rely on different enabling factors. State-led approaches depend on the presence of an enforcement body that has both a degree of independence from political influence and the technical capacity to investigate environmental harm. Society-led models, on the other hand, require an open space for civil society, supportive rules on legal standing, and sufficient organisational capacity among communities or advocacy groups. Victim-led litigation, as illustrated in Japan, rests on a more demanding set of conditions: harm that is clearly identifiable and concentrated, a well-organised group of victims, and a corporate defendant with the resources to meet substantial compensation claims. Where these conditions are not present, adopting the formal structure of this model is unlikely to produce similar accountability outcomes.

These two questions point to a step-by-step approach to PIL reform. The first step is to identify which dimension of accountability is most lacking in the given context. The next is to assess which institutional conditions are in place to support a model capable of addressing that gap. Once a model is chosen, the trade-offs it creates for the other dimensions should be recognised. Since these trade-offs depend on specific conditions, complementary measures that alter those conditions can help reduce them. This reflects the article's central argument: the trade-offs are not inevitable, but they are likely to persist unless the factors underlying them are addressed.

6 Conclusion

This article explored how four PIL models in Asia operate as mechanisms for corporate environmental accountability. Applying a framework based on deterrence, compensation and transparency, it classified the models according to who controls the proceedings and evaluated them against common criteria. The analysis showed that each model has a distinct accountability profile shaped by its institutional design.

The comparative findings are consistent with the three conditional propositions outlined in Part 2.4. The accountability gaps across the four models stem from the institutional conditions that shape each dimension, instead of coming from implementation alone. Concentrated enforcement authority tends to limit transparency and community participation; meaningful victim control depends on levels of organisation and resources that affected communities often lack; and civil society independence, while supporting public scrutiny, is associated with more limited enforcement capacity. None of the models examined fully avoids these trade-offs, and none achieves strong performance across all three dimensions as a result. Because these trade-offs depend on conditions, they can be moderated through institutional design, although they cannot be ignored.

For comparative legal scholarship, these findings indicate that PIL should not be treated as a single, uni-

form category, and that differences in accountability outcomes are better understood in terms of institutional design and its conditions, not only implementation quality. For reform practice, they suggest that greater value lies in identifying the main accountability deficit in a given context and assessing the institutional conditions available to address it, rather than attempting to replicate models seen as successful elsewhere.

In addition, the institutional design approach adopted here has certain limitations. The typology is based on four models, the analysis focuses on structural tendencies rather than measured outcomes, and PIL systems continue to evolve over time. The propositions should therefore be regarded as hypotheses for further testing rather than as established patterns, and empirical research on case-level outcomes across Asian jurisdictions remains an important direction for future work.

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