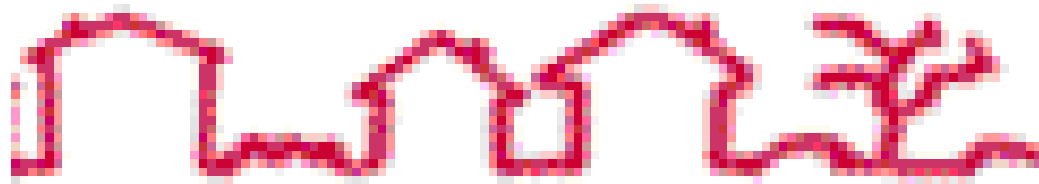


NGOs driving PIL

Protection of the Built Environment



Roland deSouza

Shehri: Citizens for a Better Environment

Quaid-e-Azam Mohammad Ali Jinnah

Address to Constituent Assembly of Pakistan
11th August 1947



“You will no doubt agree with me that the first duty of a government is to maintain law and order, so that the life, property and religious beliefs of its subjects are fully protected by the State.”

Winston Churchill

First War Cabinet Meeting “... *blood, toil, tears & sweat.*”

13th May, 1940



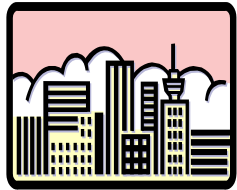
National situation: low morale, uncertainty, despondency, and confusion.

Churchill asked the Lord Chancellor, John Simon: “*Are the courts functioning?*”

Assured that judges were attending regularly,

Churchill expressed confidence there was nothing to worry about & that the future of the country seemed bright.

Social Goals of Modern City Planning



Supreme Court (*PLD 1994 SC 514*) has quoted *Encyclopedia Britannica*:

- **Orderly arrangement: residential, business, industrial, etc**
- **Efficient system of circulation/transport**
- **Optimum standards: lot size, sunlight, green spaces, parking, building spacing**
- **Safe, sanitary & comfortable housing**
- **Recreation, schools & community services**
- **Water supply, sewerage, utilities & public services.**

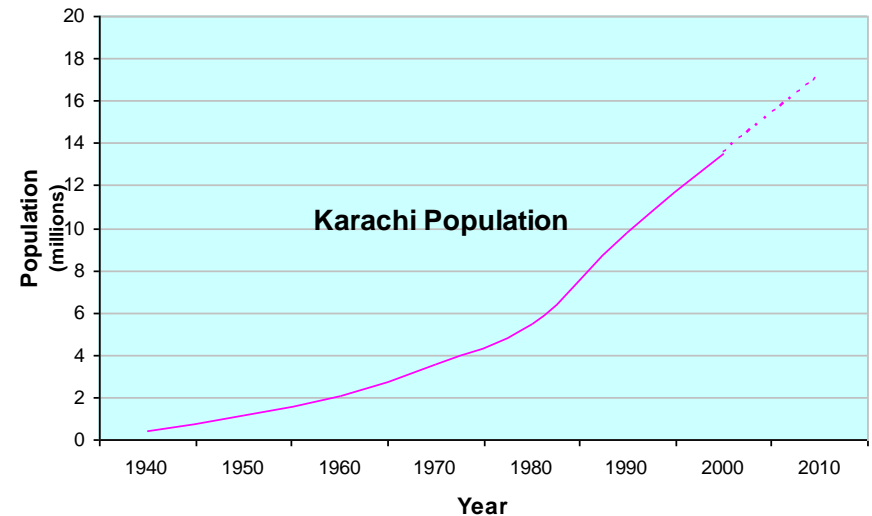
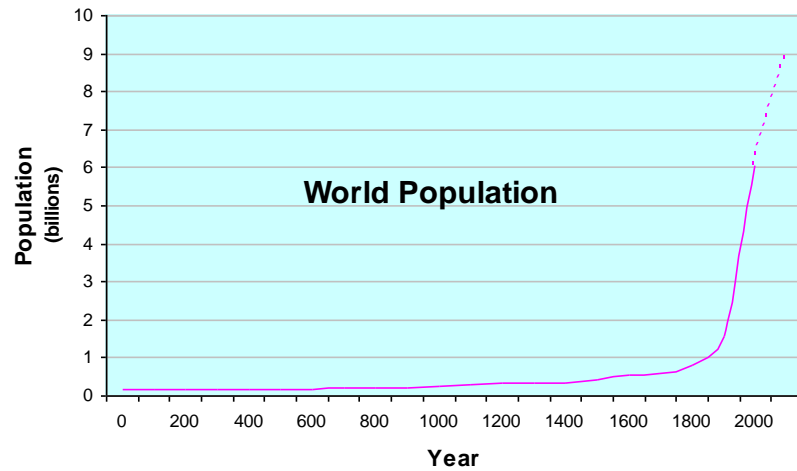
Interests of developers/builders

Britannica extract goes on to say:

“Zoning and sub-division controls. It was realized, after bitter experience with suburban land speculations in the 1920s, that the interest of the owner and developer of raw land is sometimes temporary and purely financial, while the urban community must live with results for generations afterward.”

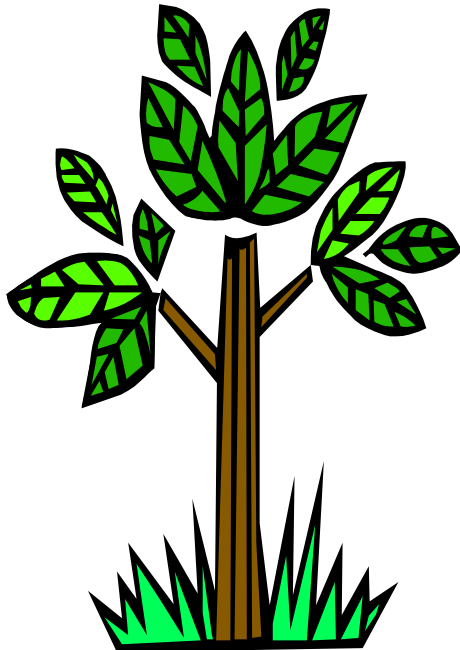
Future residents of our cities will have to live with the built environment that we develop today!

Population & built environment issues



NGOs driving PIL
Protection of the Built Environment

Right to life = Right to clean, healthy & unpolluted environment



- **Open spaces for recreation & fresh air**
- **Playgrounds for children**
- **Schools, hospitals & other social amenities**
- **Libraries & theatres**
- **Transport systems & roads**
- **Freedom from air & noise pollution**
- **Adequate utilities & infrastructure (electricity, water, sewerage, etc)**

Karachi in the 21st century

Owing to

- **Population pressures**
- **Mushrooming urban-rural migration**

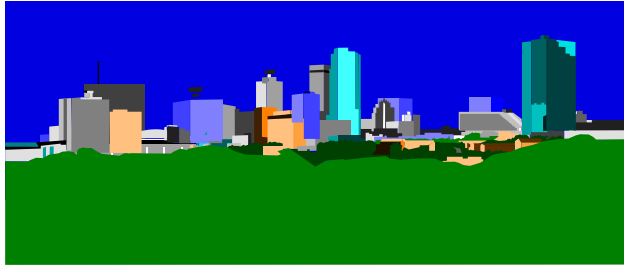
land is being abused by

- **Unlawful allotment of unplanned land**
- **Arbitrary conversion of land-use**
- **Construction of illegal buildings**

Consequently, there is severe deterioration in the built environment & violation of fundamental rights

All cases dealing with the built environment qualify as PIL

Town-Planning & Building Laws



- **Sind Town Planning Act 1915**
- **KDA Order 1957 & Zoning Regulations 1972**
- **Sind Local Government Ordinance 2001**
- **Sindh Building Control Ordinance 1979**
- **Karachi Building & Town Planning Regulations 1979 & 2002**
- **Environment Protection Act, 1997**

Over past 30+ years, such laws increasingly ignored, violated, or misinterpreted for personal gain

Sind Town Planning Act 1915

Step-1: Intention to make scheme

Step-2: Making of the scheme

Step-3: Variation of the scheme

Each step requires:

- **Local Authority application to government**
- **Publication/ gazette notification of scheme**
- **Copies of plans open to public scrutiny**
- **Acceptance of public objections/comments**
- **Gazetted sanction by government**

Life hazard of illegal construction

Earthquakes do not kill

--- falling buildings do!



- 18,000+ Izmit (Turkey), 1999
- 20,000+ Gujarat (India), 2001
- 30,000+ Bam (Iran), 2003
- 70,000+ northern Pakistan, 2005

In Karachi:

- zone of upper-moderate seismic activity
- earthquake-resistant building codes disregarded
- judges indiscriminately issuing ad interim orders (indirectly) responsible for future deaths

Supreme Court has warned



In 1999 SCMR 243,
all concerned were cautioned:

*“It may further be observed
that some builders raise
unauthorized constructions
after obtaining status quo orders
from the courts”.*

This warning has virtually fallen on deaf ears!

**Violation of law ‘*under cover*’ of ad interim court
orders continues!**

Shehri's experiences with PIL

**Shehri's partial degree of success ---
ingredient of story of PIL in Pakistan**

Superior court judges progressively active in:

- **comprehending environmental issues**
- **boldly making right decisions**

***Shehri* & friends have numerous PIL cases on**

- **environmental ruin by violation of
town-planning laws & principles**
- **some bigger defaulters/examples of
environmental degradation**

so that 'trickle-down effect' can emerge



Misuse of parks, playgrounds & amenity plots

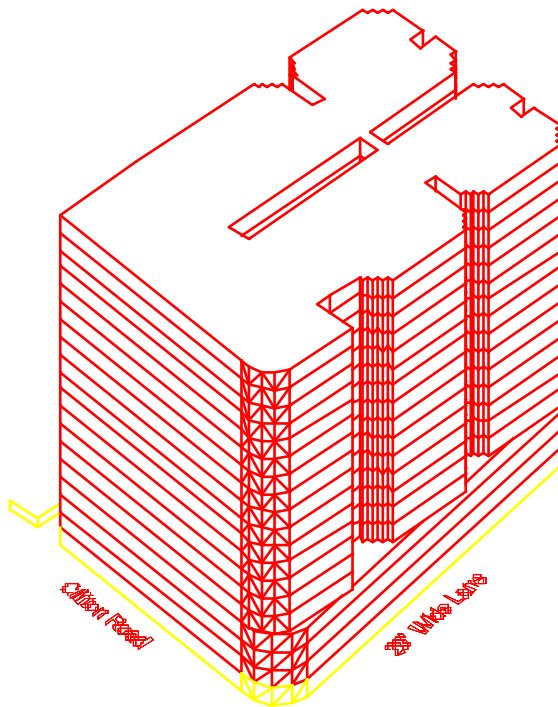
- ***'Gutter Baghicha'* park in Trans-Lyari, Karachi**
- **KTC bus-depot amenity plots (11 Nos) in Karachi**
- **SRTC bus-depot amenity plots (16 Nos) in Sindh**
- ***'Costa Livina'* in Bagh-e-Ibn-Qasim, Karachi**
- **Kirthar National Park, Sindh**
- ***'Karachi Playhouse'* at Teen Talwar, Karachi**
- ***'Doongi Ground'* park in Gulberg, Lahore**

Arbitrary conversion of land-use

- **Mai Kolachi land reclamation**
 - **‘Commercialization’ of major roads**
 - **Hazardous/explosive goldsmiths’ workshops**
-
- **Contraventions of KDA’s Hawksbay Scheme**
 - **Privatization/‘commercialization’ of beaches**
 - **Fauji Foundation beachfront power plant**

Illegal construction of buildings

- **'Glass Towers' in Clifton**
- **15 buildings around the Quaid's Mazar**
 - **35 buildings around the Quaid's Mazar**
 - **26 buildings along Shahrah-e-Faisal**
- ... and many, many more



News-report: 17-storey illegal building

THE **STAR**

Regd. No. SS-021, Price Rs 6.00, Pages 6, Karachi, Thursday, August 3, 2006

Essential facts of 'Al-Najeebi Electronic Bazaar'

Work proceeds frantically at to-be-demolished illegality



This story is getting very complicated. The builder is ignoring SHC orders restraining construction on an open space in a plot that the lessor, BoR, has stated was not allotted to anyone. KBCA officials, who have been promoting this illegal and environmentally disastrous 17-storey shopping plaza, 'Al-Najeebi Electronic Bazaar' from the very beginning, have jumped into the fray and issued notices to the builders listing deviations from approved plans; the builder is also ignoring these. Ex-CCOB Brig (R) A. S. Nasir and cronies are being prosecuted for illegal approval of this project. The Chief Secretary, Fazlur Rahman, has recently directed the present CCOB, Mumtaz-ur-Rahman, to demolish the building. Yet the construction goes on at breakneck speed. This can only happen in Karachi!—STAR photo

‘Al- Najeebi’ Photo Caption

“This story is getting very complicated. The builder is ignoring SHC orders restraining construction on an open space in a plot that the lessor, BoR, has stated was not allotted to anyone. KBCA officials, who have been promoting this illegal and environmentally disastrous 17-storey shopping plaza, ‘Al-Najeebi Electronic Bazar’ from the very beginning, have jumped into the fray and issued notices to the builders listing deviations from approved plans: the builder is also ignoring these. Ex-CCOB Brig (R) A. S. Nasir and cronies are being prosecuted for illegal approval of this project. The Chief Secretary, Fazlur Rahman, has recently directed the present CCOB, Mumtaz-ur-Rahman, to demolish the building. Yet the construction goes on at breakneck speed. This can only happen in Karachi!”

Adversarial vs Inquisitorial Litigation

For enforcement of fundamental rights under Articles 8, 9, 14, 23, 24 & 25 of the Constitution:

- Courts must examine PIL on inquisitorial rather than adversarial basis
- Officials & advocates become parties; bounden duty to assist court in determining truth
- Judge not passive umpire; actively involved in ‘collaborative litigation’



- Judge must go far beyond deciding which party has better lawyer!
- Else, judicial process is reduced to a mockery of justice!

PIL: A Tool with Promise

***Shehri* has come of age:**

- **PIL with NGOs, citizens, activists, & residents**
- **Judges by and large accept that:**



- ✓ **Shehri acts bona fide, in public interest, as watchdog on built environment**
- ✓ **diverse people adversely affected**
- **PIL moulds/raises awareness of citizens:**
 - ✓ **‘owners’ of air, water, land & environment**
 - ✓ **must rise to protect their ‘property’**
 - ✓ **reliance on managers (govt servants) not ‘enough’**

Shehri's Journey



Negative experiences include:

- **Apathy from the public**
- **Active opposition by mafias, corrupt officials & sleazy politicians (*Shehri* founder shot in 1997)**
- **Acute lack of financial & human resources**
- **Interminable delays in court proceedings**
- **No environmental tribunals & magistrates**

Positive experiences include:

- **Small group of dedicated/courageous volunteers**
- **Relationships with other citizens & groups**
- **Achieved small successes in environment campaign**
- **Being invited by residents of other cities.**

The way forward



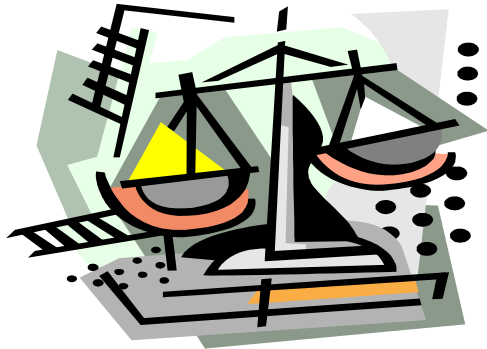
Winston Churchill: “*The price of greatness is responsibility.*”

Today, great concerned citizens and great judges of Pakistan must pay the price for such responsibility to the public interest.

Judges live in built environment of Karachi:

- **Witnesses to the loot & pillage**
- **Entirely aware of problems of society**
- **Affected observers of environmental degradation**

What must the courts do?



To facilitate PIL, advance 'rule of law' & curb malpractices:

- Reduce abuse of ad-interim orders
- Handle PIL on *inquisitorial*, not *adversarial*, basis
- Proceed against officials who defy court orders
- Recognize delays are against public interest
- Educate themselves on built environment issues/laws
- Promote special 'green benches' to deal with PIL/environmental cases

