



# **FACULTY OF JURIDICAL SCIENCES**

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# Lecture-17



## LECTURE 17: Concept of Citizen Suit Provision

### CITIZEN SUIT PROVISION IN INDIA

The legal remedies available to the citizens with regards to Water pollution in India are limited as compared to countries like US, UK, Canada and Australia and are still in a developing phase. It was in the year 1986 after the coming of Environmental protection act that a citizen got the right to file a complaint under section 19 of the EPA and prosecute the polluter. But this is subjected to restriction that a pollution control board sample is only admissible by the court and the sample given by citizen unlike in U.S. was not admissible. In India, therefore you have to first complain to the PCBs (pollution control board) and cannot directly approach the court. Moreover a 6-month prior notice has to be given before filing the suit which gives ample time to the polluter to get away with the crime. By amendments later in the water act 1974 it has been made mandatory for the PCBs to disclose all relevant information which is needed by person filing suit against any pollutant.

The Environment Protection Act, 1986-Though there is a host of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance, the environment has not so far been considered in its totality. The Environment 106 (Protection) Act, 1986, enacted under Art. 253 of the Constitution of India to implement the decisions made at the United Nations Conference on Human Environment held at Stockholm, 1972 was expected to fill the lacuna and provide a blue print for a progressive policy for protecting the ecosystem. The Act seeks to supplement the existing laws on control of pollution by enacting a general legislation for environmental protection and to fill the gaps in regulations of major environmental hazards.

Citizen suit provision under the Environment Protection Act, 1986 – Until the enactment of the Environment Act, the power to prosecute under Indian environmental laws belonged exclusively to the government. The citizens' suit provision in the Environment Act expands the concept of locus standi in environmental prosecutions.

Similar provisions allowing citizens participation in the enforcement of pollution laws are now found in Sec.43[11] of the Air Act(as amended in 1987) and Sec.49[12] of the Water Act(as amended in 1988). Sec. 19[13] of the Environment Act provides that any person, in addition to authorized government officials, may file a complaint with a court alleging an offence under the Act. However, the person must have given notice of not less than 60 days of the alleged offence and the intent to file a complaint with the government official authorized to make such complaints. The citizens' suit

provision appears to give the public significant powers to enforce the Environment Act. However, some critics are of the view that during the 60 days' notice period required for the government to decide whether to proceed against the alleged violation, the offending industry has time to clean up traces of the offence and prepare itself for the collection of samples. Further, the government may file a complaint but does not pursue prosecution diligently. There are no rules which require the publishing of information by polluters. The Act allowed, but does not require, the Central the Act from any person, officer, State Government or other authority. The citizens' suit provision may become an effective enforcement tool if industries were required to make mandatory public reports concerning their pollutant emissions and discharges.

### **DIFFERENCE BETWEEN PUBLIC INTEREST LITIGATION (PIL) AND CITIZEN SUIT PROVISION**

The basic difference between PIL and the citizen suit provision is that a PIL is a much broader concept than the citizen suit provision also citizen suit provision is governed by the respective acts and is not a matter of right while moving to the High Court or the Supreme Court cannot be barred.

Public Interest Litigation (PIL) or Social Action Litigation (SAL) is permitted by the Supreme Court and High Courts under writ jurisdiction at the instance of public spirited citizens for the enforcement of constitutional and other legal rights of any person or groups of persons who because of their disadvantageous position are unable to approach the court for relief. The Supreme Court under Article 32[14] and the High Courts under Article 226 can be moved by any public spirited citizen or by NGOs for the prevention of environmental pollution.

The Environment (Protection) Act, provided for the first time in 1986, citizen suit provisions in the lower courts. Under Section 19 of the Act, a citizen may prosecute a polluter by filing a complaint to a Judicial Magistrate Court. It can be done after giving 60 days' notice to the State Pollution Control Board of his or her intention to file a case. Hitherto, only the government could file a case. Later, similar provisions have been provided under Section 43 of the Air Act, 1981 and Section 49 of the Water Act, 1974, by way of amendments. All these provisions make it mandatory for the pollution control boards to disclose all relevant internal reports to a person who intends to prosecute the polluter.

### **SITUATION BEFORE THE INTRODUCTION OF CITIZEN SUIT PROVISION IN ENVIRONMENTAL LEGISLATIONS**

The concept of citizen suit provision as stated earlier was not a part of the original Act which was passed by the parliament. Although it was felt that the board[15] had been given way too much power by the legislature and people who are ultimately affected must have a locus standi in such cases.

Before the legislature passed the amendment including the provision of citizen suit provision various alternatives were available to the public to raise an action in case of environment pollution.

- The remedies available in India for environmental protection comprise of tortious as well as statutory law remedies. The tortious remedies available are trespass (It connotes failure to exercise the care that a reasonably prudent person would exercise in like circumstances), nuisance, strict liability (The rule enunciated in *Rylands v. Fletcher* by Blackburn J. is that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it escapes, must keep it at its peril, and if he does not do so is prima facie even though, he will be answerable for all the damage which is the natural consequence of its escape. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances) and negligence.

The judgment of the Supreme Court in instant case is a land mark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environment pollution free even if there is a budgetary constraints., J. Krishna Iyer observed that, "social justice is due to and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any public functioning." Thus he recognized PIL as a Constitutional obligation of the courts.[16]

- an activity under area 133, Criminal Procedure Code, 1973.and
- and activity brought under the Section 268 for open irritation, under Indian Penal Code, 1860
- A writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court.