

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Involvement of Public in Enforcing Environmental Law in India: A Synopsis

SHARMISHTHA SHARMA¹ AND S. SHRI NIVASAN²

ABSTRACT

In the present era of rapid development in science and technology, upshot commercial and industrial growth, the repeated environment violation with scant regard to ecological balance. In the mounting environmental violations, the well-being of the people is at risk. The conservation, protection and improvement of the environment are the major universal issues. This paper focuses on how public participation is important for the improvement of Indian environmental law, what is the role of public towards the environment and what efforts are made at the international level to secure a right to participation in environmental decision making for an Individual. Public participation can be described as the real involvement of all social actors (Public) in social and political decision-making methods that potentially affect the environment in which they live and work. It is every citizen's duty to understand the necessity of preserving purity of environment for the current and future generations. The paper mainly concerns with the constitutional and legislative measures available for the public to participate in Indian environment law and how the creative role of Indian judiciary has been significant and laudable. Public participation in environmental decision making is an interaction between the government and civil society, including processes of the government and civil society to open dialogue, establish partnerships and share information. The paper also describes the use of EIA (Environment Impact assessment) as a tool of Indian Environment law and importance of public involvement during it.

Keywords: *Environment protection, Constitutional measures, Legislative measures, Environment Impact assessment.*

I. INTRODUCTION

The right to participation helps the public to be part of the decision-making process through discussion and remarks and to have their opinion heard. Public participation can be described as the involvement of all active people in social and political decision-making procedures that possibly affect the populations in which they live and work. It is a collaboration between government and civil society, including the process by which government and civil society open

¹ Author is an LL.M. Student at Mahatma Jyotiba Phule Rohilkhand University, Bareilly, India.

² Author is an LL.M. Student at Hidayatullah National Law University, Raipur, India.

dialogue, establish partnerships, share information, and otherwise cooperate to design, implement, and evaluate development projects and policies.

II. IMPORTANCE OF PUBLIC PARTICIPATION FOR IMPROVEMENT OF INDIAN ENVIRONMENTAL LAW

Public participation is constructed on the credence that any person who is getting affected by a decision has a right to be involved in the decision-making process. Through this process, an organization consults with interested or affected individuals, organizations, and government entities before making a decision. It is two-way communication and collaborative problem-solving to achieve better and more acceptable decisions.³

Public participation substantiates the direct democracy of people in a country like India. It tries to build a balance between the right to the environment and the right to development. Effective public participation eliminates judicial review of administrative action.

The right to participation should be supported by a right to information that is accurate, accessible, timely, and comprehensive.⁴ It includes the right to seek information from public authorities, with a corresponding duty of public authorities to collect and disseminate information. The citizens can participate effectively through this right in the decision-making process.

The right to access to justice is so crucial that without it, the right to information and participation will have tiny meanings. The right of access to justice allows people to enforce environmental laws and remedy in case of any breach-it thus establishes a right to a clean environment⁵. Access to justice allows affected communities and environmental activists to challenge decisions adopted by public authorities or businesses that have failed to comply with environmental laws.⁶

III. EFFORTS MADE AT THE INTERNATIONAL LEVEL TO SECURE A RIGHT TO PARTICIPATION IN ENVIRONMENTAL DECISION MAKING FOR AN INDIVIDUAL

At the international level, there can be two elaborating stages of procedural environmental rights that is pre-and-post 1992. As earlier as 1948, the Universal Declaration of Human Rights

³ COPR ROLE OF THE PUBLIC IN RESEARCH WORK GROUP PRESENTED TO NIH DIRECTOR, OCTOBER 31, 2008.

⁴ Neil A.F. Popovic, The Right to Participate in Decisions that Affect the Environment, *Pace Environmental Law Review*, 10 (2), 1993, 683-709.

⁵ T. Hunte and K.Lunde, Access to Justice and Environmental Protection: International and Domestic Perspectives, *Journal of Environment and Development*, 7, 1998, 437-41.

⁶ *Ibid.*

provided generalized rights of access to information⁷ and justice⁸. Article 21 of Universal Declaration of Human Rights (1948) provides:

- i. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- ii. Everyone has the right of equal access to public service in his country.
- iii. The will of the people shall be the basis of the authority of government; this will, shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedure.⁹

As set out in UDHR, the above mentioned participatory rights are more smack-dab bounded to suffrage and the right to run public office. They are guaranteed in relation to participation in the government. These rights are narrower than a right to take part in the conduct of public affairs, as enshrined in the International Covenant on Civil and Political Rights (1966).¹⁰

Article 25¹¹ and 19(2)¹² of ICCPR emphasized universal suffrage concerning (representative) public affairs bodies. The adverse effects of privatization can't be elixir by it. It is the progression of privatization that affects what constitutes public affairs. Desired results in environment-related issues can't be achieved with this narrow scope of public participation as the private sector is also one of the considerable key players in this field. Law and policy in many countries rely heavily on governmental administrations for ensuring the protection of human health and the environment.

A developing recognition of procedural tools has been there during the duration between the 1972 Stockholm conference and Rio Declaration 1992 to protect the environment. In 1982,

⁷ Article 19 of Universal Declaration of Human Rights, G.A. res. 217A (11), U.N. Doc. A/810, 10th December 1948, 71 [hereinafter UDHR].

⁸ *Ibid.* Article 8 and 10, UDHR.

⁹ Universal Declaration of Human Rights, G.A. res. 217A (11), U.N. Doc. A/810, 10th December 1948, 71 [hereinafter referred as UDHR].

¹⁰ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp.(No. 16), 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, 16 December 1966 (entered into force: 23 March 1976) [hereinafter referred as ICCPR].

¹¹ *Ibid.* "Every citizen shall have the right and the opportunity, without any of the distinctions [such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status: Article 2] and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public services in his country."

¹² *Ibid.* "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Principle 23¹³ and Principle 16¹⁴ of the World Charter for nature and the 1991 Hague Recommendation on International Environmental Law¹⁵ all are concerned with equal and full access to information, for individuals and institutions, must be recognized as a prerequisite in the decision-making process related to environmental and development issues.

In procedural rights to protect the environment, a unique development was brought by the 1998 UNECE Aarhus Convention. It borrows a rights-based approach to information, participation, and justice, prepares the source for a substantive right to a healthy environment, and lets on people enforce their substantive and procedural environmental rights in court. The procedural rights conferred on the public are to be applied without discrimination as to citizenship, nationality, or domicile.¹⁶

According to the Convention, public participation can be protected with early notice of the decision-making process when all options are open to people to contribute comments or input into the process.¹⁷ Parties need to make sure that information will be available to the public by public authorities when requested and it also postulates time-frames for answers back to the requests.¹⁸ The Aarhus convention has persuaded many developments at international level and not only limited to European Union only.¹⁹ Laws and policies of many developing countries are attracted to Principle 10 of the Rio declaration and international trend supporting participation of people in environmental decision-making. The international movement for human rights gets exhibited at national levels also.

IV. CONSTITUTIONAL MEASURES

A Constitution is not a parchment of paper; it is a way of life which unrolls and bloom with time. The discrete provisions and measures on environment protection in the constitution are

¹³ World Charter for Nature, 1982, ILM 22, 455, “All persons in accordance with their national legislation shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation”}

¹⁴ *Ibid.* “All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities, all these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation.”

¹⁵ Principle I.3d, IV.7 a-c, “in developing environmental policies at the national and international levels, states should apply inter-alia: the right of access for the public to and the duty of the states to provide information relating to environmental impacts and risks and related health hazards”. Equal and full access to information, for individuals and institutions, must be recognized as a prerequisite to implementing certain fundamental rights.

¹⁶ Article 3(9) UNECE Convention on Access to Information, Public Participation decision Making and Access to justice in Environmental Matters (Aarhus Convention), 1998, ILM 38, 517.

¹⁷ *Ibid* at Article 6.

¹⁸ *Ibid* at Articles 4, 5.

¹⁹ Example, the influence of Aarhus Convention on 1999 London Protocol on Water and Health , 2003 UNECE Protocol on Strategic Environmental Assessment (SEA Protocol), 2000 Bio safety Protocol, 1992 Convention on Biological Diversity.

also result of this growing nature and enlarged prospective of the rudimentary law of the land. Section 2(a) says that- 'Environment' includes water, air and land also the interconnection which remains among and between land, air, water and humans, other living creatures, plants, bacteria and premises.²⁰

Protection of Environment is a fundamental duty of every citizen as mentioned in the chapter on fundamental duties in the Indian Constitution. Article 51-A(g), elucidates that it shall be the duty of every citizen of India to protect and improve the natural environment including lakes, forests, rivers and wild life, and to have compassion for living creatures.²¹

The directive guidelines under the Constitution aim towards exemplars of building a welfare state. Hale and hearty environment is also one of the essentials of a prosperous state. Article 47 interprets that the State shall favour the nurturing of the level of nutrition and the standard of living of its people and the enhancement of public health as among its chief duties²². Article 48-A of the Constitution explains that the state shall attempt to guard and develop the environment and to safeguard the forests and wild life of the country.²³

The constitution of India under Part-III warrants fundamental rights which are essential for the growth of each and every citizen. The right to environment is also a right without which a person's awareness and development shall not be thinkable. Articles 21, 14 and 19 of this part have been used for environmental protection.²⁴

V. LEGAL PROVISIONS IN INDIA FOR PUBLIC PARTICIPATION

The use of EIA (Environment Impact assessment) as a tool of Indian Environment law and public involvement in India:

Under Environmental Protection Act 1986, EIA was legally notified in India in 1994. Withal, public involvement in environmental clearance through the public hearing mechanism was made statutory for the first time only in 1997 when the EIA Notification 1994 was amended. It notably maintained that the findings of the impact assessing authority should be situated, inter alia, on the minutiae of public inquiry. A major change to EIA Notification²⁵ was made in April 1997 for the introduction of Public Hearings (PH) as a part of the assessment procedure for ensuring the participation of local people and stakeholders in various proposed development

²⁰ Section 2(a), The Environment (Protection) Act, 1986.

²¹ Article 51A(g), The Constitution of India, 1949.

²² Article 47, The Constitution of India, 1949.

²³ Article 48(a), The Constitution of India, 1949.

²⁴ The Constitution of India, 1949; *See also*, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=105411>.

²⁵ Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), New Delhi 14th September, 2006, available at: <http://envfor.nic.in/legis/eia/so1533.pdf>.

activities. Public hearings are called for in projects involving a large displacement of citizens or severe environmental controls. If the IAD (Impact Assessment Division) decides to hold hearings, it is required to provide notice in at least two newspapers at least 30 days before the hearing. In short this new requirement, the process includes provisions for public access to information.

Residents, environment groups, and others located at the planned site likely to be affected can participate in the legal proceedings or submit written or oral reports to the SPCB (State Pollution Control Board). The essentials regarding the configuration of hearing boards are also present in the new hearing process. Boards also include a representative of the SPCB, the District collector, a state government representative for the relevant sector under investigation, a representative of the central ministry of the Environment and forests, not more than three representatives of local bodies such as municipalities or panchayats, and not more than three senior citizens selected by the District Collector. For the time-bound processing of suggestions for public hearings submitted to several State Pollution Control Boards, the EIA Notification was edited in November 2001 and a time limit of 60 days has been laid down for completion of public hearings.

Screening, scoping, public consultation, and appraisal are the four stages of the EIA process. The understanding gap between the project sponsors and the members of the general public can be bridged with the help of the above provisions and it also brings public reliance into the process of decision-making. It comforts in confirming public acceptance of development decisions. To challenge the project clearance, the provisions are available in the National Environmental Appellate Act, 1997.²⁶

VI. THE ROLE OF INDIAN JUDICIARY

The Supreme Court or the High Court of India has directly or indirectly promoted public participation in Environment protection and environmental law-making decisions and has always insisted on the mandatory implementation of the EIA. In *M. C. Mehta v. Union of India*²⁷, the judgment made by the Supreme Court regarding the compensation for the victims was completely defensible. The Supreme Court directing Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered from the oleum gas incident and file actions on their behalf in the appropriate court for claiming compensation against Shriram is the appropriate decision that was needed. The attitude that came up with this landmark case was

²⁶ Presently, under National Green Tribunal Act, 2010.

²⁷ 1987 AIR 1086, 1987 SCR (1) 819.

the attitude of Absolute liability; the Court observed that "the Precautionary Principle" and "the Polluter Pays Principle" are vital features of "Sustainable Development."²⁸

After this case explanation of Article 21 was enlarged by accepting the Right to a clean environment, the right to human health, and the Right to live pollution free from air and water as a part of the Right to life.²⁹ In *M.C Mehta v Union of India*³⁰ case, decided on 18.03.2004, the court observed that mining activity can be allowed only based on sustainable development and on agreement with strict conditions as the Aravalli Hill Range has to be preserved at any cost and in the case despite strict conditions, mining results in an irreparable consequence on the eco-system. In January 2009, the decision to prohibit/suspend mining in the area was taken by the State of Haryana.³¹

In *Narmada Bachao Andolan v. Union of India*³² the environmental clearance was given by the Central Government in 1987, much prior. The clash concerned about raising the height of the dam was also sorted out by an award given in 1978. Thereafter, the construction was taken up in 1987. The writ was filed to encounter the construction of and raising the height of dam in 1994. The issue before the court was whether the environmental clearance decided by the Union of India for the building of a dam had been approved without correct study and understanding of the environmental effect of the project.³³

Moreover, it was examined whether the environmental situations enforced by the Ministry of Environment had been violated and if so, what was the legal effect of the violations. The court ordered compensatory measures for environmental protection in compliance with the scheme framed by the Government and ordered the construction to continue while the alleviative measures were carried out.³⁴

In *Dehradun Quarrying case*³⁵ the Supreme Court stressed the Right to a wholesome environment as a fundamental right under Article 21. The development comes through industrialization, which is the key factor behind the abasement of the environment. To solve this problem the doctrine of sustainable development is to be adopted which will help in maintaining a balance between ecology and development. Environmental deprivation is not acceptable on the pole of national interest. We can see the result of such method of the Supreme

²⁸ *Ibid.*

²⁹ *M. C. Mehta v. Union of India*, 1987 AIR 1086, 1987 SCR (1) 819.

³⁰ 1987 AIR 965, 1986 SCR (1) 312.

³¹ *Ibid.*

³² (2000) 10 SCC 664.

³³ *Ibid.*

³⁴ <http://www.asianage.com/india/all-india/090217/sc-clears-decks-for-rs-60-lakh-relief-to-narmada-oustees.html>

³⁵ AIR 1985 SC 652.

Court by, the Bar Council of India has introduced Environmental Law as a compulsory paper for legal education at the graduate level. The decision and the directions of the High Court of Gujarat in *Centre for Social Justice v. Union of India*³⁶ have an influential impact on the development of concept of public participation in India.

VII. SUGGESTIONS

The process of public proceedings should not be restrained to those projects which are quantified in the EIA notification but it should also include all those matters which may lead to cause danger to the environment. Whenever there is a threat to the people's right to the environment, the state should protect citizens' rights.

The legal papers which are needed are occasionally available on time. The EIA suggests several places where one can get these documents or official papers, but no definite guarantee is there where the documents or the official papers are found. The cited websites are not updated. The result is that rarely one finds the documents present at the locations. In many cases, public hearing never reflects the actual legal hearings. Moreover, the recommendations of the public hearing board are only advisory and it is not compulsory for the impact assessment agency even consider these while allowing environmental clearance to projects.

VIII. CONCLUSION

An important element of our cultural values and traditions is environmental protection. In Atharvaveda, it's been aforesaid that "Man's paradise is on earth; this living world is the beloved place of all; It holds the blessings of nature's bounties; live in a beautiful spirit". Earth is our ecstasy and it's our responsibility to protect our ecstasy. The constitution of India epitomizes the framework of preservation and protection of nature as life cannot be enjoyed without it. Familiarity with the constitutional provisions relating to environmental protection is a need of the day to bring better public participation, environmental education, and environmental awareness and to guide people on how to preserve ecology and the environment.

³⁶ AIR 2001 Guj 71.