

The Environment Friendly Right to Information

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Abstract

Most environmental decisions are concerned with establishing rights and responsibilities over the use of common natural resources (such as water, land, air and biodiversity), therefore environmental laws should enshrine substantial rights of public participation to provide checks and balances on administrative government and to improve the quality of decisions. Public participation can also enable advocacy on behalf of interests not normally represented. The rights of access to information, public participation, and access to justice are essential to sustainable development. One of the largest problems standing in the way of sustainable development and a clean environment is the lack at both the national and international level of operational and effective rights of access to information, public participation and access to justice. These access rights facilitate more transparent, inclusive, and accountable decision-making and implementation of matters affecting environment and development. Access to information empowers and motivates people to participate in an informed and meaningful manner.

KEYWORDS: Environment, Rights, Sustainable Development, Public Participation

INTRODUCTION

The 21st century is the age of Information. We are constantly being bombarded with and are seeking information. Information access has become inevitable both to the individuals as well as to the institutions. It is a key tool for enabling citizens to participate in the political processes of their countries. It provides the people with knowledge about what the Government is doing and how it is choosing to respond to changes in today's constantly evolving political landscape. With greater knowledge and information people are able to scrutinize official policies and suggest alternatives they feel could be more effective. In this manner, access to information can be the key to moving from a formal to a responsive, consultative and effective democracy. Individuals and community groups find it very difficult to participate meaningfully in environmental decision-making unless they have access to information relevant to the decision to be made. Ideally, the public should have access to the same information as the decision-maker. In this manner Right to Information is a key to healthy environment both at international and National level.

THE IMPORTANCE OF ACCESS TO INFORMATION AND ENVIRONMENT

Most environmental decisions are concerned with establishing rights and responsibilities over the use of common natural resources (such as water, land, air and biodiversity), therefore environmental laws should enshrine substantial rights of public participation to provide checks and balances on administrative government and to improve the quality of decisions. Public participation can also enable advocacy on behalf of interests not normally represented. The rights of access to information, public

participation, and access to justice are essential to sustainable development. One of the largest problems standing in the way of sustainable development and a clean environment is the lack at both the national and international level of operational and effective rights of access to information, public participation and access to justice. These access rights facilitate more transparent, inclusive, and accountable decision-making and implementation of matters affecting environment and development. Access to information empowers and motivates people to participate in an informed and meaningful manner. Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions. Access to justice encourages the public's ability to enforce their right to participate, to be informed, and to hold regulators and polluters accountable for environmental harm. If citizens are to have confidence in administrative decisions affecting the environment, then they need to know that these decisions are based on sound information, have canvassed all the relevant issues and have been subjected to a methodical, transparent and accountable decision-making process. One of the best ways of instilling this confidence in the community is for decision-makers to be required to give reasons for their decisions.

INTERNATIONAL PERSPECTIVE OF ACCESS TO INFORMATION AND ENVIRONMENT

Environmental issues at the United Nations were first considered in the 45th session of the Economic and Social Council (ECOSOC), when on 30 July 1968 it recommended that the General Assembly considered convening a United Nations conference on "problems of the human environment".¹ At its 23rd session the General Assembly adopted a resolution convening a United Nations Conference on the Human Environment noting the "continuing and accelerating impairment of the quality of the human environment" and its "consequent effects on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as developed countries," thus relating the Charter to emerging environmental issues. The resolution also recognized that "the relationship between man and his environment is undergoing profound changes in the wake of modern scientific and technological developments".²

The United Nations Conference on the Human Environment took place in Stockholm from 5 to 16 June 1972 and led to the establishment of the United Nations Environment Programme (UNEP), the lead programme within the United Nations working on environmental issues³.

¹ www.humanrightsinitiative.com. (United Nations Documentation, Research guide United Nations Dag Hammarskjold Library.

² Resolution 2398 (XXIII) of 3 December 1968

³ At its 1st plenary meeting, held on 5 June 1972, the Conference decided to adopt as the basis for its consideration of recommendations for action at the international level, the framework for environmental action suggested by the Secretary-General of the Conference, which included, Planning and management of human settlements for environmental quality, Environmental aspects of natural resources management, Identification and control of pollutants of broad international significance, Educational information, social and cultural aspects of environmental issue, International organizational implications of action proposals.

In 1983 the United Nations General Assembly welcomed the establishment of a special commission to report on "Environment and the global problems to the year 2000 and Beyond" appointed by the United Nations Commission. In 1987 the World Commission on Environment and Development (WCED) submitted its report (also known as The "Brundtland Report") to the General Assembly. The report, based on a four-year study, developed the theme of sustainable development, the type of development that "meets the needs of the present generation without compromising the ability of future generations to meet their own needs".⁴ Pursuant to the Report of the World Commission, the General Assembly adopted a resolution, convening the United Nations Conference on Environment and Development (also known as the "Rio Conference" or the "Earth Summit") to "elaborate strategies and measures to halt and reverse the effects of environmental degradation". The resolution listed nine areas of major concern in maintaining the quality of the Earth's environment and especially in achieving environmentally sound and sustainable development in all countries.⁵

The United Nations Conference on Environment and Development (UNCED), which took place in Rio de Janeiro from 3 to 14 June 1992, led to the establishment of the Commission on Sustainable Development. At the Conference three major agreements were adopted: Agenda 21 a global plan of action to promote sustainable development; the Rio Declaration on Environment and Development, a series of principles defining the rights and responsibilities of States and the Statement of Forest Principles, a set of principles to underpin the sustainable management of forests worldwide. In addition, two legally binding instruments were opened for signature: the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. The Earth Summit called for several major initiatives in other key areas of sustainable development, such as, a global conference on Small Island Developing States; negotiations began for a Convention to Combat Desertification and for an agreement on highly migratory and straddling fish stocks.

During its 55th session the General Assembly adopted a resolution convening the World Summit on Sustainable Development (WSSD) (also known as "Rio + 10"), a ten-year review of progress achieved since 1992 in the implementation of Agenda 21.⁶ Agenda 21, the "Blueprint for Sustainable Developer", the companion implementation document to the Rio Declaration, states:

*"Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information protection measures."*⁷

At the national level, several countries have laws which codify, at least in part, Article 10 of the Rio Declaration. There has also been progress at the regional level. In 1998, as a follow-up to the Rio Declaration and Agenda 21, Member States of the United

⁴ Resolution 2398 (XXIII) of 3 December 1968

⁵ Resolution 44/228 of 20 December 1988

⁶ Resolution 55/199 of 20 December 2000,

⁷ UN Doc .a/Con (vol.3), paragraph 23.2.

Nations Economic Commission for Europe (UNECE) and the European Union signed the legally binding Convention on Access to justice in Environmental Matters [the Aarhus Convention].⁸

The Convention recognizes access to information as part of the right to live in a healthy environment, rather than as a free-standing right. However, it does impose a number of obligations on States Parties which are consistent with international standards relating to it. For example, it requires states to adopt a broad definition of “environmental information” and ‘public authority’, exceptions must be subject to a public interest test, and an independent body with the power to review refusals of request for information must be established. As such, it represents a very positive development in terms of establishing the right to information⁹.

RIGHT TO INFORMATION AND ENVIRONMENT AT NATIONAL LEVEL:

As the Indian Constitution states we have adopted a democratic form of Government, where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their Government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of Government.

It was in the mid 1970s, that the Indian State started showing interest in the protection of environment. After the Stockholm Conference, the Forty Second Amendment inserted provisions related to the protection of environment in the Constitution of India, firstly in the part dealing with the Directive Principles of the State Policy as Article 48-A and secondly in the Chapter dealing with Fundamental Duties as Article 51 –A (g). Article 48-A obligates the state and Article 51-A (g) imposes duty on citizens to protect and improve the environment. The first formal legislation related to the environment came in form of the Water (Prevention and Control of Pollution) Act, 1974, followed by the Air (Prevention and Control) of Pollution Act, 1981. This new sensitivity of the Indian State regarding the environment was further consolidated when the Parliament of India enacted the Environmental Protection Act of 1986. It brought a major shift in the Indian approach towards environment because until the enactment of this legislation, prosecution under Indian environmental laws could only be done by the government. Public interest groups or citizens had no statutory remedy against a polluter who discharged the pollutants beyond the permissible limit. But under Section 19, the Environment Protection Act 1986, the court can take cognizance of an offence on the complaint of any person provided he has given notice of not less than sixty days, of the alleged offence and his intention to make a complaint. Besides this law, similar provisions allowing citizens to participate in the enforcement of pollution laws are now found in Section 43(1) of the Air (Prevention and Control of Pollution) Act, 1981 as

⁸ UN Doc. ECE.CEP/43, adopted at the Fourth Ministerial Conference in the ‘Environment for Europe process’, 25 June 1998, not in force as of May 2001.

⁹ www.article19.org/docimages/512.htm, visited on 4, Aug 2005.

amended in 1987 and in Section 49(1) of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988. Both these amendments also require the Pollution Control Board to disclose internal reports to citizens seeking to prosecute a polluter.¹⁰

ARTICLE 21 AND RIGHT TO POLLUTION FREE ENVIRONMENT

Article 21 of the Constitution provides that No person shall be deprived of his life or personal liberty except according to procedure established by law.¹¹ The linkage between the right to life and liberty, guaranteed by Article 21 of the Constitution, and the right to know was clearly affirmed in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.*,¹² by Justice Mukharji, who stated that:

“We must remember that the people at large have a right to know in order to take part in a participatory development in the industrial life and democracy. Right to know is a basic right to which citizens of a country aspire under Article 21 of our Constitution.”

The Supreme Court has not only played a leading role in the implementation of environmental laws but also interpreted the right to life under Article 21 to include a right to healthy and pollution free environment, as a fundamental right. For instance in a famous case *Subhash Kumar versus State of Bihar*¹³, it was observed that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life.¹⁴ If the democracy has to function effectively, people must have a right to know and to obtain information about the conduct of affairs of the State of local bodies like Municipal Corporation, Municipal Councils etc. In *Bombay Environmental Action Group's* case an argument was advanced by the Cantonment Board to the effect that if the request of the Action Group for inspection of document is granted, then it will practically amount to creating an extra legal authority to supervise and control the working of the Cantonment Board which is not permissible. The Division Bench expressly rejected this argument by the following observations.

“Real democracy cannot be worked by men sitting at the top. It has to be worked from below by the people of every village and town. That sovereignty resides in and flows from the people. So said the Father of Nation in whose name we swear. Therefore, “who will watch the watchman” is the vexed question before our democracy. For this people's participation at all levels is a must”.

Further as observed by the Supreme Court in (*R.L. and E Kendra, Dehradun v. State of U.P.*)¹⁵, the question involving issues relating to environment and ecological balance, brings into sharp focus the conflict between development and conservation and serves to emphasize the need for reconciling the two in larger interest of the people residing within the area and the country. Therefore, it cannot be said that action groups

¹⁰ A. I.R 1996 S.C. 2715.

¹¹ Article 21 of the Constitution of India.

¹² AIR 1989 SC 190.

¹³ *Subhash Kumar versus State of Bihar*, (1991) 1 Supreme Court Cases 598.

¹⁴ *Ibid*, p. 604.

¹⁵ A.I.R. 1985 S.C. 652

are trying to meddle in the affairs of Cantonment Board or are claiming any Extra-legal authority.

THE RIGHT TO INFORMATION ACT, 2005 AND ENVIRONMENT

Until 2005, an ordinary citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidized services as food for work, wage employment, basic education and health care, it was not easy to seek the details of decision making process that affected or harmed the person. One of the reasons for the battle for appropriate legislation for the right to information has been the demand for amendment of the draconian colonial Official Secrets Act, 1923, which has been used time and again to suit the purposes of the Government. Two infamous instances come to mind in the present context. One was the imposition of the Official Secrets Act being used to prohibit entry of journalists into an area where massive displacement was taking place due to construction of a large dam, one of the world's largest dams displacing hundreds of thousands, the Sardar Sarovar Project. A strong movement against the construction of the dam has raised many pertinent questions about the nature of development and of survival rights of the marginalized as well as the cost to the environment of such large "developmental projects". Public debate and dissent was sought to be suppressed by the use of this law. This is highlighted in a series of reports by a Delhi-based NGO working on the issue of displacement and rehabilitation¹⁶. The foreword to the report presents the picture as:

*"We found that the level of information about the dam, the submergence, displacement and rehabilitation is lamentably low. Information about the dam was given only when displacement began to loom on the state government's horizon. Though stone markers indicating the level of submergence were put in or were supposed to have been put in five to ten years ago, no-one bothered to explain their purport to the villages. ..."*¹⁷

Another dramatic instance which has been in the eye of international attention during the last few years is the Bhopal Gas Tragedy¹⁸. The lack of information about this massive disaster continues to raise serious questions even today. People are still asking about the government's responsibility. As one author has noted:

"The tragedy in Bhopal can be seen not merely as a failure of technology but as a failure of knowledge. The accident might not have happened at all if the right people had obtained the right information at a time when they were capable of appreciating it and taking appropriate preventive action. ... A central challenge for the future right to know policies is to bridge the information gaps and the communication gaps that are likely to arise in the course of technology transfer".

The Government's response even in the wake of the tragedy has been secretive. It has refused to release crucial information, for example to help people to get medical

¹⁶ "Sardar Sarovar Oustees in Madhya Pradesh – What Do they Know?" (Multiple Action Research Group, 1992).

¹⁷ Dr. Vasudha Dhagamwar, Director, Multiple Action Research Group

¹⁸ The Tragedy occurred in December 3, 1984, in which leakage of Methyl Isocyanate gas from the Union Carbide factory in Bhopal, the capital of the largest state in India, claimed several thousand lives and maimed and handicapped at least the next three generations.

treatment and rehabilitation packages.¹⁹ Not only did the government refuse to make public details of the monetary settlements between the government and the Union Carbide, but several participants at a workshop on the medical aspects of the victims were arrested for taking notes under the provisions of the Official Secrets Act. Both the above instances have, however, been used by activists for furthering the cause of Right to Information. The Right to Information Act has enabled the citizens to work for the protection of environment. Some recent judgments by the courts on providing information and involving NGOs in development planning have encouraged people to seek information on projects and policies.²⁰

The passage of the Right of Information Act (RTIA) provides a valuable opportunity for developers and regulators to improve public relations, which they cannot afford to miss or under-utilize. It is important to widely disseminate policy guidelines on the type of information the public has access to. Under sec 4 of the Right to Information Act, 2005, It is the obligation of Public Authorities to provide information. All Public Authorities are required to maintain a properly catalogued and indexed record of its activities and to publish and update, at least once every year, certain basic information about the functioning and duties of the Public Authorities.²¹ It is mandatory for all Public Authorities to publish relevant facts, while formulating important policies or announcing decisions which affect the public. Each Public Authority must ensure that there is a healthy participation of people in the decision-making process.²² The obligations also require all public Authorities to be more accountable to those whom their decisions affect and therefore to provide them with the reasons for which certain decisions were taken-be they administrative or quasi-judicial in nature. This provision ensures that the principles of natural justice are guaranteed to each person affected by the decision of a Public Authority.

Besides, Water (Prevention and control of Pollution) Act, 1974 provides that State Boards have to maintain a register of information or water pollution, and the information relating to any outlet or any effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises,²³ Information disclosure provisions are also made about air pollution.²⁴ The Act obliges Pollution control Board to disclose relevant interval reports to a citizen prosecuting the polluter. However, information may be withheld in the public interest.²⁵ This qualification to the right of information seems unnecessary. It is difficult to envision a situation where the disclosure of reports on pollution could harm public.

¹⁹ *Policy Statement for Abatement of Pollution*, Ministry of Environment and Forests, Government of India (1992).

²⁰ See Government of India-Ministry of Environment and Forests (1986) Right to Know-the Judgment of Bombay High Court and Supreme Court Order: in case of Bombay Environmental Action Group and Others versus Pune Cantonment Board, vide Writ petition 2733 of 1986, Bombay High Court and other cases mentioned therein.

²¹ Section 4 (1) (b) of Right to Information Act, 2005.

²² Section 4 (1) (c) of Right to Information Act, 2005.

²³ Water (Prevention and Control of Pollution) Act, 1974 s. 25(6) [Water Act.]

²⁴ Air (Prevention and Control of Pollution) Act, 1981, s 25 [Air Act.]

²⁵ Dr.Jai Jai Ram Upadhyay,Env.law, Water Act, S 49 and Air Act, S. 43. Central law Agency,2005,p.167 .

The Environment Protection Act, 1986 provides for right to information.²⁶ Environment (Protection), Rules, 1986 and the Environment Impact Assessment (EIA) provides for public consultations and disclosures under various circumstances. Procedure prescribed for public hearings and requirement for the publication of the executive summary of a proposal for any project affecting environment are required by law, Participation from planning process to successful execution of large projects requires that people should be able to appreciate and judge whether certain plans and schemes are useful for them or not. It is only possible when they have sufficient information about nature of the projects and programmes. Informed public debates on the pros and cons of a project to bring required changes and modifications cuts on the time-lag and thus reduces project's costs.

The National Environment Appellate Authority is empowered to hear appeals on ecological matters, by aggrieved persons, when a project has been cleared.²⁷ Environmental laws of the country provide right to information against private entities, particularly from large corporations dealing in hazardous activities or in large projects. The Bhopal gas tragedy and its disaster syndrome might have environmental hazards of the deadly gas leaked from the union Carbide chemical plant at Bhopal. Big corporations, dealing in hazardous substances are under a duty to provide people baseline health data around existing hazardous plants. Failures to undertake such studies and to provide information to people render them liable.²⁸ The Environmental clearance by government for setting up any industry in India also puts a duty on the government to provide such information to the people and NGOs.

Although these provisions are meant to facilitate citizens input, in fact they are limited, and environmentalists and NGOs have to frequently approach the courts to get complete disclosure.

CONCLUSION & SUGGESTIONS

We believe that there needs to be a significant effort to ensure that all nations should make tangible and identifiable commitments for adopting laws on control and prevention over the deteriorating environmental conditions. The said law should be widely publicized and should be legally enforceable through stringent clauses. Disclosure is a tool for environmental management. We should recognize the public's right to be informed about and to criticize environmental issues. By increasing the transparency of environmental information, the force of public opinion can put pressure on those who destroy the environment. These should be included in Sustainable Development Goals. At the International level, Additional assistance should be provided by UNEP and other parties to assist nations into fully implementing the UNEP guidelines into national law. All parties should commit to begin negotiations on a new international convention on Access to Information, Public Participation and Access to Justice. The other UN regional bodies should be encouraged to adopt in the meanwhile regional mechanisms for access to information following the model of the Aarhus Convention. Any reform of the

²⁶ Environment Impact Assessment Regulation. 1994 Para 2(1)(a) read with Schedule IV

²⁷ P.S Jaswal, Env.law, National Environment Appellate Authority Act, 1997, S.11 Pioneer publications, 2008, p.310-311.

²⁸ Union Carbide Corp. v. U.O.I AIR 1992 SC 248: (1991) 4 SCC 584.

institutional framework of governance for sustainable development should including the creation of a Council on Sustainable Development, and a World Environmental Organization or UN Environmental Organization should also ensure that the Principle 10 rights are incorporated into their structures. This includes all other UN and regional bodies.

At National level , there should be Promotion of public participation to develop a national program, including Programs for raising community knowledge and capacity ,Guidelines and training to State Pollution Control Boards on public consultation, Programs to involve citizens in monitoring and enforcement of environmental policies, Development of sectoral guidelines and training on public consultation, Improvement of access to information, knowledge and training, Development and regular updating of public on-line environmental data base, Development of guidelines to facilitate the use of the Right to Information Act in seeking and imparting justice, Sharing of local knowledge with environmental agencies, Development of networks of regional centers within appropriate existing institutions to provide high quality training and knowledge across the country for upkeep of healthy environment, Proactive use of the Right to Information Act to obtain local environment data, Dissemination of relevant information to affected communities

Beside's Protection of urban environment is an important function of urban local bodies as well as other agencies like pollution control boards. The local authorities need to ensure a balance between natural and built environment in urban areas and hence ensure preservation of lakes, parks, green areas, ground water and other ecologically sensitive areas. The Pollution Control Boards set up by the State Government and other Governmental agencies involved in environmental protection need to provide, maintain and update the records relating to public safety and threshold levels of pollution, inspection of industrial units and so on. Citizen/ citizen groups may seek information on environmental protection data from the public authority using the Right to Information Act.

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