

# RIGHT TO KNOW ENVIRONMENTAL MATTERS IN INDIA

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## ABSTRACT

India's political landscape has evolved a lot since the "right to know" went from being considered a supplementary political advantage to a fundamental tool for human and social existence. The old top-down bureaucratic way of doing things, where the government has a monopoly on information about industrial dangers and how to allocate resources, has not succeeded and has even proved dangerous as the economy has grown rapidly. There are two basic concepts behind modern environmental justice: substantive rights, which include the right to clean air and water, and procedural rights, which provide people power through information, participation, and the opportunity to go to court. The Bhopal Gas Leak and the huge displacements caused by the Narmada dam projects are instances of how keeping things secret in government may lead to loss of human dignity. In both cases, the lack of openness caused long-term health concerns and the loss of livelihoods. Indian law has been adding more and more of these procedural rights to the Constitution. This is partly because of international agreements like the Aarhus Convention and the Rio Declaration. The Indian courts has moved towards an open society idea by saying that Article 21 (the Right to Life) and Article 19 (Freedom of Speech) include the right to know about the environment.

Key words: Right to Know, Environment, Human rights

## 1.1 INTRODUCTION

During the advent of the chemical age in the twentieth century, people had little reason to demand information about the release of chemical substances into the environment. These chemicals held the promise of progress, farmers enjoyed bigger yields as a result of pesticides and consumers benefitted from the innovation and convenience of plastics. Unfortunately, the long-term environmental consequences of these chemical innovations were not always obvious. But as early environmental activists warned, in addition to the dangers posed by large releases, even small releases of commercial chemicals into the air, water, and land can have long-term chronic effects. Right of public participation and access to the environment is significant for society to engage and deliberate in the key decision-making process. Rather than viewing the bureaucratic process of decision-making on the environment as a top-down model, the emphasis is on the consultation of the societal members who would be affected by the decision, to have a say in reaching an inclusive informed decision. The right to have a say by community members in environmental issues such as infrastructure development and cutting down of a large

number of trees in an urban neighborhood has been identified as part of the sustainable and inclusive environmental process.

## 1.2 INTERDEPENDENCE OF HUMAN RIGHTS AND ENVIRONMENTAL JUSTICE

Environmental Rights consist of two components: Substantive Rights (basic rights) and Procedural Rights (essential for the attainment of substantive rights). Substantive Rights include the right to a safe climate, clean air, clean water, non-toxic settings, and healthy ecosystems. Procedural Rights contain three basic access rights. They are: the right to know, the right to participate in public life, and the right to a fair trial.<sup>1</sup>

Human rights and the environment are linked. You can't enjoy your human rights without a safe, clean, healthy, and sustainable environment, and you can't have sustainable environmental governance without establishing and respecting human rights.<sup>2</sup>

### 1.2.1 CASE STUDIES

**1.2.1.1 Gas leak in UCC in Bhopal:** The methyl isocyanate spread all throughout the city, and more than half a million people were affected. Because of the exposure, twenty thousand people perished in the years that followed, and every year more people die from gas-related illnesses. It shows one of the most terrible atrocities committed by a company out of carelessness and an inhumane desire for profit. It is a case of technology transfer gone wrong in the early days of globalization, and it shows how policy makers failed to protect the survivors' right to life and justice. The statistics of people died or dying is so meaningless when dying still has not stopped.<sup>3</sup>

**1.2.1.2 The Narmada Bachao Andolon:** Most significant water project is Sardar Sarovar. The project involves building a huge dam on the Narmada River, making a reservoir that will flood land in the states of Gujrat, Maharashtra, and Madhya Pradesh, and building a large canal and irrigation system in Gujrat (Berger, 1992). The project was planned to displace 120,000 people from an area of around 370 square kilometers that would be flooded. There is no legal way to fix big violations of the law and human rights because the dam was built without knowing much about the river's hydrology and its bad record of resettling and rehabilitating people. The human rights violations continue to happen in the valley from the rise in the water level leading to loss of livelihood and cultural depletion due to submergence.<sup>4</sup>

## 1.3 AARHUS CONVENTION NEW PARADIGM OF ENVIRONMENTAL GOVERNANCE

The Aarhus Convention is the new model for how to control the environment when it comes to getting information, letting people take part in decision-making, and getting justice in environmental concerns. The Convention seeks to accomplish the introduction of the new paradigm in environmental regime formulation by

<sup>1</sup> Boyle, Human Rights and The Environment: Where next? 23 Eur. J. Int'l L. 613 (2012).

<sup>2</sup> Atapattu S, The right to a healthy life or the right to die polluted? the emergence of a human right to a healthy environment under international law, TUL.L.REV, 65, 66-67 (2002).

<sup>3</sup> Sarang. S, Crimes of Bhopal and the Global Campaign for Justice, J.MATER.SCI.CHEM.ENG, 47, 49-52(2002).

<sup>4</sup> Berger, T. R, The World Bank's Independent Review of India's Sardar Sarovar, Am.U.LREV, 33-48(1992).

embracing the three principles of public involvement in environmental management: access to information, participation in decision making, and access to justice.<sup>5</sup>

The Convention also specifies that citizens can go to court or other government agencies to challenge actions and inactions by both private and public authorities. The procedure should be fair, not too costly, and give people a lot of good ways to deal with their problems. India has to make laws that provide people the right to know what's going on and have a say in decisions affecting the environment. It believes that environmental democracy won't work until people can see things before they go to court. Reviewing it internally is the most important part of gathering knowledge and letting people get involved. Without it, it would be weak to make environmental justice a permanent part of the system.

#### 1.4 RIGHT TO ENVIRONMENTAL INFORMATION IN INTERNATIONAL SPHERE

The right to seek, receive, and impart information is recognized in the Universal Declaration of Human Rights<sup>6</sup> and the International Covenant on Civil and Political Rights<sup>7</sup>, as part of the human right to freedom of expression. The right to information is also very important for being able to use other rights. The UN Special Rapporteur on toxic wastes has said that the right to information and the right to take part in decision-making are "both rights in themselves and essential tools for the exercise of other rights, such as the right to life, the right to the highest attainable standard of health, the right to adequate housing, and others." International environmental agreements also stress how important it is to give people knowledge about the environment. Some examples are:

**Principle 10 of the Rio Declaration states:** At the national level, everyone should be able to get the right information about the environment that public authorities have, such as information about dangerous chemicals and activities in their neighbourhoods.<sup>8</sup>

**Principle 17 of the Rio Declaration states:** As a national tool, environmental impact assessment must be done for proposed activities that are expected to have a big negative effect on the environment. Impact on the environment and are subject to a judgment of a competent national authority.<sup>9</sup>

#### 1.5 RIGHT TO KNOW IN INDIAN CONTEXT

People in democratic countries like India want the basic right to know or get information. Lack of transparency renders elected governments less legitimate.<sup>10</sup> The Right to Know, on the other hand, makes participatory democracy stronger. The right to know is highly crucial when it comes to the environment. Article 19(1)(a) implies it, and it is closely related to Article 21 of the Constitution, especially when it comes to environmental

<sup>5</sup> Article 1, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

<sup>6</sup> Article 19 of the Universal Declaration of Human Rights.

<sup>7</sup> Article 19 of the International Covenant on Civil and Political Rights.

<sup>8</sup> Rio Declaration on Environment and Development, princ. 10, U.N. Doc. A/CONF.151/26 (Vol. I), 31 I.L.M. 874 (June 14, 1992).

<sup>9</sup> Rio Declaration on Environment and Development, princ. 17, U.N. Doc. A/CONF.151/26 (Vol. I), 31 I.L.M. 874 (June 14, 1992).

<sup>10</sup> Thomas I Emerson, Legal Foundations of the Right to know, Wash. U. L. Q. 1,323, 323-330 (1976).

issues where the secret government decision could harm people's health, life, and livelihood.<sup>11</sup> Any government plan to build a dam, nuclear power plant, thermal power plant, or hazardous industry that will directly damage the health and lives of people in the area must be made public.

The Judiciary has broadened the scope of the right to know in *S. P. Gupta v. Union of India*<sup>12</sup> the Supreme Court recognized the right to know to be implicit in the Right of free speech and expression. The Supreme Court observed: "This is the new Democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception."<sup>13</sup> The concept of open government is the direct emanation from the right to know which seems to be implicit in Article-19(1) (a). Therefore, disclosures of information in regard to the functioning of the government must be the rule and secrecy exception justified only where the strictest requirements of public interest so demand"<sup>14</sup>.

In *R.P. Ltd., v Proprietors, Indian Express Newspapers. Bombay Pvt. Ltd.*,<sup>15</sup> The Supreme Court held that "We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy." Article 21 of the Constitution says that every citizen of a free country has the right to know. This is a vital right that people want to have in this day and age on our land.

In *Research Foundation for Science Technology and Natural Resource Policy v. Union of India*<sup>16</sup> the Supreme Court has stated that the right to information and Community participation necessary for protection of environment and human health is an inalienable part of Article 21 and is governed by the accepted environment principles accordingly.<sup>17</sup>

## 1.6 PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

The Universal Declaration on Human Rights in 1948 established the right to participate in government, free voting in elections, and equitable access to public services as a way for people to take part in their government. The International Covenant on Civil and Political Rights (ICCPR) of 1966 gave people the right to take part in public affairs, which further expanded the right. The ICCPR also gave people the right to get information. The Stockholm Conference in 1972 stressed how important it was for citizens, governments, and businesses to work together to safeguard the environment. The World Charter for Nature of 1982 came next. It gave people the chance to have a say in environmental choices and required that all planning impact assessments be made public to allow for effective consultation and participation. The Tokyo Declaration of the World Commission on

<sup>11</sup>Mahi Pandit, Constitutional Recognition of Environmental Protection in India (Mar.23, 2023), <http://dx.doi.org/10.2139/ssrn.4506392>.

<sup>12</sup> AIR 1982 SC 149

<sup>13</sup> <https://main.sci.gov.in/jonew/judis/29918.pdf>

<sup>14</sup> Id

<sup>15</sup> 1989 AIR 190

<sup>16</sup> Writ Petition (C) No.657 of 1995.

<sup>17</sup> Id

Environment and Development in 1987 and The Hague Recommendation on International Environmental Law in 1991 brought these ideas back to life.<sup>18</sup>

The United Nations Rio Declaration on Environment and Development during the Earth embraced the idea of letting people have a say in environmental decisions in 1992. The Rio Declaration made it even clearer that governments are responsible for making sure that people can get information. The global conversation about how citizens may take part in making decisions about the environment started with access to information and moved up to collaboration, with steps in between for consultation and permission.<sup>19</sup>

## 1.7 ENVIRONMENT IMPACT ASSESSEMENT

According to UNEP, an Environmental Impact Assessment is a way to find out what a project's effects would be on the environment, society, and economy before making a decision. It tries to guess what the project's effects on the environment will be early on in the planning and design process, find strategies to lessen those effects, modify projects to fit the local environment, and give decision-makers the predictions and options.<sup>20</sup> Environment Impact Assessment in India is statutorily backed by the Environment Protection Act, 1986.

The case laws such as *Adivasi Kisan Ekta Sanghatan v Ministry of Environment* highlight the importance of public engagement when the EIA process did not include the meaningful involvement of the relevant individuals. The fishermen protested because the public didn't become involved in the Mumbai coastline road project. The Bombay High Court had to step in to fix the mistake since the effects on fishermen's livelihoods and the coastal marine environment were not fully taken into account.

The Forest Rights Act, 2006 gives people the right to take part in the decision-making process when an activity could lead to resettlement or have a negative effect on the community that lives in the forest. The people who live in the forest and its edge areas have cultural and economic links to the forest. Any infrastructure construction or mineral extraction activities should be done according to the principle of free prior informed consent. The Forest Rights Act of 2006, Section 4(2)(e), says that "the free informed consent of the Gram Sabhas in the areas affected by the proposed resettlement and the package has been obtained in writing."<sup>21</sup>

In the *Niyamagiri case*<sup>22</sup>, The Supreme Court had to step in to make sure that the Dongria Kondh community could use their right to free, prior, and informed consent to stop the proposed mining project that would have affected their culture and way of life. This was the first environmental referendum in India that allowed an indigenous group to exercise their right to participate in public life.

<sup>18</sup> Stephen W. Kleinschmit & Hindy Lauer Schachter, Review: The Role of Public Participation in Environmental Governance, PUBLIC ADM.REV, 303-306(2011).

<sup>19</sup>Id.

<sup>20</sup> Hollick, M. Environmental impact assessment: An international evaluation. Environmental Management 10, 157–178 (1986). <https://doi.org/10.1007/BF01867355>.

<sup>21</sup> Deva Prasad M, Why India Needs a Better Public Participation Framework For Environmental Governance, Jurist Academic Commentary (May 21, 2021), <https://www.jurist.org/commentary/2021/05/deva-prasad-environment-india/>.

<sup>22</sup> *The Orissa Mining Corporation Ltd (OMC) vs Ministry of Environment & Forest*, Writ Petition (Civil) No. 180 of 2011.

## 1.8 VIZHINJAM PORT IN KERALA

The Vizhinjam International Deepwater Multipurpose Seaport is in Kerala's Thiruvananthapuram district. It was first suggested in the 1990s, and some people have said that the initiative came about because of the sacrifice of ordinary people. The Adani Ports and Special Economic Zone (APSEZ) and the state government work together in a public-private partnership. The Comptroller Auditor General of India said that the choice of concessionaire was too good for APSEZ. Even though government evaluations raised doubts about the project's financial sustainability and suggested building smaller ports instead, the Vizhinjam project moved forward. The Union Ministry of Shipping's Committee Report on Ports and an Expert Appraisal Committee both raised concerns about the idea because there were already three ports nearby.<sup>23</sup>

### 1.8.1 Scope for Public Participation

Ports need to seek environmental approval under the EIA Notification, which implies there needs to be a public hearing. The project also needs a CRZ Clearance because some parts of the area are in the CRZ. But the CRZ process and the Air and Water Act way of acquiring authorization don't need people to be involved. The District Collector and the courts are places where people who are affected can make complaints. The IFC Compliance Advisor Ombudsman can also obtain reports of complaints because the State Government hired the International Finance Corporation (IFC) to help with the project.<sup>24</sup>

### 1.8.2 Public Strategy and action

Before the project started, citizens voiced their concerns in a formal public consultation procedure with government agencies, an expert appraisal committee, and by registering complaints with international organizations and taking legal action. They even submitted a petition asking for a translation of the whole EIA report because just the summary was available in the local language, but the petition was turned down. In 2012, someone told the Compliance Advisor Ombudsman that the IFC was not following the World Bank's rules for environmental and social performance.

## 1.9 CONCLUSION

Most states have now passed legislation that require environmental impact assessments and regulations that protect people's right to obtain information. Some countries have also made laws or added to their constitutions that deal with access to environmental information. So, in India, public participation in environmental governance needs to be made stronger in practice. India has to pass laws that provide people the right to receive information and take part in making decisions about the environment.

<sup>23</sup> Nileena MS, Adani's Vizhinjam port still mired in controversy after inquiry into the CAG report, THE CARAVAN, Oct 22, 2018.

<sup>24</sup> Dilay, A., Diduck, A.P & Patel, K, Environmental justice in India: a case study of environmental impact assessment, community engagement and public interest litigation, 16-27(2018).

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