



CENTRE FOR ACADEMIC LEGAL RESEARCH | JOURNAL OF APPLICABLE LAW &  
JURISPRUDENCE

Volume 1 | Issue 1

***“Public Participation: A Boon to Environmental Decision Making Process”***

By: Hardik Jain (Vivekananda Institute of Professional Studies)

The following research/scholar work is under Centre for Study of Contemporary Legal Issues. The copyright over this material is held by CALR as per the CALR Policy 2020.

---

## **Abstract**

In a modern developing world, the need for a healthy environment with greater environmental values is not only a need but a necessity of the hour. From Various Development Projects to creating space for commercial needs, mankind is in a hefty race to succeed develop as fast as possible. In this race to succeed, resources are used exponentially a high rate and no care towards environment is provided. Thus, it is an essential need that people understand the need of the Healthy and sustainable environment. Various movements in the past with added Judicial Activism, it has been seen that people do take into account the arbitrary legislations and projects with respect to environment. This not only realizes the need of people participating in the Decision-making process but further establishes the fact that people understand the need and importance of the environment much more than the legislators. Thus, it lay down a huge scope and need for public participation to create stringent and more effective laws and more calculated decisions. This need has also been identified in various conventions and decelerations over the years too. Taking such immense need and further the importance of Public Participation in decision making, Indian Government came up with Environment Impact Assessment which not only sees to establish the intent of Public Participation in the Decision-making process but also understands the importance of Public Participation. This Paper tries to understand the various facets of Public Participation in the Decision-making Process with respect to Environment.

## **Research Problem**

This Research paper will try to understand the concept of People Participation in pursuance of environmental decision making. Furthermore, it will try to understand the need and importance of such participation and how People's Participation in various movements and Judicial Activism has laid a foundation for Public Participation in the Decision-making process.

## **Research Objectives**

This Research Paper tries to establish the relationship between Public Participation with respect to the environmental Decision-making process. This Research Paper also unravels the importance of public movements and Judicial Activism as part of Public Participation in the pursuance of Environmental Decisions. It further tries to understand the Environmental Impact Assessment and how it plays and sees that the Public plays an active role in the decision-making process.

---

## **Hypothesis**

People Participation in Environmental Decision-Making Process has not only led to more stringent and stricter environmental law but has also played a huge role in empowering and protecting the environment at a large scale.

## **Research Methodology**

This Research Paper Primarily focuses on Understanding and analysing the involvement of Public Participation in Environmental Decision Making and how it has played a key role in establishing stricter and efficient laws. This Research paper uses Secondary sources in the form of Statutes , Constitution , interpreting Website Articles and Journals.

---

## **I.) Introduction**

An effective mechanism that seeks to enforce the Right to Participation, right to information and right to access justice not only protects but also empowers human rights. Right to Participation empowers and motivates people to be a part of the decision-making process and get their opinions heard. This is done through consultations, comments, opinions, etc. Public Participation can be described as the real involvement of all social factors in social and political decision-making processes that potentially affect the communities in which they live and work. Public Participation is usually a mechanism where the general public and government together share information and intent to design, implement, and evaluate policies. The most common Participatory tools used by the authorities are Public Hearings, Notices, Consultation, Judicial Review, etc. Public Participation in recent times has provided for the formation of various Environment projects, Policies, etc. taken up by the government which has seen positive results and enforcement.

## **II.) Public Participation in Decision Making Process: A Key to future Environmental Legislation?**

The Reason why the Public Participation came into existence with respect to the Environmental Decision-making process is rather simple. With the increased Protection of the environment, States have assumed that it is their responsibility to meet the risks and dangers threatening the environment. Thus, measures taken by them might at times hurt the public at large and cause large distress among the public. Thus, to overcome the traditional methods of policymaking the state has given opportunity to citizens and other stakeholders to participate in the environmental decision-making process. After all, it is the people who are expected to accept and comply with the provisions, thus the public should have the chance to develop and formulate the policies, rules, etc. Furthermore, People Participation also helps in giving suggestions and views which might not have been considered by the Legislators before, giving rise to stronger and better Laws and Regulations.

## **III.) Public Participation in Environmental Decision Making: In Indian Landscape**

In India Public Participation mechanism when exercised directly leads to the direct manifestation of Democracy. Public participation not only bridges the gap between the heterogeneous groups of

---

the society but further maintains a balance between the right to development and the right to a protected environment. On one hand, it helps in the fulfilment of the usage of vast resources for development but at the same time analyses and evaluates the impact of such big projects. This is done by public hearing in environmental decision making. The process of Public Participation further acts as an essential source by which various alternative and valid views are put forward by the general public which was not first taken during the policy-making furthermore it brings quality in objectivity too.

The general Public confidence is also gained by the process of Public Participation and in a country like India where people of different culture and socio-economic background co-exist, thus it becomes important to seek validation from every strata of society. This process further helps in a higher acceptance rate and lowers down the process of Judicial Review on the courts.

It is to note that the Right to participation and information will have little meaning if people don't have a right to access to justice. The right to access justice allows people to enforce environmental laws and provide a remedy where the law is violated. Access to Justice also allows the people who have any distress to seek relief and remedy.

These rights have been dispensed due to various international conventions and several inter-related factors that have given rise to public participation. Thus, For Example: - Principle 10 of the Rio Convention<sup>1</sup> talks about the need for public participation.

In India, People and the community itself have been a part of various Environmental movements and have themselves actively participated in not only conserving the environment but also giving scope and mandate for a stricter and stringent environmental law in the country. Thus, it is the result of these movements and various other factors that even the Government has understood the importance of People's Participation in the decision-making process with respect to environmental laws and policies. The government has come with the statutory concept of Environmental Impact Assessment (EIA) to make people actively involved in environmental decisions.

---

<sup>1</sup> Principle 10 , Rio Deceleration on Environment and Development , The United Nations Conference on Environment and Development

---

#### **IV.) Public Participation through Movements and Judicial Activism.**

The formation of Various Environmental Groups in the mid-19th Century gave an uprising push to various international movements across the globe regarding the importance of the Environment. Though these movements were confined to a small part of Europe and Asia, it was majorly spread in small groups in The United States of America. These groups not only spread information regarding the need for a safer environment but also tried to voice their opinions regarding the unhealthy use of resources and lack of sustainable development. Thus protests against nuclear power in the USA and Europe after incidents like Chernobyl and Three Mile Island, Campaigns in Tasmania against the damming of Franklin river, etc. were some widespread campaigns which were taken up by these environmental groups.

In India, the need for conserving the environment and people playing an active role in protecting and strengthening their surroundings dates long back. Activities like Soil conservation and afforestation was a very common practice among the people of India since the 16th century. India being a country that was highly dependent on its Agricultural sector knew the value of a healthy environment much before the world. Values like these later became the foundation for India's Environmental movements.

The boom of Industrialization has led to many projects which has led to the degradation of the environment. In a recent case Aarey Forests in Maharashtra, the Municipality ordered the cut down of a substantial part of the forest to make a metro shed. High Court affirmed the said order. In a PIL filed by the protestors addressing the severity of the issue, then Chief Justice Ranjan Gogoi ordered Status Quo and directed the release of all the protestors who were detained in pursuance of the said Municipality order.<sup>2</sup>

This is only one of the few examples where the general public has influenced an arbitrary decision with respect to the environment taken by the authorities. More such examples where people have come together to protect and strengthen the environment are listed below:-

---

<sup>2</sup> (2019) 9 SCC 363 : 2019 SCC OnLine SC 1322

---

## **1. Chipko Movement**

This movement also known as the Tree Hugger movement is one of the most famous and important movements in the history of environmental studies in the country. The Movement started in a small village where women prevented the trees from being cut by hugging them. The movement peaked in around 1970.

In 1973 in Chamoli District, Chandi Prasad a various other tree huggers of his team opposed the cutting of trees by a Sports Good Company. In 1974 the forest authorities marked few trees of Reni village to be cut, women of the village not only hugged trees to protect them from being cut but also didn't allow any labour to step into the premises. The movement became so widespread that people even opposed the destruction of a large number of trees for the construction of Tehri Dam.

The Milestone Moment for the movement came when Sunderlal Bahugana, a member of the movement went on an indefinite fast to protect the felling of trees in the Himalayan Region which were above an altitude of 1000 meters above the sea level. This demand was later met by the authorities who respected the tree huggers and their efforts to save the trees and the biodiversity. This incident not only made authorities revoke the order but the Prime Minister Indira Gandhi ruling a 15-year ban on cutting of trees in the Himalayan Region which was later extended to other regions. Thus, Chipko Movement became one of the primary examples as to how the people participating in the decision-making process is not only a need but a necessity as it's the general public who are the biggest stakeholders when it comes to the environment

## **2. Beej Bachao Andolan**

This movement began in Jardhargaon, Uttarakhand to save the Indigenous seeds which had been used in the region by generations of farmers and empowering traditional farming techniques in the area. The movement has not only been a crusade to protect soil erosion by excessive use of fertilizers but also to promote agricultural bio diversity and sustainable methods of farming.

## **3. Sukhomajri Model Village**

---

In the early 1980s, Sukhomajri Village in Haryana became a model of inspiration and sustainable development for the people of the country. The village by conserving the environment in numerous ways like Conserving forests, Afforestation, Establishing Check Dams and Preventing Soil erosion helped the village to not only produce more Crops which further lead to a stable income for the residents of the village but also alleviated poverty from the area.

### **Judicial Activism: Another Dimension to the Public Participation in decision making process**

The Indian Judiciary has always been an open institution in empowering public participation in the decision-making process. Over Time there has been a lot of effort by the Judiciary and the public to establish new provisions in the law to fit the environmental needs and empower the depleting environment in various ways. Public Interest Litigation has been a boon to the citizens of India as any free-spirited citizen can approach the court for public cause and welfare by filing a petition under: -

- In Supreme Court under Article 32<sup>3</sup> of the Indian Constitution.
- In High Court under Article 226<sup>4</sup> of the Indian Constitution.
- Under Section 133<sup>5</sup> Criminal Procedure Code before the court of Magistrate.

Few of the Landmark Judgements pronounced by the court with respect to Environment and its Protection are:-

#### **1. Ratlam Municipal Council v. Vardhichand, 1980<sup>6</sup>**

The Judgement of the Supreme Court, in this case, has been held as the landmark in the history of environmental law. Ordinary Tort and Public Nuisance was first discussed in this landmark case. Judicial Activism, in this case, compelled the M.P Municipality to provide sanitation and drainage despite budgetary constraints.

---

<sup>3</sup> INDIA CONST. art. 32

<sup>4</sup> INDIA CONST. art. 226

<sup>5</sup> Code of Criminal Procedure, 1973 No.2 , Acts of Parliament, 1974 (India).

<sup>6</sup> Municipal Council, Ratlam v. Vardhichand, (1980) 4 SCC 162

---

## **2. M.C. Mehta v. Union of India, 1988**<sup>7</sup>

In the following case the Supreme Court observed and highlighted the need and importance of the Provisions which have been laid down in our Constitution with respect to Protection and empowerment of environment. Court while explaining the Constitutional provisions of Article 48-A and 51-A also cited the importance of the Water (Prevention Control of Pollution) Act, 1974. Thus, Court in the case directed the Municipality Authorities of Kanpur to bear major responsibilities for the pollution of the Ganga River and directed it to take corrective measures within the period of 6 months.

Furthermore, this case held that though the petitioner is not the party that is directly affected, but he is a person who is interested in protecting the lives of the people living nearside the Ganga river. Thus, the petition was treated as a PIL and pollution of the Ganga river as a public nuisance.

## **3. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad , 1987**<sup>8</sup>

In this case, the court held that environmental pollution would be a violation of the Fundamental Right to Life and Personal Liberty as enshrined in Article 21 and thus established a relationship between Fundamental rights and the right to a Healthy Environment.

Apart from these case, there have been other numerous case like the Taj Trapezium Case<sup>9</sup>, Kinkri Devi Case<sup>10</sup>, etc. where the court has taken an active part in improving the environment and enforcing various Fundamental duties in the form of Article 48-A<sup>11</sup> and Article 51-G<sup>12</sup> to provide a healthy and a safe environment. It is also seen that PIL has played a major role in these cases as public Participation yet again formed the basis for such decisions by the court.

---

<sup>7</sup> M.C. Mehta v. Union of India, (1988) SCC (Cri) 141

<sup>8</sup> T. Damodhar Rao v. Municipal Corporation, Hyderabad AIR 1987 AP 171

<sup>9</sup> M.C. Mehta (Taj Trapezium Matter) v. Union of India , 1997 2 SCC 353

<sup>10</sup> Kinkri Devi and Another v. State of Himachal Pradesh and Others, AIR 1988 HP 4

<sup>11</sup> INDIA CONST. art. 48-A

<sup>12</sup> INDIA CONST. art. 51-G

---

## **V.) Public Participation and Environmental Impact Assessment**

In India, EIA was given statutory validity under the Environment Protection Act, 1986<sup>13</sup> in 1994. It was for the first time that public involvement was seen in the environmental clearance process. It was done by a Public hearing mechanism and was made statutory under the Environment Protection Act. EIA specifically provided for the details of Public Inquiry. The details of the project were to be published in the Newspaper and suggestions, comments, and views were invited by the general public within 30 days. Thus EIA became a major source in helping to bridge the gap between the project sponsors and the general public. It not only helps in gaining Public confidence but also results in ensuring public acceptance of development decisions. Thus, EIA has turned out to be the most effective form of Public Participation in Environmental Decision Making. Various Judicial Decisions have confirmed this position. Thus, in the case of *Vedire Venkata Reddy v. Union of India*<sup>14</sup>, the apex court made it clear that the process of environmental clearance has to be meticulously followed. In *Samarth Trust Case*<sup>15</sup> the Delhi HC has considered EIA as an essential part of participatory justice. EIA process is an outcome of the 1992 Rio Declaration which states that environmental issues are best handled by the participation of all citizens.

The New EIA notification 2020, has gathered some controversy recently due to the provisions regarding the Public Consultation Process. It proposes to reduce the time limit for suggestions from the public from 30 days to 20 days which as argued by many legislators is not adequate and fails the EIA process. Thus, we need to empower the EIA process to invite more and more Public Participation and strengthen the public decision-making process.

---

<sup>13</sup> The Environment (Protection) Act, 1986 Act No. 29 of 1986 (India)

<sup>14</sup> *Vedire Venkata Reddy and others v. Union of India and others*, AIR 2005 AP 155

<sup>15</sup> *Samarth Trust v. Union of India Ministry of Environment and Forests* 2010 SCC OnLine Del 2127 : (2010) 117 DRJ 113 (Del)

---

## **VI.) Conclusion & Suggestions**

Public Participation is not only an advantage but an essential process towards the environmental decision-making process. Not only various International Conventions but even the Indian Judiciary through its Judgements have stressed upon the fact that how important People Participation is for the society. People's Participation not only allows for a scope for improvement but further is a boon to the Authorities towards the formation of Quality and stringent Environmental Decisions. Each day Environment suffers and in turn increases the need for its protection and further its empowerment. These objectives can only be achieved if People Participation is maximized, Stronger laws are made, Quality Checks during short intervals, Sustainable development is motivated and people are informed about the importance of a Healthy Environment. Protection of the environment is not only dependent on laws but a collective effort from both the Government and the general public is needed. Only through this collective effort, we will be able to protect and empower the Environment.

---

## **Researcher/Scholar Index**

- Principle 10 , Rio Deceleration on Environment and Development , The United Nations Conference on Environment and Development
  - (2019) 9 SCC 363 : 2019 SCC OnLine SC 1322
  - INDIA CONST. art. 32
  - INDIA CONST. art. 226
  - Code of Criminal Procedure, 1973 No.2 , Acts of Parliament, 1974 (India).
  - Municipal Council, Ratlam v. Vardhichand, (1980) 4 SCC 162
  - M.C. Mehta v. Union of India, (1988) SCC (Cri) 141
  - T. Damodhar Rao v. Municipal Corporation, Hyderabad AIR 1987 AP 171
  - M.C. Mehta (Taj Trapezium Matter) v. Union of India , 1997 2 SCC 353
  - Kinkri Devi and Another v. State of Himachal Pradesh and Others, AIR 1988 HP 4
  - INDIA CONST. art. 48-A
  - INDIA CONST. art. 51-G
  - The Environment (Protection) Act, 1986 Act No. 29 of 1986 (India)
  - Vedire Venkata Reddy and others v. Union of India and others, AIR 2005 AP 155
  - Samarth Trust v. Union of India Ministry of Environment and Forests 2010 SCC OnLine Del 2127 : (2010) 117 DRJ 113 (Del)
-