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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



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THE EMERGENCE OF PUBLIC PARTICIPATION IN THE FULFILMENT OF ENVIRONMENTAL RIGHTS

AUTHOR – K. BEISUNGIA, RESEARCH SCHOLAR, FACULTY OF LAW, UNIVERSITY OF DELHI

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ABSTRACT:

This article critically aims to assess the significant role of public participation that can be useful in achieving the state governments' fulfillment of citizens' environmental rights, also highlighting some of the international development in this field. It also discusses the scope and objectives of public participation for better management of the environmental challenges as well as the fulfillment of environmental rights and how the concerned community participation brings good environmental governance. This article does not attempt to discuss the concept of good environmental governance in general. Yet, it attempted to highlight how the crucial role played by the participation of the public in promoting environmental rights could bring good environmental governance. This article is confined to the process and method of public participation in the protection of environment and management of environmental decision-making for attaining environmental rights. The article contemplates substantive environmental rights within the meaning of human rights and deliberates on the meaningful concept of public participation. The creative role of the judiciary in broadening the meaning and scope of life under Article 21 of the Constitution of India by incorporating a 'clean and healthy environment' under the ambit of 'life' along with the relevant decided cases are discussed in this article. The international organizations, conventions, committees, declarations, etc relating to human rights and the environment concerned are also highlighted for a better understanding of the linkage between the environment and living human beings. The analysis of this article does not ensure its failure or success in real life, which is beyond the objective of this contribution. This article highlighted the majority of Indian context, wherever applicable, to illustrate and reinforce the viewpoints

1. Introduction

Fulfillment of the Environmental Rights of the people is grounded on the right of public participation and access to the environmental decision-making process. It is indispensable for society to maintain a well-balanced between living human beings on one side and their surrounding on the other. The environmental decision-making process of a top-down model in which bureaucrats play overall stages without the knowledge or consulting with the stakeholder perhaps could not attain a favorable result. In order to have an inclusive informed decision, the socially interested members who would likely be

affected by the decision must be consulted and heard. The right of the community members to have a say in environmental-related issues such as the clearance of forests, infrastructure development projects, etc has now been considered part of the inclusive and sustainable environmental process.

The rapid growth awareness of the notion of human rights and the inter-disciplinary studies and analyses of the interlinking of the universe brought forth the emergence need to focus on environmental rights. The 1970s decade set a remarkable moment for environmental-related laws as the calamities of global

environmental and enhanced awareness of the state of the environment give rise to the consciousness of the peoples' environmental rights. As a result, various countries have incorporated environmental right feature in several state constitutions and international law instruments. The then Prime Minister of India – Mrs. Indira Gandhi also attended the Conference on Human Environment held in Stockholm, Sweden; the resolution made at the conference had amply moved her. As a result of this, the Constitution was amended, inserting the provision relating to environmental protection by the 42nd Constitutional Amendment Act Passed in the year 1976.⁵⁵⁸ And now in Part IV and Part IV-A under the head of "Directive Principle of State Policy and Fundamental Duties" Article 48-A and Article 51A(g) respectively are provided in the Constitution. Which read as follows: *"The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country"*⁵⁵⁹

*"It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes rivers, and wildlife, and to have compassion for living creatures"*⁵⁶⁰

Therefore, environmental rights basically require protection not only from the state government but every individual as a stakeholder must also strive toward its prosperity and show respect besides taking positive action on the part of the organ of the state government towards the achievement of its goal. Some of the fundamental rights guaranteed by the Constitution may be meaningless without providing a means of proper public participation by the stakeholders in their implementation. The real notion of environmental justice and participatory democracy is based on where the community's participation in environmental decision-making is properly considered. This is also frequently emphasized in academic analyses of

environmental rights. It has been highlighted that the past last four decades have witnessed a 'Participation explosion' such as public participation, citizen involvement, indigenous people rights, local community consultation, etc all over the world, the notion that the governed should engage in their own governance is "gaining ground and rapidly expanding in both law and practice"⁵⁶¹

This article critically examines the significant role and duty that public participation can be played in the achievement of citizens' environmental rights in the administration of state government with reference to some national and international developments. It focuses primarily on substantive environmental rights in relationship with human rights with reference to the idea of public participation largely. The notions and ideas on which public participation in environmental decision-making can be promoted for the fulfillment of environmental rights and how this may lead to good environmental governance also highlight in this article. Good environmental governance or good governance *per se* is not the target of this article. However, the aim of this article is how the empowerment of public participation methods in environmental issues or rights may contribute to good governance and/or good environmental governance. This article is mainly confined to public or local community participation in the context of environmental decision-making processes with respect to environmental rights courses without validating its failures or successes as a whole in real life. Mostly Indian context is highlighted to reinforce and illustrate viewpoints

2. Environmental rights vis-a-vis human rights

In order to make an assessment of the role of public participation in the fulfilment of environmental rights, first and foremost, some of the basic related questions needed to be

⁵⁵⁸ AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW, available at <https://legal.un.org/avl/ha/dunche/dunche.html> visited on 10 April 2023

⁵⁵⁹ Article 48-A of The Constitution of India; Protection and improvement of environment and safeguarding of forests and wildlife

⁵⁶⁰ Article 51A of The Constitution of India; Fundamental duties

⁵⁶¹ George (Rock) Pring, Susan Y. Noe *The Emerging International Law* p.11

addressed. *"What constitutes environmental rights and what are those rights and from where do we find them? How to define the word 'environment' with reference to the phrase 'environmental rights?'"* The answer to these questions may vary according to the location and its context. However, some of the possible answers may be derived from the history and jurisprudence of international law and research writing. The general and common parlance sense of environmental rights can be traced from some of the basic rights incorporated in the environmental clauses of instruments like The International Bill of Rights⁵⁶² regional human rights instruments,⁵⁶³ some international and regional environmental law instruments,⁵⁶⁴ and national constitutions.⁵⁶⁵ According to some other authors 'Environmental Rights' is defined as *"Basic rights to a qualified environment beneficial to human life and well-being that belong to members of existing and future generation. Environmental Rights are rights of action and rights of recipience that consider the state of the environment; the relation and interaction between people and their environment; as well as the dependency of human life on the natural resource base."*⁵⁶⁶

According to United Nations Environment Programme (UNEP) *"environmental rights mean any proclamation of human rights to the environmental condition of a specified quality."* The environment that we live in and human rights cannot be studied separately, they are connected and intertwined. Human rights cannot be accomplished and enjoyed without a balanced, healthy, clean, and safe environment; similarly, Good and sustainable environmental governance cannot be survived for long without maintaining proper establishment of and respect for human rights. The relationship

between humans and the environment has been accepted and recognized by the majority of the country across the globe, as more than 100 regional or national constitutions incorporated the right to a healthy environment in it.⁵⁶⁷ Human rights that are composed of numerous established rights are also related to the environment. Environmental rights are a combination of two rights; the first right – is Substantive rights also called fundamental rights. These rights embrace *Civil and political rights* like the right to life, freedom of association, and freedom from discrimination; and *economic and social rights* such as the right to food, health as well as an adequate standard of living; the right to access religious sites also come under substantive rights as it falls under the category of *cultural rights*; and rights of indigenous people come under *collective rights* as environment degradation affected the community as a whole. These rights of substantive with its enjoyment and existence themselves have been directly affected by the environment. And the second right is Procedural rights – these rights are those processes that are used to achieve substantive rights. It consists of three fundamental access rights such as access to information, public participation, and access to justice. In these procedural rights, formal processes are set in order to enforce legal rights

3. The Notion of Public Participation and its Role

Public participation can be conceptualized as the active involvement of a set of people in a collective method on a particular project or scheme which government administrative authorities proposed to implement. It is the process of taking part in the initial stage of the project to influence the decision-makers in the right decision at the right time. Public

⁵⁶² The International Bill of Human Rights comprises of the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social, and Cultural Rights of 1966 (came into force in 1976), the International Covenant on Civil and Political Rights of 1966 (came into force in 1976) and its two Optional Protocols of 1966 and 1989. See OHCHR <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights> and United Nations Environment Programme available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what> (Accessed on 14 April 2013)

⁵⁶³ The African Charter on Human and Peoples Rights, 1981

⁵⁶⁴ The Rio Declaration on the Environment 1992

⁵⁶⁵ Article 21 of the Indian Constitution by Judicial interpretation impliedly included environmental rights under 'Right to Life'

⁵⁶⁶ Dowrick (ed) *Human rights Problem P. 26*

⁵⁶⁷ UN ENVIRONMENT PROGRAMME, available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what> (Accessed on 14 April 2023)

participation can also be useful in finding out defects on the part of government decision-makers and encouraging them in reaching the right decision, it also promotes a sense of ownership on the part of citizens. The phrase 'Public participation' implies that in the initial stages and process the concerned citizens/public should be consulted in any government scheme or project and heard their voices with regard to the possible impact of the project outcome so that any likely negative result can be minimized at early stages. According to Picolotti⁵⁶⁸ public participation in the real sense means the actual and real involvement of all the social actors in societal and political decision-making processes which possibly have an effect on the community's livelihood and its surroundings. On the other hand, public participation can be conceptualized as *"all interaction between government and civil society...including the process by which government and civil society open dialogue, establish a partnership, share information, and otherwise interact to design, implement, and evaluate development policies, project, and programs"*⁵⁶⁹. In common parlance, it is the communication through various modes between the concerned stakeholders and the administrative body regarding the views and concerns of the public relating to the policies or projects. Public participation or community involvement in the process of government decision-making is also considered a useful tool and a spin-off to decentralization of the modern-era movement in local governance⁵⁷⁰. The technique and procedure of participation may vary from country to country according to its rules and regulations as well as its public authorities, some public participation may be governed and determined by way of traditional and cultural practices. This implies that the method/process, procedures, tools, instruments, mechanisms, etc of public participation applied in one similar project of one country may be

different from the other country as different countries followed different patterns to facilitate public participation according to its practices. In India, there is no explicit provision with respect to public participation in the government decision-making process in the Constitution of India. However, a few statutory provisions such as The Forest Act, of 2006 provide the concerned public a right to participate in the decision-making process such as wherein the proposed project could lead to resettlement and might potentially have an adverse effect on the forest-dwelling community. The statutory recognized the rights of forest-dwelling communities as they have traditional and livelihood ties to the forest and their mindset rooted in it. Any government activities or infrastructural development projects that might come up in their forest area must be accorded by following the stipulation of free and fair prior informed principle. It stated that⁵⁷¹ "Free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and the package has been obtained in writing". At the Village level, a constitutional body or unit such as the Gram Sabhas comprising all the electorate members of the society could play a crucial role in promoting greater public participation in the decision-making process of infrastructural development policy for the benefit of the community in particular and for the proper implementation of any infrastructural development project in general. In Niyamagiri case⁵⁷² the Apex Court intervened and held that the rights of the Dongria Kondh community must be protected and ensure that they could assert their rights of free, prior informed consent. In this case, the Supreme Court decided in favor of the forest-dwelling community by negating the proposed bauxite mining project which would adversely impact their livelihood and culture. In this case, the indigenous community for the first time in the environmental history of India had the opportunity to assert their public participation right.

⁵⁶⁸ Picolotti and Taillant (eds) *Linking Human Rights and the Environment*. P.50

⁵⁶⁹ Public Participation Strategy of the Organisation of American States. See George (Rock) Pring, Susan Y. Noe *Supra* note 4 at p.16

⁵⁷⁰ UN Habitat Report *State of the Worlds' Cities* 2006/2007. P. 168

⁵⁷¹ Section 4(2)(c) of the Forest Rights Act, 2006

⁵⁷² Orissa Mining Corporation v. Ministry of Environment & Forest & Others (Writ Petition (Civil) No. 180 of 2011)

In the Indian context, another important notification relating to public participation was first introduced in 1994 as Environmental Impact Assessment Notification (EIA); in this notification, there is a requirement for consultation of the affected community of the project. Later on, an updated version of the Environmental Impact Assessment Notification came up with a feature of public participation. Besides, the need for the community's concern participation in the process of decision-making was deep-rooted in the earlier mentioned legislation of the Forest Act, 2006. The latest Environmental Impact Assessment notification made it clear that public participation or community involvement must be made mandatory for any infrastructural project that could have a potentially adverse impact on the environment in which their livelihood is sustained.

Although representative democracy country like India is a form of public participation wherein the officials of the decision-makers and politicians are either directly or indirectly elected by the citizens of the country. However, more direct and transparent participation of the public in any governmental project is quite necessary as the real voices of the concerned citizens could not always be addressed as per the need and convenience of their culture and livelihood. For instance; the decision-makers like bureaucrats and politicians are not in a position to comprehend the socio-economic needs and suitability of all the community members under all circumstances. More often than not the information submitted to the public for their feedback is a superficial draft an outline of the final form of some infrastructural project or development scheme which is already being planned as per previous agreements by government organs, developers, and other decision-makers like bureaucrats. This kind of practice negates the very object and idea of public participation in the real sense, which must be corrected and prevented so as to bring the true object of public participation so that the concerned community voices could be

exercised and heard at the time of problem identification of the project for decision-making.

The common drawback that the different countries practice is that their laws and policies have provisions relating to public participation in the decision-making stage with strong emphasis from the government agency without proper implementation as there is a lack of meaningful tools/ methods for the actual achievement of such public participation. Thus, it is clear from the fact that without proper guidelines and procedures, the mere incorporation of public participation in written laws or policies with great emphasis could not achieve real implementation of community involvement in governmental development schemes. Perhaps, more often than not public participation process is taken and viewed as an impending for decision-making at an administrative level as participation prevents swiftness in processes that are meant for social and economic development. The reasons behind this could be the complicated processes when taking into account various communities' values and cultural systems, with the different development priorities and needs, including different classes of the societies' education level. Another challenge when advocating public participation is that very often people with *mala fide* intentions or uneducated people without any knowledge participate in the decision-making process, this could have an adverse impact on the designed project. Therefore, it is necessary that the government decision-makers need to be cautious at the participation level with very innovative and creative processes which could ultimately lead to effective participation of the public in the decision-making process.

4. Public Participation vis-à-vis Fulfilment of Environmental Rights

In a democratic nation like India where its governance is based on the political representation of the people itself inherent public participation as a part of its system and the importance of people participation cannot

be ignored. However, one needs to realize how public participation can play a role in fulfilling environmental rights and how to interlink with good environmental governance. First and foremost, through international law, the responsibility of states toward the international community can be acknowledged, and through international law coupled with domestic constitutions, the states are accountable to their own citizens. The responsibility of states has been internationally acknowledged and recognized that it has an obligation to “respect, protect and fulfill their citizens’ human rights, inclusive of environmental rights”⁵⁷³. However, there is no straight rule or guideline as such environmental rights should be implemented uniformly by each state. Each individual country is at liberty to have its own rules or guidelines for the proper implementation of environmental rights according to its convenience and the circumstance of its environmental condition of the country. Nevertheless, The Limburg principles⁵⁷⁴ emphasized that in order to attain the real fulfillment of environmental rights, the states should take appropriate measures by all means, and all the government organs such as legislative, administrative, judiciary, economic, social, and educational functionaries must come together to this effect. States should take the initiative for effective use of available resources and provisions of access thereto, and encourage the citizen’s involvement in the decision-making process to this effect. States’ obligation and responsibility in these regards is very crucial, and environmental rights cannot be fulfilled if the states fail to take their obligations that are explicitly necessary for the implementation of such rights; neglecting their duty to get rid of any impediments that are blocking the fulfillment of environmental rights; fail to take necessary measure when the implementation required immediate action; deliberately avoid the necessary steps and fail to

meet widely recognized internationally minimum standard of achievement in which they are the only authority to fulfill, or willfully and deliberately delay the requisite realization of these rights.

Laws, orders, bye-law, rules, regulations, notifications, etc made by the competent authority do not by themselves suffice and cannot always achieve the practical implementation of public participation in fulfilling environmental rights. The innovative and creative role of judiciaries and adjudicating bodies often reinforces the law by interpreting the written law very broadly and meaningfully in such a way that environmental rights could be fulfilled. In this matter, the proactive role of the judiciary in protecting the rights of citizens in general and of environmental rights, in particular, is very crucial. In India, although there are numerous environmental-related legislations, its implementation at the ground level is often weak and ineffective coupled with improper functioning on the part of the government agency. The innovative role played by the judiciary has become the real foundation for the redressal of environmental-related wrongs. Additionally, the Court though not vested with the power and functions to look after if environmental-related laws are properly implemented, that functions being vested with the executive, yet, more often than not it is necessary for the judiciary to step in and pass an order directing and instructing them to implement the law for the protection of fundamental rights of the people to live a life and enjoy a clean and healthy environment since the enforcement agencies and machinery do not take necessary steps or ineffective in implementation of the requisite laws to this effect. This proactive role played by the judiciary in giving direction to the concerned authority for the proper implementation of laws cannot be considered as the judiciary having overreached

⁵⁷³ See principle 3 of the Limburg Principles on the Implementation of the ICESCR of 1987, guideline 6 of the Maastricht Guidelines on Violation of Economic, Social, and Cultural Rights of 1997 and Dankwa *et al* 1998 *Human Rights* 705 on the “three-level ‘typology’ of obligations”. Also see Eide 1999 *NIHR Human Rights Reports* 141.

⁵⁷⁴ This notion highlighted that the mere measures taken by legislative authorities could not attain the real fulfillment of socioeconomic rights and are not sufficient. See Principles 17 and 18.

or usurped the role or function assigned to the legislature or the executive. In one of the landmark Indian cases relating to the environment⁵⁷⁵, the Supreme Court categorically held that the fundamental right of 'right to life' guaranteed under Article 21 of the Constitution of India includes the right to the enjoyment of pollution-free water, clean air, and a healthy environment. Hence, the right to a wholesome environment is implicit in the fundamental right to life. In this case, the Apex Court directed that every individual citizen must be aware of his fundamental duty and responsibility incorporated in the Constitution of India toward the environment; *"protection of the environment and keeping the ecological balance unaffected is a duty which not only the government must keep but every citizen must undertake it. It is a social obligation and we need to remind ourselves that every Indian citizen as is a fundamental duty as enshrined in Article 51-A (g) of the Constitution."* Along these lines, the Supreme Court not only scolded the government authority for failing to discharge its duty in maintaining the environment pollution free but also called upon the citizens to perform their duty in protecting and improving the environmental balance. It indicated that the citizens not only have rights but they as responsible citizens have an obligation and duty to improve and protect the natural environment. This landmark case was based on the previous liberal-thinking Court's judgment of *Rural litigation case*⁵⁷⁶ in which the Court held and gave a wide and liberal interpretation of the word "life" in Article 21 of the Constitution by encompassing environment protection within the ambit of 'right to life'. This had reaffirmed also in the *Virender Gaur case*⁵⁷⁷ where the Court clarified that the right to live with human dignity and enjoyment of life includes protection and preservation of the environment which is an essential part of life, without which, life could not be enjoyed to the fullest. For this reason, it is

important to understand the interlinking between the quality of life and the environment.

Besides Regional and international legal frameworks for the protection and maintenance of environmental rights, there are certain organizations or bodies such as the United Nations Human Rights Committee, the European Court of Human Rights, the European Commission of Human Rights, the African Commission on Human and Peoples' Rights, National Human Rights Commission, India, etc play a very significant role in promoting environmental rights and maintain the right of human vis-à-vis protection of the environment with the help of giving awareness regarding the importance and essential intertwine between the condition of human life and the well-balance of the environmental state, which in turn inspire the concerned individual citizens about the importance of the healthy environment in our lives and ultimately urge the need to involve and participate in protection and preservation of the environment. In this way, community involvement or public participation in the environmental decision-making process could lead to achieving the essential fulfillment of the environmental rights

5. Linkages Between Public Participation and environmental rights

The tool of public participation that promotes environmental rights can be divided into two ways; Firstly, the participation procedure in which the public is made aware of their right and educated in the process of participating in environmental decision-making. In this process, the concerned public is provided an opportunity to raise their concern and permit to represent a large diverse interest of the concerned community and this could facilitate transparency and accountability in the field of the administrative decision-making process. This process is considered as an end in itself. Secondly, the Substantive or practical process of

⁵⁷⁵ Subhash Kumar v. State of Bihar, AIR 1991 SC 420

⁵⁷⁶ Rural Litigation and Entitlement Kendra and Others v. State of Uttar Pradesh and Others 1985, AIR 652

⁵⁷⁷ Virender Gaur v. State of Haryana, 1994

participation contributes to more important decisions regarding environmental rights. Important environmental-related decisions taken by government officials alone do not always achieve the essential outcome for the fulfillment of environmental rights as the stakeholders' concerns cannot be taken into account according to the need and circumstances of the affected community. Participation in environmental decision-making not only promotes the fulfillment of environmental rights but also creates a sense of truly democratic government. It is the most effective means to realize the importance and priorities of environmental rights. It suggests suitable solutions to the problem of the environment and formulates, executes, and implements the most suitable and accurate decisions possible. Public participation in environmental decision-making not only promotes and enhances environmental rights but is considered indispensable as it gives an opportunity for the concerned community to represent their voices through environmental impact assessment and decision-making processes before the implementation of any project that is likely to have an impact on their livelihood, culture, etc. The affected communities may provide useful and additional information to decision-makers that involve social, cultural, or environmental values that cannot easily be quantified without prior information from them. Corruption in the political and administrative domain may come down and accountability and transparency may be reinforced if any issues relating to environmental conditions are open to public view. Transparency and openness give pressure on the decision-makers to follow the necessary procedure in the right way and push the administrator to implement the work on time in all cases. The viewpoints of the public are as important as the successful implementation of an environmental project, and when the concerned public's voices are not incorporated into the environmental decision-making

process, the implementation of the policy or project tends to get delayed and may turn into the wrong decision for the project. The public or community when they are provided an opportunity to raise their voice, become a part of the decision, and that ultimately enhances ownership of the decision in their mind and the resultant outcome binds them as per the scheme of the project. Stakeholder engagement may produce a good relationship and partnership among the interested parties and help in achieving cooperation with local government as well. When the concerned community voices are fully heard and carefully incorporated in every case of an environment-related decision, public confidence in the government and decision-makers is enhanced, which reinforces the real democratic system of the nation.

Later on, the need for the incorporation of public concerned voices increased, and various international bodies have come up with a number of international legal instruments which recognized the concerns of the affected communities and explicitly draw the essential relationships between public participation and the achievement of environmental law objectives.⁵⁷⁸ The important Convention which is very necessary to mention is the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)* of 1998, which specifically aims and emphasizes reinforcing and strengthening the need for public participation in the environmental decision-making process.⁵⁷⁹ Besides this, the state authorities have the responsibility and are required to implement community involvement in the decision-making process in order to pave the way for environmental development activities. Another important development of public participation in environmental decision-making can be found in the *Rio Declaration* wherein the principle of public participation was

⁵⁷⁸ Highlighted the requirement of public participation in international environmental law documents, reference at George (Rock) Pring, Susan Y. Noe, *supra* note 4 at p. 26 - 50

⁵⁷⁹ Also refer to George (Rock) Pring, Susan Y. Noe *supra* note 4, p. 49

solemnly adopted and incorporated;⁵⁸⁰ emphasizing the need for citizens' participation, the participation of women, and the participation of indigenous people and their communities. These initiatives and development are supported and endorsed by Agenda 21⁵⁸¹ wherein it states that *"one of the fundamental requisites for the achievement of sustainable development is broad public participation in decision-making"* However, in order to implement the essentials objectives, mechanisms, and policies contained in Agenda 21 effectively, all concerned social groups such as women, youth, indigenous people, local community, NGOs, workers and trade unions, business and industry as well as the scientific and technological community experts involvement and participation must be obtained.⁵⁸² Agenda 21 reaffirmed the principle of public participation and reiterated the need for "new forms of participation" and "the need of individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions."⁵⁸³

According to the *United Nations (Ksentini) Special Rapporteur's Report on Human Rights and the Environment of 1994 and (Annexed to the former report) the Draft Declaration of Principles on Human Rights and the Environment of 1994*⁵⁸⁴ the term participation has very much close and relates to the idea of participatory democracy, without participation from various stakeholder, the aim and objectives of sustainable development will be meaningless or without/less substance. And propose that⁵⁸⁵ *"all persons have the right to active, free and meaningful participation in planning and decision-making activities and processes that*

may have an impact on the environment and development. This includes the right to prior assessment of the environmental, developmental, and human rights consequences of proposed actions". One of the essential prerequisites which international bodies or organizations widely endorsed for the achievement of sustainable development vis-à-vis environmental rights is wide public or community participation in decision-making processes.⁵⁸⁶

It is a prerequisite to realize the role of environmental information in order to review the explicit linkage between public participation and fulfillment of environmental rights, without which the relationship between the two cannot be comprehended properly. Environmental information means making known to the concerned community the issues and solutions of the environmental state and thus encourages and supports public participation. It is evident from the research on environmental rights by international legal instruments and jurisprudence that the objectives of environmental rights cannot be fulfilled by the state alone without having gathered and shared the requisite environmental information with the public at large.⁵⁸⁷ With the emergence of the right to the environment, the need for and the content of the rights to have access to environmental information has also been specifically incorporated in the *Aarhus Convention*. In addition to this, the Rio Declaration and Chapter 23 of Agenda 21 are also very much concerned about the need and importance of environmental-related information and explicitly mentioned and demand the right to access information on the environment and development⁵⁸⁸ at the same

⁵⁸⁰ The *Rio Declaration on Environment and Development* of 1992, Principles 10, 20 and 22 respectively.

⁵⁸¹ See Chapter 23 of Agenda 21.

⁵⁸² Refer to Chapter 20 – 22, 25 – 27 and 29 – 32 of Agenda 21. Also see Piccolotti and Taillant *supra* note 11 at p. 50

⁵⁸³ See Chapter 23, para. 23.1 and 23.2 of Agenda 21

⁵⁸⁴ Report of the United Nations, Economic and Social Council Commission on Human Rights Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

⁵⁸⁵ Refer para. 70 of the Ksentini Report and also principle 18 of the Draft Principles proposal

⁵⁸⁶ Refer eg. Principle 6 of the United Nations World Commission on Environment and Development (WCED), Report on Sustainable Development (the Brundtland Report) of 1987 and principle 13(b) of the Earth Charter of 2000

⁵⁸⁷ Birnie, Boyle and Redgwell's *International Law and the Environment*, Oxford University Press, p. 261 – 265 (2002)

⁵⁸⁸ Refer to Principle 10 of the Rio Declaration, this may be considered as an international simulation of the procedural aspects which accompany the fulfilment of environmental rights. Also, see principle 6 of the Brundtland Report and principle 13(a) of the Earth Charter.

time the proposal also made under the Draft Declaration of Principles on Human Rights and the Environment, which state that “*all persons have the right to information concerning the environment*”⁵⁸⁹

The right to environmental information includes not merely collection, dissemination, and access but also includes any other necessary procedures, which may be said to establish a secondary right to the independent environmental right that should be affordable and available to all the people concerned. Public participation encourages and promotes transparency among the decision-makers in such a way that enhances accountability which may be imposed by the Courts, may be directed by the government, or any other authority. It is a very useful tool for maintaining checks and balances on the bureaucracy and possible threats to disrespect democratic values, which is one of the underlying outlines for accomplishing fulfillment of environmental rights. The environmental information that is required for the state to share needs proper research and genuine data collection as the state’s responsibility to provide useful information solely depends on the availability of information. Hence, it is imperative that all the concerned authorities of the state government’s organs and other institution should take the necessary step to collect scientifically reliable data and up-to-date information with respect to the state of the environment, environmental impacts, conservation, discharges and emissions, pollution levels and any other related activities of environmental state. Environmental information, being the foundation for attaining the objectives and fulfillment of environmental rights and also strengthening the essential element of public participation, the government authority is expected to provide and disseminate genuine and well research environmental information to the concerned public on a regular and timely basis.⁵⁹⁰ Therefore, it is very significant and

claimed that environmental information which is very helpful for well-inform public participation in environmental matters should be non-discriminatory at all times. Accurate and genuine information helps the development of environmental programs, policies, and laws.

6. Imperative role of the public in environmental sustainability

Every living being whether human or animal depends on the environment in which we live. Thus, a clean, safe, healthy, and sustainable environment is a precondition for the fullest enjoyment of life and also fulfilment of human rights, which include the right to life, health, food, water, and sanitation. Without a healthy and balanced environment, living beings are unable to attain aspirations or even live at a level proportionate to minimum standards of human dignity. Similarly, protecting human rights helps to attain fulfillment of the environmental rights. When the public is provided an opportunity to learn about and take part in the decision that affects them, they can assist to ensure that those decisions respect their requirement for a sustainable environment. Public participation as a result encourages and promotes environmental sustainability for generations to come

In 1994, Hoff and McNutt published a book called ‘*The Global Environment Crisis; Implication for Social Welfare and Social Work* – moved by environmental threats facing humankind, it highlighted that human and environmental states are “inextricably linked” and suggested that social work and other professions will have to move beyond outdated goals of individual well-being and social welfare to adopt new model geared more towards sustainability and protection of the environment.⁵⁹¹ In the year 2000, the National Association of Social Workers issue a policy statement in support of the said views. Protecting people and the natural environment

⁵⁸⁹ Information includes any data compiled, on actions or courses of conduct that may impact the environment and information necessary to enable effective public participation in environmental decision-making

⁵⁹⁰ Refer to Fabra *Yearbook of Human rights and Environment*, 2002, at p. 208

⁵⁹¹ Raj Kumar Gupta, 2019: *Necessity of The Environmental Laws*. p. 237

through sustainable development is the fullest realization of the person-in-environmental perspective. The compatibility of sustainable development and the person-in-environment perspective is a firm theoretical foundation from which to apply macro-level social work practice to person-natural environment problems.⁵⁹²

As stated by the Stockholm Declaration on the Human Environment (United Nations Report, 1972): Principle 1 *“Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”* India was greatly moved by the development made at Stockholm Declaration and became clear when the provisions relating to the protection of the environment were included in the Constitution of India by the 42nd Constitutional Amendment Act passed in 1976. And now it appears as Article 48-A⁵⁹³ of Chapter IV under Directive Principles of State Policy and Article 51A(g)⁵⁹⁴ of Chapter IVA under Fundamental Duties respectively and some other related provisions in the Indian Constitution. And by judicial interpretation, the right to a clean and healthy environment has been implicitly recognized as a Right to life under Fundamental rights, meaning thereby there is a close and inseparable link between the life of a living being on one hand and a clean and liveable environment on the other. In such cases, community participation and involvement play a crucial role in environmental sustainability.

The role of public in the post-independent India becomes more in demand and important because the available resources were not enough for all to equally enjoy. Also due to the change in the face of society in India from being an agrarian nation to an industrialized nation the demand for resources went high and by the 1980's India also realized the result of over-

exploitation of resources which led to the environmental degradation. As a result, India also showed solidarity in the international efforts to curb environmental pollution where India also signed many international conventions, declarations, etc, and also adopted and incorporated these regulations into national laws. The Environment Protection Act, of 1986 which is the umbrella legislation for the protection of the environment in India is the product of the above efforts. However, even after making hundreds of legislations, rules, and regulations for the protection of the environment, effective implementation and adherence to these laws are seldom seen in reality. The main reason for its non-effectiveness is environmental protection cannot be forcibly implemented by applying the law, but the importance of balancing and interlinking between human life and the state of the environment needs to be known to the public, provide an opportunity for participation in environmental decision-making, and also has to be followed by each and every person in his daily life, this will create the law into effective implementation. Thus, in this context, public involvement becomes very crucial for the effective implementation of environmental policy.

Access to environmental information is important because an informed public is more alert to the problem, more apt to challenge assumptions of government or corporate decision-makers, more capable of discussing issues, and more likely to organize for social and political change. Access to decision-making matters because people want and need to shape the choices that affect their well-being – the quality of the air they breathe, the purity of the water they drink, the aesthetics of their neighborhood, the availability of forests that are a source of fuel or food, the wildness of their favorite place to hike. When people have access to justice – where independent Courts provide

⁵⁹² Ibid

⁵⁹³ Article 48-A – Protection and improvement of environment and safeguarding of forests and wildlife: State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”

⁵⁹⁴ Article 51A sub clause(g): “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures”

remedy and redress free from politics – there is greater accountability in decisions that affect the environment.

The importance of public participation gained momentum as a result of the Principle of the 1992 Rio Declaration, which read as “*assess to information, to the decision-making process, and to a system of justice are all essential components of a comprehensive system of public participation*”. Involvement of the public in all levels of planning and decision-making, from policy formulation through project-level planning and design, ensures that policies, programs, plans, and projects are responsive to community needs. Participation builds the credibility and legitimacy of policies, plans, and decisions in the eyes of the community, and ensures greater ownership and compliance. Involvement of communities in all aspects of planning and decision-making gives effect to the notion of participatory governance, enshrined as a Constitutional right, and deepens our democracy. The Constitution of India incorporates useful legal guidelines for the protection and preservation of the natural environment without which life cannot be enjoyed to the fullest and will be meaningless. The knowledge and awareness of the Constitutional provisions regarding environmental protection is the need of the hour to bring greater public participation, environmental awareness, and environmental education, and sensitize the people to preserve ecology and the environment.⁵⁹⁵

7. Public Participation in the Protection of the Environment under Indian Laws

The Constitution of India casts an obligation not only on the state but also on every individual citizen to protect and improve the environment. Justice Krishna Iyer calls it “*a remedial weapon of versatile use’ which must be made available to citizens in their struggle to achieve social justice* (Krishna Iyer, 2011). The

Constitution as it stood on 26th January 1950 did not provide any direct reference to environmental protection. India was perhaps more concerned and committed to the dream of development. According to Prof. Baxi – “*If the provisions relating to the environment had been incorporated in the Constitution then, India would have set a very worthwhile model of environmental protection not just for herself but for the many decolonized third world nations which modelled their Constitutions on the Indian Constitution.*”

The year 1972 could be regarded as a turning point in the history of Indian environmental awareness. Before 1972, environmental concerns like public health, sanitation, and sewage management were taken care of by different government ministries without proper coordination among various departments at the inter-governmental level.⁵⁹⁶ After the Stockholm Declaration of 1972, with the increase in the overall environmental consciousness, amendments were made to the Constitution inserting the environmental aspects. Article 48A was inserted in Part IV of the Constitution⁵⁹⁷ under Directive Principles of State Policy, which read as “*the State shall endeavor to protect and improve the environment and safeguard the forests and the wildlife of the country.*” And by the same Amendment Act of 1976, a new provision was also added under Fundamental Duties in Part IV-A of the Constitution⁵⁹⁸. Though not legally enforceable, these fundamental duties are recognized as moral obligations that help in upholding the spirit of nationalism. The fundamental duties can be classified as duties towards the state, towards the environment, and towards one’s self. Article 51-A(g) stipulates that it is the duty of every citizen “*to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.*” For the purposes of taking effective and meaningful steps, under the same

⁵⁹⁵ PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA available at <https://pib.gov.in/newsite/printrelease.aspx?relid=105411> accessed on 23 April. 2013

⁵⁹⁶ Shyam Divan and Armin Rosencranz *Environmental Law and Policy in India*, P. 33 (2001)

⁵⁹⁷ The Forty Second Constitution Amendment Act, 1976.

⁵⁹⁸ *Ibid*

Amendment Act⁵⁹⁹ 'forest and wildlife' were placed in the Concurrent list.⁶⁰⁰ The Constitution of India thus casts an obligation on the State as well as the citizens to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures. The insertion of Article 48A and 51-A(g) have acted as the foundation for building up environmental jurisprudence (Leelakrishnan, 2010)

The Universal Declaration of Human Rights has also incorporated a provision with reference to fundamental duties. The provision in Article 51-A of the Constitution of India is in line with Article 29(1) of the Universal Declaration of Human Rights which provides that *"everyone has duties to the community in which alone the free and full development of the personality is possible"*. The scope of Article 51-A (g) was discussed by the Rajasthan High Court in *LK Koolwal v. State of Rajasthan*⁶⁰¹ the Rajasthan High Court was moved in this case by the petitioner under Article 226 (writ jurisdiction) highlighting that the municipality had failed to discharge its 'primary duty', resulting in the acute sanitation problem in Jaipur, which was hazardous to the life of the citizens of Jaipur. The Court explained the true scope of Article 51-A as follows: *"We can call Article 51-A ordinarily as the duty of the citizens, but in fact, it is the right of the citizens as it creates the right in favour of citizens to move the Court to see the State performs the duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizens and thus, Article 51-A gives the right to the citizens to move the Court for the enforcement of the duty cast on State Instrumentalities, agencies, departments, local bodies, and statutory authorities created under the particular law of the State."*

The Court also points out that "right and duty co-exist; there cannot be any right without

any duty and there cannot be any duty without any right." An unhygienic environment leads to slow poisoning and adversely affects the life of the citizens. Hence, it falls within the purview of Article 21 (right to life) of the Constitution of India. Therefore, every citizen is duty-bound to see that rights which he has acquired under the Constitution as a responsible citizen are fulfilled.

There is another landmark *State of Bihar* case⁶⁰² in which the Supreme Court called upon the citizens to fulfill their social obligation as a fundamental duty enshrined in the Constitution; "Preservation of the environment and keeping the ecological balance unaffected is a task which not only the government but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution." Thus, the Supreme Court while clearly pointing out the failure on the part of the executive bodies to perform the statutory duty in controlling pollution, also made it clear that the citizens have a fundamental duty to preserve the environment and ecological balance. A clear indication shows that while citizens have rights, they are also obligated to protect the environment.

The importance of public participation is once again emphasized in *Kinkri Devi* case⁶⁰³ in this case the petitioner moved the Court for revocation of the excavation of the limestone mining lease as this create a problem and posed a danger to the adjoining land, water resources in particular, and environment in general and sought compensation for damage. Justice P.D Desai in this particular case stated that *"There is both a Constitutional pointer to the State and a Constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, flora and fauna, the rivers and the lakes, and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the*

⁵⁹⁹ *Supra* note 40.

⁶⁰⁰ Entries 17A and 17B

⁶⁰¹ AIR 1988 Raj. 2

⁶⁰² Subhash Kumar v. State of Bihar AIR 1991 SC 420, 424

⁶⁰³ Kinkri Devi and Anr v. State of Himachal Pradesh and Ors. AIR 1988 HP 4

fundamental law which the state and indeed every Indian is bound to uphold and maintain.” So, it is the public as responsible citizens must participate in protecting and preserving the environment in the same way as nature has gifted to all of us so that the condition of the environment improves gradually for the present and future generations, which ultimately promotes and enhances the required fulfillment of environmental rights.

8. The implication of Right to Environment under Article 21 of the Constitution of India

Article of the Constitution of India states that –

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Taking the human rights angle, in *Bandhua Mukti Morcha case*⁶⁰⁴, in respect of bonded labour and weaker sections of society, the Supreme Court stated that Article 21 ensures the right to live with human dignity and be free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when the person being exploited belongs to the weaker section of the community and is unable to wage a legal battle against an opponent who is strong and powerful. Both, the Central government and the State government are therefore bound to ensure observance of the various social welfare and labor laws enacted by Parliament for the purpose of securing the workmen a life of basic human dignity in compliance with the Directive Principles of State policy. The innovative and bold role played by the judiciary in broadening the scope of the right to the environment has been quite commendable as it accommodated a hygienic environment within the meaning of life under

Article 21 of the Constitution of India. It goes to the credit of the Supreme Court of India for its landmark judgment in the *Rural Litigation case*⁶⁰⁵, *M C Mehta case*⁶⁰⁶, and several other pronouncements it has expanded the connotation of the right to life in Article 21, guaranteeing the right to life, an expanded meaning to include the right to safe and pollution free environment within its ambit. The Apex Court in the *Subhash Kumar case*⁶⁰⁷ gave direction that the ‘right to life’ referred to in Article 21 of the Constitution of India includes the ‘right to pollution-free air and water. In *A P Pollution Control Board (II) case*,⁶⁰⁸ the Supreme Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Article 21 to provide clean drinking water to its citizens. Similarly, in the matter of vehicular pollution in Delhi, the Court in the *MC Mehta case*⁶⁰⁹ held that clean air is a part of the ‘right to life’ and directed the Delhi Government, to convert the buses fuel in Delhi to Compressed Natural Gas (CNG) to protect the people from air pollution.

The country’s highest Court has made a remarkable job in allowing any person to move the Court by exempting “the traditional rule of ‘standing’ before the Court.” With this innovative approach and widening the meaning of life under Article 21 of the Constitution, and through Public Interest Litigation (PIL), many human rights issues⁶¹⁰ were made known to the Judiciary. With the help of judicial innovation, any public spirit can move to the Court under Article 32 of the Indian Constitution as it is one of the actions of PIL. Under Article 226 of the Constitution, any person can also approach the High Court for the enforcement of fundamental rights relating to the environment and the High Court also intervene in any other legal matters. In this way, the right under Article 21 expanded and encompassed the matters with respect to

⁶⁰⁴ *Bandhua Mukti Morcha v. Union of India and Others*, 1992 AIR 38; 1991 SCR (3) 524

⁶⁰⁵ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* AIR 1986 2 SCC 431

⁶⁰⁶ *MC Mehta v. Union of India* 1998(6) SCC 60 and 1998 (9) SCC 589.

⁶⁰⁷ *Supra note 45*, 1991, SC 420 PIL.

⁶⁰⁸ *A P Pollution Control Board (II) v. Prof M V Nayudu* 2001 2 SCC 62

⁶⁰⁹ *MC Mehta v. Union of India*, 1991 SCR (1) 866, 1991 SCC (2) 353

⁶¹⁰ Example; Health hazards due to pollution, housing for beggars, immediate medical aid to injured persons, deaths due to starvation, the right to information, the right to open trial, inhuman conditions in aftercare homes.

environmental issues. Through the innovative and creative approach, the Apex Court has fulfilled the wishes of the public and maintained the true spirit and values of the Constitution. The judiciary has developed a new idea of the law for the protection and fulfillment of environmental rights.

The Judiciary has made a very remarkable achievement in expanding the scope of the “right to life” under Article 21 of the Constitution with regard to the environment by incorporating the “right to a clean and healthy environment in it.” Thus, even though the “right to a clean and healthy environment” is not expressly mentioned in Part III of the Constitution as a fundamental right, by the interpretation of the judiciary it is now accepted as a part and parcel of the fundamental rights ambit. With the creative role played by the judiciary, “the right to environment” has been given the status of a fundamental right, and has to be enforced under the power of the Constitution, however, State has been assigned to take necessary steps for the achievement of such rights. It is the obligation of the State to adopt such policies and measures for fulfilling such rights so that the general citizens can vindicate their rights in the Court of law.

Every human being needs unpolluted air, water, and a hygienic state of the environment. A well-balanced environment is one of the most important parts of life for each and every person. As the Supreme Court has already recognized *“the right to the environment as inherent in the right to life, which is a fundamental right, there is adequate justification to articulate that the right to a clean and healthy environment as a basic and independent fundamental right within part III of the Constitution of India.”*

The Constitution is the supreme and highest law of the nation, right to a clean and healthy environment has now been implicitly included within the ambit of the right to life under the Constitution of India, which gains more advantages in many ways. The State is under

obligation to frame rules, schemes, laws, etc for the protection of this right. Constitutional recognition of the right to the environment will definitely give proper and stronger enactment of environmental laws, effective implementation, a sense of ownership on the part of the citizens, better and larger allocation of resources, greater public participation in environmental decision-making, enhanced transparency and provide awareness the general public. The safeguard provided under the Constitution will ensure the balance for the need of the society on one hand and the maintenance and protection of the state of the environment on the other hand.

9. Inclusion of the ‘Right to Environment’ in the National Green Tribunal Statute

A writer on Environmental Law Shri Dhruvesh Singh Yadav, in his article, stated the requirement and reason for establishing the Environmental Court as under: *“Since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up special Environmental Court.”* With the direction of the Apex Court, Green Bench has been established in various High Courts in India for solving the challenge of environmental cases.⁶¹¹

Despite the fact that the Supreme Court developed an innovative method of Public Interest Litigation (PIL) as a tool to provide solutions to common citizens of the nation and entertained numerous amounts of environmental cases. Still, the Court finds difficulty in solving the problem of environmental cases. Environmental issues can only be solved by a person who has specific knowledge of environmental law. The Supreme Court initially in 1986 and for a second time in 1996 and 2001, three pronouncements of its judgment stated the problem that the Court encountered due to an unawareness of facts in addressing practical problems with respect to the environment.⁶¹² The

⁶¹¹ *Supra* note 34, p. 219 Para. 2

⁶¹² MC Mehta v. Union of India, 1986, 2 SCC. 176, 201-202,

Law Commission in its 186th report recommended the constitution of environmental courts (Law Commission Report, 2003).

After various decisions of the Court with reference to the right to the environment, the Government of India in 1995 set up the 'National Environment Tribunal' by enacting a law, and also the 'National Environment Appellate Authority' was established in year 1997. However, both of them were not operational since their formation as they had very limited jurisdiction. And the Acts were repealed soon after their establishment. In order to improve in the field of environment, be more effective and responsive legally and scientifically proficient in environmental-related law, and help the regular Court, specific and special Court that target achieving quicker, inexpensive, and more responsive in solving environmental problems was established, a name called 'National Green Tribunal in the year 2010

The reason for setting up the 'National Green Tribunal' was "to provide effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to the environment and to give relief and compensation for damages to person and property and for matters connected therewith or incidental thereto." The statute target to safeguard fast and speedy providing justice.

However, the Tribunal has limited power and decides only on environmental-related issues, bearing in mind the "connection of multi-disciplinary issues" The statute gives that other than the problems that come from the execution of that stated enactments.⁶¹³ The Tribunal will have the authority and jurisdiction over altogether civil cases where significant

questions refer to the environment (as well as the implementation of every lawful right with respect to ecology) is raised.⁶¹⁴ The power of the Tribunal is to give assistance and provide damages to the affected person for contamination, harm from pollution, and for restoration of property and to restore the environment.⁶¹⁵ This Tribunal is different from any other ordinary Court for it has the expertise and intellectual person in the area of environment.

Under Section 22 of the Act; "an appeal against the decision of the Tribunal would lie to the Supreme Court of India." Any civil matters that fall under the domain of the Tribunal will be excluded from the jurisdiction of the Civil Court. The Tribunal has similar authority and power which the Code of Civil Procedure (CPC), 1908 conferred on the general civil Court. The jurisdiction of the Tribunal is independent and not subject to any rules and guidelines prescribed by CPC, 1908, however, the principle of natural justice is one of the main guidelines for maintaining justice.

"The National Green Tribunal is empowered to enforce any legal right relating to the environment and is enjoined to follow internationally recognized environmental principles such as sustainable development, the precautionary principle and Polluter pay principle while issuing an order, decision, or award."⁶¹⁶ With the various judgment pronounced by the Supreme Court of India, the above-mentioned principles have been a part and parcel of the environmental jurisprudence of the nation. Most prominently, in the preamble of the National Green Tribunal, it has now recognized what India has made her commitment at the International Conference in 1972 of the Stockholm Declaration and Rio Declaration of 1992 as well as various judicial pronouncement of the 'right to a healthy

Indian Council for Enviro-Leal Action v. Union of India (CRZ Notification) 1996 (3) SCC 212, 252,

AP Pollution Control Board v. Prof M V Nayadu (2001) 2 SCC 62, 84-85

⁶¹³ The enactments stated in Schedules I are:

1. The Water (Prevention and Control of Pollution) Act, 1974
2. The Water (Prevention and Control of Pollution) Cess Act, 1977
3. The Forest (Conservation) Act, 1980
4. The Air (Prevention and Control of Pollution) Act, 1981

5. The Environmental (Protection) Act, 1986

6. The Public Liability Insurance Act, 1991

7. The Biological Diversity Act, 2002

⁶¹⁴ Section 14 of National Green Tribunal Act, 2010

⁶¹⁵ Section 15 of National Green Tribunal Act, 2010

⁶¹⁶ NATIONAL GREEN TRIBUNAL available at http://www.wvfindia.org/about_enablers/cel/national_green_tribunal
Accessed on 17 May 2023

environment’ as part of the ‘right to life’ provided under Article of the Constitution of India. Without this the real meaning of ‘life’ under Article 21 of the Constitution of India cannot be enjoyed to the fullest. It is a very significant and landmark jurisprudence of environmental law as the “right to a healthy environment” attains the status of the Act. Although incorporated in the preamble of the statute and does not find a place in the operative part of the statute, it is very helpful and relevant for the clarification of any doubt and problems that arise in determining the intention and objective of the statute.

10. Good Environmental Governance through Public Participation in Decision-making

The title of the article stated how public participation could be used as an effective role in helping the state governments fulfillment of citizens’ environmental rights. It also highlights a better understanding of the role of public participation in environmental governance in India. The judicial interpretation of the ambit and scope of environmental rights as well as the concept of fulfillment of such rights suggested that promoting and encouraging the participation of the public in environmental decision-making have a significant role in achieving the need of governments to fulfill the environmental rights of its citizens. However, the method and technique of fulfilling environmental rights in each country may vary depending on the conditions and circumstances of each country as well as the customs and practices of the concerned community. Environmental rights in fact are the rights of the public to maintain and protect the natural environment and improve its condition so that a specified quality of the environment is maintained with the help of taking steps towards environmental impact assessment, environmental standards, environmental issue-identification and also effective and consistence responsible government in decision-making or

environmental governance. However, there is no prescribed specified standard quality of the environment and means for the maintenance to this effect. It is necessary that the essential minimum requirement should also be prescribed by the concerned government by means of collaborative assessment, agreement, and decision-making in consultation with the likely affected community and persons living in the environment concerned.

Public participation or community involvement in environmental decision-making is about providing an opportunity for the citizens concerned to raise their needs with respect to the environment where they live and also connecting the public to environmental governance so that environmental rights are exercised with the help of the necessary stakeholders’ dialogue. The issues of the environment are complex and cannot effectively be resolved by the government alone as suggested by George (Rock) Pring and Susan Y. Noe. It is necessary that there must be coordination and joint effort between the government and the public concerned.⁶¹⁷ It is suggested and proposed that the method of public participation should not just be providing information feedback and a consultation process, it should include at the stage of open planning, citizen monitoring, and citizen assistance in environmental inspections.⁶¹⁸ Enacting law or revisiting legislation would be the initial stage in framing the necessary policy for positive public participation in achieving the need for fulfillment of environmental rights. However, without the effective implementation of such policies in different departments of the government, mere consultation and working with the concerned public cannot constructively attain the desired goals. Providing an opportunity to the concerned public just for the namesake or on the spur of the moment or an account of political pressures, will not be sufficient, instead, it will create confusion

⁶¹⁷ *Supra* Note 4, P. 75

⁶¹⁸ Paul Wilkinson - *Public Participation in Environmental Management: A Case Study*, P. 121 Natural Resource Journal Vol. No. 1, January 1976/ ENERO 1976

between the public and the decision-makers and which will ultimately offer inconclusive evidence as to their destiny.⁶¹⁹ All the departments and organs of the government should equally receive and apply the necessary national policy relating to environmental information, otherwise, any deficiency with respect to the guideline of general policy may lead to unreliable programs along with its own structure and purpose.⁶²⁰ It is desirable that basic national policy must not confine only to provisions and principled statements about the need for public participation, it must go beyond this. The government should adopt a policy that is reliable and accurate and must prepare in such a manner as to offer more concrete measures and tools to enhance the fulfillment of public environmental rights claims. It is important to mention here that obtaining the necessary information from the community concerned can also improve and reinforce the requirement of a nation's environmental law compliance and enforcement regime as well as effective implementation where participation of the public has been provided and encouraged in the making of legislative measures with respect to environmental challenges.

From the above-highlighted discussion, there has been sufficient evidence and acceptable observation that environmental justice and public participation are very crucial issues in this contemporary development and for the improvement or maintenance of environmental rights across the globe. This article also discusses some of the drawbacks which the government's authority failing to provide necessary environmental information for better management of environmental conditions. At the same time, it also suggests some new ideas and methods for public participation and dissemination of environmental information to this effect. Furthermore, the innovative role played by the judiciary in safeguarding the right of the people vis-à-vis environmental rights is crucial in

fulfillment of overall environmental justice. In a nutshell, it can be concluded that the role of public participation in the field of environmental management has immense means to improve transparency and accountability in the management of environmental resources efficiently and strengthen environmental policies and laws to protect and improve the environmental state of the people, consequently, this will bring good environmental governance and result in fulfilling the need of environmental rights today. In short, both active public participation and effective implementation of environmental policies and laws can produce the desired result for the environmental rights of the people.

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NO. 08, ARUL NAGAR, SEERA THOPPU,
MARUDHAANDA KURICHI, SRIRANGAM - 620102,
TAMILNADU, INDIA.

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