

PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE FOR RURAL DEVELOPMENT IN INDIA: A DISCUSSION

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Public participation is an essential aspect of environmental governance. It is based on the idea of ecological justice and inclusive decision-making. The essence of public participation is captured through the meaningful involvement of communities that are directly or indirectly affected by decisions taken by the authorities concerned and those that are involved in governance. The challenges these communities encounter often have social and legal implications. This article first covers the conceptual framework of public participation, discussing the principle in light of the legal right in environmental governance. Thereafter, the legal foundations of public participation in rural environmental governance have been elaborated, followed by a discussion of institutional mechanisms and judicial activism in this regard. Through this discussion, the author has tried to give a glimpse of the participatory nature of the rural environmental governance in India that plays a pivotal role in the rural development of the country.

Introduction

Public participation in environmental governance is a very pertinent topic of discussion in India. At the very onset of the discussion, one must note that India is an agrarian economy in which rural development is primarily governed by environmental governance. Thus, a discussion of public participation in India essentially concerns the integration of the principle into environmental governance in rural India. Public participation is an essential element of environmental governance. The principle of public participation is based on the idea of participatory democracy. It is one of the governing principles that holds the edifice of sustainable development. It is based on the principle of ecological justice and inclusive decision-making. The essence of public participation is captured through meaningful involvement of communities that are directly or indirectly affected by decisions taken by the authorities concerned and involved in the governance. The challenges so encountered by these communities often

have social and legal implications. This article firstly covers the conceptual framework of public participation, wherein the principle is discussed in light of the legal right in environmental governance. Thereafter, the legal foundations of public participation in rural environmental governance have been elaborated, which is followed by a discussion on institutional mechanisms and judicial activism in this regard.

Conceptual Framework: Public Participation as a Legal Right in Environmental Governance

Various scholars have identified lacunae in the participatory mechanism and argue that participation is more than mere consultation¹. Right to participation is an integral part of the international environmental law as well as constitutional law. Right to be informed and access to justice are collateral to the right to participate. In India, this is clearly reflected in various legislative instruments such as the Environmental Impact Assessment Notification of 2006² and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006³ (FRA 2006). It has long been observed that local community

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knowledge and traditional practices often contribute to good governance mechanisms. Rural development often relies heavily on participatory mechanisms in order to ensure transparency and accountability⁴.

The right to participate in government affairs is intrinsically linked to right to information. Furthermore, the Indian judiciary has interpreted it in line with Article 21 of the Indian Constitution. As noted earlier, the right to participate is crucial to rural development. In this context, it is worth noting that the Supreme Court has recognised the significance of right to participate in country's political affairs as a fundamental right under the Constitution⁵. The principle of public participation is instrumentalised in the environmental rights jurisprudence through the EIA process and the recognition of the rights of forest dwellers. However, Rajamani and Ghosh argue that these rights, as stated here, are not only "poorly implemented" but also on the verge of "erosion"⁶. Principle 10 of the Rio Declaration and the Aarhus Convention are two notable international legal frameworks that operationalise the procedural aspect of the principle. These global legal frameworks justify the concept of sustainable development in the lines of access to information, access to justice, and participation in environmental matters.

In this premise, one must analyse how the formal legal rights get translated to practice amidst complex social constructs in rural India. The conjuncture of environmental governance, the existing legislative framework, and rural societal challenges (such as caste, class, and gender, together with local traditional practices) often creates a complex dynamic. This implies that participation cannot be ensured solely through legal mechanisms. Instead, it must be supported by addressing the various societal challenges that cripple the system. It is crucial to understand the overlapping dimensions of legal and social dynamics to operationalize the participatory mechanism. This is furthermore important as it ensures to assert the right to participation as a substantive right rather than limiting it to a procedural framework⁷.

The principle of public participation in environmental governance is supported by not only legal and social constructs but also with enforcement of the international environmental order. In rural India, the principle is embedded in the governance procedure through the functioning of Gram Sabhas and other institutional mechanisms.

Legal Foundation of Public Participation in Rural Environmental Governance

The 73rd Amendment to the Constitution lays the legal

foundation for public participation in rural environmental governance, primarily through the role of Panchayati Raj Institutions. In fact, the Ministry of Rural Development has successfully established task forces in several states in India to implement the 73rd Amendment, with the objective of addressing various environmental issues⁸. The Panchayati Raj Institutions, with their three-tiered structure, introduced the Gram Sabhas, which became the foundational deliberative bodies for ensuring community consent in resource management⁹. The 73rd Amendment finds significance in the introduction of the Eleventh Schedule containing a list of 29 subjects dealing with various areas, including agriculture, soil conservation, water management, watershed development, minor irrigation, animal husbandry, fisheries, minor forest produce, social forestry, and small-scale industries, which are intertwined with environmental imperatives on which these Panchayati Raj Institutions could legislate.

The Indian environmental jurisprudence operationalises the constitutional framework involving explicit participatory mechanisms through the institutional concept of Gram Sabha under FRA 2006. The legislation vests in the Gram Sabhas the ultimate authority to determine rights in relation to Community Forest Resources, forest management, regulates forest produces. These bodies are also responsible for giving consents for forest diversions. The same is also protected under the Forest (Conservation) Act of 1980. Further, one must also note the role of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), which empowers Gram Sabhas in tribal areas to protect and preserve land, water, and minor forest resources, mandating consultations on mining leases and development projects¹⁰. The Notification relating to Environmental Impact Assessment is another legislative measure that involves the full-fledged participation of the public in the decision-making process. It mandates the involvement of the locals in the public hearing proceedings, as well as gives an opportunity to the persons having a 'plausible stake' to send in writing their concerns about a developmental project. In general, the environmental jurisprudence governing public participation in India is tokenistic. The tree of participation model determining the nature of participation in various stages as proposed by Karen and Reed focusses on the need to address inequalities and empowerment of marginalized groups. The model also counters the often tokenistic nature of public participation in Indian environmental jurisprudence, which mostly underrepresents the marginalized voices¹¹. The legislative measures establish a robust mechanism that supports participatory architecture in the decision-making process governing environmental matters.

There have been several instances in India where public participation has occurred in the form of public resistance. Two such notable instances are the Singur Project in West Bengal and the Mallannasagar Project in Telangana¹². Both the projects received backlash through public resistance movements, and they are clear examples of how local communities' resistance to State hegemony exposes collective consciousness, leading to later reform in law and policy.

In the case of *Samatha vs. State of Andhra Pradesh* (1997)¹³, the State of Andhra Pradesh granted leases of several tribal lands to be mined by non-tribal people. Challenging the same, a Writ petition was filed before the Supreme Court, wherein the Court advocated for the position of Gram Sabhas in the democratic decision-making process for tribals and forest dwellers. Further, in the case of *Orissa Mining Corp Ltd v. MoEF*¹⁴ the Supreme Court protected the traditional rights and beliefs of the tribals in the Niyamgiri Hills. The Court upheld the provisions of FRA 2006 and PESA 1996 and Gram Sabha and also upheld the role of Gram Sabhas in determining the nature and extent of the individuals and community rights. In the case of *Research Foundation v. Union of India*¹⁵ the Supreme Court observed that Government and its instrumentalities must aid to motivate public participation. In yet another case of *Lafarge Umium Mining Pvt. Ltd v. Union of India*¹⁶ mining permission in a limestone mine in the State of Meghalaya was challenged on the ground of granting of environmental clearance without conducting adequate and effective public hearing procedure. Also, in the case of *Ganga Mahasabha v. Union of India*¹⁷ the Allahabad High Court expressed its concern for the irregularities in the conduct of EIA, putting emphasis on the flawed public hearing procedure in the construction of Ganga Express Highway.

Through the judicial activism on public participation in environmental governance in India, right to participation has been constructively elevated from the idea of a mere procedural right to that of a substantive right.

Institutional Mechanisms

The Gram Sabhas, as empowered by the 73rd Amendment, are deliberative bodies on subjects such as watershed development, soil conservation, social forestry, and minor forest produce, and form the very foundation of participatory environmental governance in rural India. These Gram Sabhas are granted ultimate authority under the FRA 2006 to legitimize various acts and actions involving community rights in forest areas. Their mandates range from approving village eco-restoration plans to

participatory mapping of water bodies and degraded lands, and regulating the harvesting of minor forest produce for sustainable livelihoods¹⁸. In Joint Forest Management, Gram Sabhas are entrusted with the responsibility for afforestation and wildlife protection, including integration of traditional knowledge for effective conservation. In fact, the PESA 1996, further enforces this by making consultations on land and water use issues in tribal areas mandatory, thereby ensuring watershed protection and community-led anti-encroachment¹⁹.

Adding to these, awareness gaps, such as the lack of knowledge about rights among the majority of rural dwellers, result in merely tokenistic consultations with Gram Sabhas. Gram Sabhas also suffer from capacity deficiencies in training on science-based conservation or in enforcing laws. Lack of transparency in the procedural aspects, combined with delays in conducting public hearings and an inefficient documentation process, reduces trust. Overlapping roles of Gram Sabhas and other authoritative bodies result in conflicts and set back the restoration of the ecosystem. Legal environmental rights have therefore been reduced to mere procedural formalities, mostly restricted to pen and paper, resulting in grave inactions in practice and thus environmental degradation in rural India²⁰.

Conclusion and Way Forward for Environmental Public Participation in Rural India

The statutory recognition of the Gram Sabhas ensures a strong foundation for environmental democracy. The same also ensures legal recognition of the principle of public participation in the environmental governance especially in rural societal structure. From actual legal right to the state of achieving actual empowerment through participatory processes, various challenges are met with. There is a constant tussle between "law on paper" and "law in action," largely due to deep-rooted social hierarchies, bureaucratic complexity, and elite structures at the village level. Participation becomes a mere procedural formality with minimal involvement in actual decision-making. The participatory forums very often exhibit a non-inclusive behaviour towards the marginalized communities. Even if they are included in the process, they are made to feel intimidated through various actions or because of the nature of the proceedings conducted. Furthermore, meaningful public hearings become a farce due to lack of transparency in the administrative process and low level of awareness of environmental rights.

The Gram Sabhas in India play a crucial role in maintaining the sanctity of environmental democracy. There are multiple success stories across India to highlight the role of Gram Sabhas and even judicial activism to a large extent has ensured the same. But these at the same time also throws light on the gaps in the legal system. The existing legal regime does not address the various issues such as cultural and power imbalances that too influences the level of participation.

Meaningful participation in environmental governance in rural India can be ensure through the following mechanism as recommended hereunder.

- Conduct mass awareness programs on legal environmental rights, targeting particularly vulnerable groups like tribals and indigenous communities;
- Ensure timely participation, most importantly, early participation;
- Provide effective training for preparing experts who can assist in public participations and train the locals for the participatory process;
- Organise capacity building program for masses involved in participatory process;
- Ensure accountability of all the participating members;
- Provide adequate facilities at various levels to ensure social empowerment and upliftment of the marginalised.

Thus, to conclude, it is important to integrate legal, institutional and social dimensions keeping in mind the idealistic models of participation and redesign our policies and machineries to facilitate effective participation of the public in rural development through environmental governance structure. □

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