Chapter-7

Part—I

RESOURCE MANAGEMENT: NEED FOR INFORMATION AND PUBLIC PARTICIPATION

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PART—I

Resource Management: Information and Public Participation

7.1. Access to Environmental Information

Today, information on the environment has acquired importance as well as urgency. It is an area vital to human existence. Environmentally sound decisions, which are essential for achieving sustainable development, are not possible in an information vacuum. Sustainable development, which has evolved as the goal for human welfare in recent times, is rooted in the availability of right information to the right people at the right place and at the right time. The need for information arises at all levels, from that of senior decision-makers at the national and international levels to the grassroots and individual levels.\(^{1008}\)

The system of the enforcement of pollution control is exercised mainly by statutory enforcement agencies. These enforcement agencies do not, however, engender public confidence. As restrictions on the right to take action by private prosecution are removed, the general public are able to enforce the law where, for instance an enforcement agency fails to prosecute for a regulatory breach.

The enforcement agencies, of course, have specific and wide-ranging powers to enable them to obtain information. These powers are not available to the general public, but the information obtained by the appropriate agency is crucial in assessing whether or not enforcement action should take place. It is this information, which, if it were accessible, could be utilized by those outside the statutory enforcement system to bring an action themselves.\(^ {1009}\) Moreover, the publics have additional rights of enforcement both through resort to the common law for a private remedy and in the case of the abuse of statutory powers by an enforcement body by an application for judicial review. Without adequate information, public rights such as these are useless. Although documents containing general information about environmental pollution are freely available, specific information is far more difficult to obtain. For instance, basic

\(^{1008}\) Chapter 40 of Agenda 22 Rio includes the following passage: “In sustainable development, every one us a user and provider of information considered in the broad sense. That includes data, information, appropriately packaged experience and knowledge. The need for information arises at all levels, from that of senior decision makers at the national and international levels to the grass roots and individual levels”. Harjit Singh, Environmental Information System [ENVIS]: India, paper presented at INFOTERRA 2000 – Global Conference on Access to Environmental Information, Dublin, Ireland September 2000.

\(^{1009}\) Under the Water Act or the Air Act a citizen can file a suite only after serving the PCB a notice upto 60 days before going ahead with prosecuting an industry.
information as to who is polluting, where they are polluting, with what they are polluting and how much is being emitted, can be elusive.  

Historically, secrecy has been endemic in environmental legislation. Many statutes contain specific sections explicitly forbidding the disclosure of information relating to environmental discharge. Even if there were no specific sanctions for disclosure, access to information was prohibited unless another statute specifically required that it be made available to the general public. Industry’s main argument in favour of secrecy is that such general disclosure of data about the content of discharges to the environment causes industry concern because it could involve highly sensitive data, which may be of commercial advantage to a competitor. In practice industry often disclose information to the PCB which relates to the quality of the environment, as a responsible neighbour and part of society; but this disclosure cannot be assumed to be a public right nor can refusal to disclose be taken to mean that there is ‘something to hide’.

Many member of the public are uncertain as to who controls the different areas of pollution control. There is a plethora of environmental enforcement agencies each with their own individual responsibilities. It is often difficult for those closely involved in the field to understand such a complex administrative structure.  

The environment is not owned by anyone individual. The general public has in interest over all elements of the environment and, as a consequence, that interest should be balanced with the competing interests of industry and its ‘right to pollute’. The need to maintain natural resources and to ensure a proper environmental quality requires that the full extent of any particular problem should be assessed. Consequently, access to information is the cornerstone of effective law enforcement.

7.2. The Need for Public Participation

Experience has demonstrated that the Government alone cannot bridge the existing gap in the awareness and education of the masses regarding environmental issues caused by the onslaught.

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1010 Most environmental offences involve the carrying out of unauthorized activities. These may rise from the breach of a condition in an authorization or they may be entirely unauthorized actions. To assess levels of compliance the public require access not only to information concerning the details of an authorization but also to monitoring data which can provide an assessment of the success of the controls.


1012 Ibid, p. 127.
of industrialization and at the cost of environment degradation. In order to educate the masses and to increase their awareness, different sources have to be exploited such as the media, educational institutions at all levels, NGOs, social movements etc. Coupled with this need to spread awareness, there is a growing recognition that the public has a right to information and that a more direct approach by citizens will reduce conflict, augment trust in agency decisions and improve the quality of decision making. Towards this end, public input into decision should be encouraged and sought. This involvement will lead to substantive contribution to environmental protection by raising new issues and counterbalancing agency biases. Active participation is necessary to ensure that policies reflect public preferences and procedural and substantive justice is necessary to foster public acceptance of government decision. As laid down in Principle 10 of the Rio Declaration, “Environmental issues are best handled with the participation of all concerned citizens at the relevant level.”

The Gro-Harlen Brundtland Commission concluded that one of the main prerequisites of sustainable development is ‘securing effective citizens participation in decision making’. The former notion that ‘our projects will be more effective if the people understand them better and take charge of their implementation’ has given way to the realization that; our projects will be better if they are based on peoples own analysis of the problem they face and their solution.

**Modes of Public Participation**

The modes of public participation are varied. Often members of the general public act as pressure groups on government in the formulation of policies. This is justified from the premise that, first, public opinion modulates governmental process or even creates law. Second, external

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1013 In *Tarun Bharat Sangh case*, the Supreme Court cited an American Judge who placed Government above big business, individual liberty above government and environmental above all.


1015 Dwivedi, India’s Environmental Policies, Programmes and Stewardship, 1997, p. 34.

1016 Principle 10 of the Rio Declaration states that: *environmental issues are best handled with the participation of all concerned citizens, at the relevant level.*

1017 World Commission on Environment and Development Our Common Future, 1987. This seminal work thus identified the vital shift of focus, viz from the citizen as the tool of change, to the citizen as the source of change. Whereas in the former, the citizens merely implemented policy, the latter approach is more inclusive, inviting citizens to identify the problems and contribute local-level solutions.

1018 For a detailed and illuminating discussion on this aspects see E Gelhorn, ‘Public Participation in Administrative Proceedings’, 81 Yale LJ 359 at p 360-380 [1971]; Raj Anand and Ian G Scoot, ‘Financing Public Participation in Environmental Decision-making’, 60 Canadian Bar Review 81 at p. 84-96 [1982]; and Lothar
vigilance of the people focuses attention on potential harm to the environment and paves the way for essential counter measures. Third, public interest groups take up environmental litigation at different levels and this conscientize development proponents, decision makers and judicial and quasi judicial institutions, fourth, environmental groups become spokespersons of environmental causes in impact inquiries held prior to making decisions. Fifth, they can contribute substantially towards evolving sound environmental decisions by being members of advisory panels and agencies constituted for the purpose of protecting the environment. Sixth, the modern welfare-cum-technological state is governed through delegated legislation and people can participate and influence formulation of substantive criteria, laid down in Rules and Regulations to base environmental decisions. Draft schemes, programmes and regulations are published with the object of eliciting opinion, which mould their final shape.1019

7.3. Right to Information: Ecological perspective

The single most problem to effective environmental management is lack of concrete information. Unless, we the people of India assert ourselves to the need for information on civil, political, social, cultural and economical, our efforts to live in a better environment will never be seen.

Improving the availability of information on the state of the environment and on activities, which have adverse or damaging effects, are well-established objectives of international environmental law. Information is recognized as a prerequisite to effective national and international environmental management, protection and co-operation. The availability of, and access to, information allows preventative and mitigation measures to be taken, ensures the participation of citizens in national decision making processes, and can influence consumer behavior. Information also allows the international community to determine whether states are complying with their legal obligations.

Environmental Impact Assessment is one important technique for acquiring environmental information. International agreements and practice have developed other techniques for

ensuring that States and other members of the international community are provided with information on the environmental consequences of certain activities.\(^{1020}\)

No fewer than four of the Rio Declaration's twenty-seven Principles are concerned with improving the provision of, and access to, environmental information. The Rio Declaration calls for exchange of knowledge [information]; individual access to environmental information; public awareness; notification of emergencies; and prior and timely notification on certain potentially hazardous activities. Chapter 40 of agenda 21, entitled 'Information for decision-making', recognizes that the need for information arises at all levels, from senior decision-makers at international levels to the grass roots and individual level, and to that end calls for the development of two programme areas: to bridge the 'data gap' and to improve information availability.\(^ {1021}\)

The above may be better appreciated in the context of the Bhopal disaster wherein lack of information regarding the gas [MIC] lead to so many causalities. Experts believe that had the people been better informed about the dangerous gas been produced in the UCC factory, many would not have made their homes near the factory and moreover would know how to deal with any leakage whatsoever. If people are kept in dark, the consequences of any disaster or calamity is sever, than what can be avoided through information dissemination.

7.3.1. Information exchange

The general obligation to exchange information is found, in one form or another, in virtually every international environmental agreement. ‘Information exchange’ can be characterised as a general obligation of one state to provide general information on one or more matters on an *ad hoc* basis to another state, especially in relation to scientific and technical information. ‘Information exchange’ may be distinguished from specific obligations to provide regular or periodic information on specified matters to a specified body [reporting] or to provide detailed information on the occurrence of a particular event or set of events, such as an accident or emergency or proposed activity. ‘Information exchange’ of a general nature is endorsed by Principle 20 of the Stockholm Declaration and by Principle 9 of the Rio Declaration, which

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\(^{1020}\) Principle 2 of the Stockholm Declaration called for the ‘free flow of up to date scientific information and transfer of experience’. The 1982 World Charter for Nature broadened the scope and extent of obligations relating to information, calling for the dissemination of knowledge of research, the monitoring of natural processes and ecosystem, and the participation of all persons in the formulation of decisions of direct concern to the environment.

\(^{1021}\) Agenda 21, para 40.1.
supports exchange of scientific and technical knowledge as a means of strengthening ‘endogenous capacity-building for sustainable development by improving scientific understanding’.

Under environmental treaties, the obligation of exchange information can be a requirement between states, between states and international organizations, and between international organizations and non-governmental actors.

Information exchange can be required in respect of general and undefined matters or in relation to specific matters. Examples of the former include the obligation to exchange information: on general scientific, research and technical matters; on helping ‘align or co-ordinate’ national policies; on research results and plans for science programmes; on appropriate technologies; on relevant national records; on national legislation; on implementation; on relevant national authorities and bodies; and even on the availability of professors and teachers. Examples of more specific requirements include information exchange on: aspects of pests of pest and plant diseases; the conservation of species of wild flora and fauna; and the conservation and sustainable use of biological diversity.

In recent years several conventions have established more detailed rules on the type of information to be exchanged. The 1982 UNCLOS requires exchange of scientific information and other data relevant to conservation of fish stocks, on marine scientific research, and on marine pollution. Art 8 of the 1979 LRTAP Convention requires the exchange of

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1022 The Chernobyl disaster in 1986 provided the impetus for the provision that “states shall immediately notify other states of natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those states” [Principle 18 of Rio] and “States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with these states at an early stage and in good faith” [Principle 19 of Rio].

1023 The 1993 London Convention requires information exchange on the adoption of certain implementation measures, including import and export. [Art. 8(6), 9 and 12(1)].

1024 1982 Benelux Conservation Convention, Art. 2(2).

1025 1959 Antarctic Treaty, Art III (1)(a) and (c); 1973 Polar Bears Agreement, Art. VII.

1026 Under Agenda 21, UNEP is to facilitate ‘information exchange on environmentally sound technologies’ including legal aspects’. Para 38.22 (j).

1027 1952 North Pacific Fisheries Convention Art VIII.

1028 1958 Danube Convention, Art. 12 (3); Cartagena Oil Spills Protocol, Art. 4.

1029 1959 Plant Protection Agreement, Art. IV (3).


1031 1979 Berne Convention, Art 3(3).

1032 1992 Bio diversity Convention, Art. 17 (1). Art 17 (2) provides that information exchange shall include ‘specialised knowledge and indigenous and traditional knowledge’ and shall also, where feasible, include repatriation of information.

1033 Arts. 61, 143, 200 and 244.
‘available information’, through an Executive Body and bilaterally on emission data at periods of time to be agreed upon of certain air pollutants; major changes in national policies and general industrial development; control technologies for reducing air pollution; the projected cost of the emission control; meteorological and physi-chemical data relating to processes and effects; and national sub-regional and regional policies. Art. 4 of the 1985 Vienna Convention requires the exchange of ‘scientific, technical, socio-economic, commercial and legal information’, as further elaborated in Annex II to that Convention, as well as information on alternative technologies. The 1987 Montreal Protocol calls for information exchange on best technologies possible alternatives to controlled substances and products and costs and benefits of relevant control strategies.\(^{1035}\)

A widespread concern about the limited effectiveness of the traditional language on information exchange is evident from the language adopted in more recent Conventions. Increasingly, parties are being called upon to provide inventories or statistics of their natural and cultural resources\(^{1036}\) and to report on their emissions and discharges and their consequences. The 1992 Climate Change Convention, for example, calls on parties to promote and co-operate in ‘the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change and to the economic and social consequences of various response strategies’.\(^{1037}\)

1992 Climate Change Convention, illustrates the extent to which reporting requirements have become increasingly onerous. Reporting, which is described as ‘the communication of information related to implementation’, is a central technique for ensuring implementation of the Convention. All parties must publish and make available to the conference of the parties ‘national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the ‘Montreal Protocol’, and communicate to the conference of the parties ‘information related to implementation’.\(^{1038}\) These reports must include a general description of steps taken or envisaged to implement the Convention and ‘and

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\(^{1034}\) The Long Range Transboundary Pollution Convention ESPOO 1991.


\(^{1036}\) 1972 World Heritage Convention, Art. 11 (2) [property forming part of the cultural and natural heritage]; 1979 Bonn Convention, Art VI (2) [migratory species of wild animals]; 1983 ITTA, Art. 27(1) and (2) [tropical timber]; 1992 Bio Diversity Convention, Art. 7 (a) and (b), 1992 Climate Change Convention, Art. 4(1)(a)

\(^{1037}\) Art. 4(1)(h). It remains to be seen whether this form of language can influence the willingness of states, and the private sector, to improve flows of information. It will always be difficult to gauge the effectiveness of general obligations to exchange information.

\(^{1038}\) Arts. 4(1)(a) and (j).
other information the party considers relevant to the achievement of the objective of the convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.\textsuperscript{1039}

\textbf{7.3.2. Prior Informed consent:}

The Obligation to consult is closely linked to the Principle of ‘prior informed consent’.\textsuperscript{1040} Prior informed consent is the principle that international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision, of the designated national authority in the importing country.

The prior informed consent procedure, which requires the formal obtaining and disseminating of the decisions of importing countries on whether they wish to receive further shipments of chemicals which have been banned or severely restricted, has been used in UNEP\textsuperscript{1041} and FAO\textsuperscript{1042} no binding instruments and integrated into the legal binding arrangements for international trade in hazardous waste established by, for example, the 1989 Basel Convention,\textsuperscript{1043} the 1991 Bamako Convention,\textsuperscript{1044} and the 1993 EC Regulation.

The body of international rules on improving the availability of environmental information is now extensive, and information is now rightly a central technique for the implementation of environmental standards set by treaties and other international agreements. Citizen’s access to environmental information will have to be developed in practice and further guidelines developed to ensure that natural resources are equitable managed.

\textbf{7.4. National Perspective of Right to know}

\textsuperscript{1039} Art. 12(1)(b) and (c).
\textsuperscript{1040} In 1983 the General Assembly adopted a resolution which provided the basis for the principle of ‘prior informed consent’, declaring that: ‘products that have been banned from domestic consumption and/ or sale because they have been judged to endanger, health and the environment should be sold abroad by companies, corporations or individuals only when a request for such products is receive from an importing country or when the consumption of such products of officially permitted in the importing country.
\textsuperscript{1041} UNEP London Guidelines 1989.
\textsuperscript{1042} 1985 FAO Pesticides Guidelines.
\textsuperscript{1043} Chapter 12, 504-6.
\textsuperscript{1044} Chapter 12, 507-8.
‘In India secrecy is the normal rule, openness an exception’. This is more strictly followed by government authorities responsible for pollution control and ‘development’ issues. Lack of information and the extremely uncooperative attitude of the concerned government authorities is the stumbling block in environment cases. Groups, especially those fighting major projects and development areas are faced with extremely hostile government authorities.

Public participation in environmental decision-making can be meaningful and effective only if people have ‘right to know’. This is imperative in environmental matters because, for example, government decisions to site dams and large projects may displace thousands of people and deprive them of their lifestyles and livelihood. It has been stressed by the Court in the Doon Valley case that the question involving issues relating to environment and ecological balance brings into sharp focus the conflict between development and conservation; and serves to emphasize the need for reconciling the two in larger interest of the people residing within the area and the country.\textsuperscript{1046} The reconciliation of conflict between development and conservation can be served better if the facts, basis and reasons for decision that affect health, life, liberty and livelihood of people are known to those whose interest and rights are affected. This becomes all the more important because, in a developing society large segments of the populations are illiterate or unaware of their legal rights. The massive development projects leading to socio-economic transformation result in depletion of vast resources including wild flora and fauna, which are linked with the questions of life, liberty and livelihood of people. Therefore, desirability or otherwise of accelerated development can be decided only in the context of its socio-economic impacts particularly those concerning local people. Right to know becomes important from this perspective.

In pollution cases, the problem is more of collusion, of the government authorities with the polluters. Under the prevailing special environmental enactments, the concerned citizens or activists have no right to information. Even when the government authorities undertake investigation on a complaint by the concerned citizen or activist the said activist or citizen does not have the right to the investigation reports. There is more disabling legislation in this regard. Government authorities have used Sec. 5 of the Official Secrets Act to declare documents and

\textsuperscript{1045} The Central and various State Pollution Control Boards are getting out the Annual Report, which is not continuous and rather never easily accessible.

\textsuperscript{1046} G.S. Tiwari; Conservation of Biodiversity and techniques of people’s activism; Journal of the Indian Law Institute, April-June 2001 Vol 43 No. 2 p. 215.
even areas\textsuperscript{1047} as ‘secret’ and therefore inaccessible. In addition to this the government claims immunity from producing documents in Court under sec. 123 of the Evidence Act.

The right to information is considered a fundamental right in many countries. Special Acts have also been enacted to facilitate right to information.\textsuperscript{1048} The Air Act 1981\textsuperscript{1049} and the Water Act 1974\textsuperscript{1050} were amended to allow private citizen access to information on polluting industries, if they were complaining about them.\textsuperscript{1051} As usual they also had a proviso allowing withholding of the information of the officials thought the interest of the public would not be served.\textsuperscript{1052} In India the right to information has been read into the fundamental rights to free speech and expression. This has been done in cases that raised wide constitutional problems. As early as in 1975 in the case of \textit{State of Uttar Pradesh v Raj Narain}\textsuperscript{1053}, the apex Court derived the right to information from freedom of speech. They said that the accountability of the Government could be safeguarded with information as a check against corruption. Later in \textit{S. P Gupta v Union of India}\textsuperscript{1054}, popularly known as Judges case, Justice Bhagwati recognized the ‘right to know’ to be implicit in the right to free speech and expression.

The first observation of any Court regarding right to information in environment cases is found in \textit{L. K Koolwal v State of Rajasthan}\textsuperscript{1055}, wherein the decision is based on tenuous legal logic and right to information is merely an observation in the ratio decidendi. In this case, PIL was filed for the issue of Mandamus against Jaipur City Municipal Corporation to provide better sanitation facilities.\textsuperscript{1056} The Court opined that the citizen has a right to know about the activities of the State. The privilege of secrecy does not survive now to a great extent. Under Art. 19(1)(a) the right to freedom of speech is based on the foundation of the ‘right to know’. But this right is limited, particularly in the matter of sanitation. Every citizen has a right to know how the State is functioning in such matters because maintenance of health preservation of the sanitation and environment falls within the preview of Art. 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning, if not checked.\textsuperscript{1057}

\textsuperscript{1047} Eg: The Submergence zones of the Narmada Dam was initially put under the ‘secret clause’ and later due to public outcry was made available to the citizens.
\textsuperscript{1048} United States; The Freedom of Information Act.
\textsuperscript{1049} Sec. 17 [c] of the Act provides for the functions of the Central Board among which collection and dissemination of information in respect of matters relating to air pollution is one. But the section fails to specify to whom this information and what is the nature of this information; is to be disseminated.
\textsuperscript{1050} Sec. 25(6) provides for inspection of the register maintained by the State Board.
\textsuperscript{1051} Sec. 3(2)(xii) of the EPA provides the Central Government with powers to take measures for collection and dissemination of information relating to environmental pollution. It appears that the central Government has forgotten about this power.
\textsuperscript{1052} See Sec. 25 of the Air Act 1981.
\textsuperscript{1053} AIR 1975 SC 865, 884.
\textsuperscript{1054} AIR 1982 SC 149; also see Dinesh Trivedi v Union of India, 1997 (4) SCC 306.
\textsuperscript{1055} AIR 1988 Raj. 2. This case was a PIL seeking directions to the Municipal Corporation of Jaipur to improve the sanitation of the city and remove filth, garbage and dirt from the city.
\textsuperscript{1056} Jaipur had bad sanitation facility. This caused inconvenience to the citizens and environmental hazard due to accumulation of filth, rubbish, night soil, odour etc.
\textsuperscript{1057} Under Chapter 6 of the Rajasthan Municipalities Act, 1959, the Municipality is under a duty to maintain the city clean. Chapter 6 deals with three duties of the Municipality namely primary, secondary and special duty.
In *Bombay Environmental Action Group*\textsuperscript{1058} the Court upheld the right of a citizen's group to inspect documents of Government agency; the Poona Cantonment Board; which was habitually suppressing information regarding illegal structures. The Court categorically held that it was not any Tom Dick and Harry that is asking for information but group acting in public interest that required information and thus should have full access to it.

However, the right to information in both these cases was read into fundamental right to free speech and expression and both these decisions pertain to the times prior to the Courts observation that the right to clean air and water and wholesome environment is part of Art. 21. It would be useful to advocate the argument that right to clean air, water and environment also includes the right to information that is absolutely necessary to exercise this right. Thus it can be argued that the state cannot suppress information which is vital to exercise of a fundamental right. The argument has not been used in any environment case, but is a promising one. If the right to information is achieved in this manner it will facilitate the exercise of right to life in all its aspects, including the right to a clean environment.

In *M.C. Mehta v Union of India*\textsuperscript{1059}, Mehta filed this application in the public interest, asking the Supreme Court to:

1. issue direction to cinema halls that, they show slides with information on the environment;
2. issue direction for the spread of information relating to the environment on All India Radio; and
3. issue direction that the study of the environment become a compulsory subject in schools and colleges. Petitioner made this application on the grounds that Article 51A(g) of the Constitution requires every citizen to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures. To fulfil these obligations to the environment, the Petitioner argued that people needed to be better educated about the environment.

### 7.5. Right to Information Act

India is a democratic country. Political democracy empowers its citizens to demand that its need to be fulfilled by the elected government. Democracy allows demonstration, campaigns and gherao to achieve these demands. Courts may not be the proper forum for directing the executive to comply with the law.\textsuperscript{1060} Judicial action would be subverting the political democratic process, which is more effective.

The Freedom of Information Act 2005\textsuperscript{1061} was introduced for the first time in the Lok Sabha in July 25, 2001.\textsuperscript{1062} The Act aims to provide for freedom to every citizen to secure access to

\textsuperscript{1058} Bombay Environment Action Group v Poona Cantonment Board, [unreported].
\textsuperscript{1059} Writ petition (Civil) No. 860 of 1991.
\textsuperscript{1060} Almitra H. Patel v Union of India, 2000 2 SCC 679.
\textsuperscript{1061} Till the time this chapter was written the Rules to the Act were not framed.
information under the control of public authorities, consistent with public interest in order to promote openness, transparency and accountability in administration. \(1063\) This definition is missing the dynamisms of the right which must include the right of the citizen to demand all information pertaining to any of the state’s actions, and the right to participate in an question decision etc. It does not include the right of the citizen to demand proactive, *suo motu* and mandatory disclosure from government and its agencies and others under its control and supervision. Further, most of the provisions are very generally framed, which leaves much room for confusion. Likewise it leaves too much room for administrative discretion, defying its very purpose. While the Act gives a time consuming and tiring process for requesting information and appealing its refusal, there is no system for holding anyone responsible for unreasonable delays or unwarranted refusals. The Act does not initiate systems, for easy information retrieval or for simplification of procedures and official language, which are the main hurdles between information and the public as seen in the case of Bangalore-Mysore Infrastructure project. \(1064\)

7.6. Participation means Cooperation

The Citizenry is the ultimate beneficiaries [or victims] of policy. Thus their cooperation is vital to the success of any policy. Unfortunately, the hierarchical structure of our society, coupled with the inadequate information, has alienated the common man from the government. In order to secure their cooperation it is imperative to seek it first. The common man must be instructed on his role in environmental conservation. India lives in her villages and conservation must take place at the microcosmic level. Only if the common man feels relevant will be assist. To feel relevant he must be convinced that the policy will not be inimical to his interests. More importantly, he must be convinced that the myopic, immediate interest must be subordinated to

\(1062\) The Bill introduced in 2001 was amended as passed in 2005 significantly due to protest from Civil Society movement, led by Magsaysay award winner Ms. Aruna Roy.

\(1063\) Not only does the Act restrict itself to information from public authorities, it also defines the ‘freedom of information’ narrowly. It restricts the right to the mere right of access to documents.

the long-term interest. This is sustainable development, which includes in its ambit pollution control. Right to know strengthens participatory democracy also as armed with information on government programmes, citizens may influence decision making through representation, lobbying and public debate. Public access to government information enables citizens to exercise their political options purposefully. A government that conceals its actions and policies from the people who are affected by such actions and policies cannot be judged by the people and cannot be held accountable for its misdeeds. Moreover, governments in modern welfare states exercise vast powers that affect economic interests and impinge on citizen’s liberty. These powers are susceptible to misuse by the executive for private gains. Thus, the right to be informed of public acts can help check the abuse of executive power. Likewise, access to government records, can better equip a public-spirited litigant, particularly environmental groups to fight cases of environmental degradation and clearly establish where does public interest lie. The latest laws are the freedom of Information laws. Tamil Nadu and Karnataka have passed a Right to Information Act in 1997 and 2000 respectively, earlier than any other state but in an precedent fashion had exception to the right listed out from Sec. 3(2) (a) to 3(2)(v). The Karnataka law awaits the Rules to be framed so as to affect the procedural process of obtaining information. The exception and the non-framing of Rules have made a mockery of the intention of these Acts. The law in Goa contains much fewer exceptions but still contains that widely used Government tool of ‘Public Purpose’. What information was available before the passing of this Acts are now made difficult by what is titled as ‘Right to Information Act’ in many States.

Public participation is a very important part of the 1990 U. S Clean Air Act. Throughout the Act, the public is given opportunities to take part in determining how the law will be carried out. For instance, you can take part in hearings on the state and local plans for cleaning up air pollution. You can sue the government or a source’s owner or operator to get action when EPA or your state has not enforced the Act. You can request action by the state or EPA against violators. The reports required by the Act are public documents. A great deal of information will be collected on just how much pollution is being released; these monitoring (measuring) data will be available to the public. The 1990 Clean Air Act ordered EPA to set up clearinghouses to collect and give out technical information. Typically, these clearinghouses will serve the public as well as state and other air pollution control agencies. See the list at the end of this summary for organizations to contact for additional information about air pollution and the Clean Air Act.

Tiwari Journal of ILN April-June 200q p. 216.
See generally Maheswari, Anil and Mustafa; Right to Information; Ajanta Publications, New Delhi; 1998.
The Press Council of India prepared a draft Bill on Right to Information in 1996. This had three exceptions covering sovereignty, privacy and trade secrets. It also had an interesting clause saying that information that could not be denied to Parliament, also could not be denied to any citizen, even of it fell within these three exceptions. A Committee under the Chairmanship of Mr. H. D Shourie was also set up, the composition of which was entirely of bureaucrats from various departments with the exception of Mr. Soli Sorabjee. This draft had eleven exceptions with the ever present ‘public interest or purpose’ and also it narrows the scope of the word ‘information’ as compared to the Press Council of India draft.

It is the latter draft that has been taken up by the Government and it is certainly a step in the right direction. The very least it does is change the focus from all is secret, except what is allowed to all is accessible except what is barred. However in a way the root problem of control of accessibility of information is still unsolved and officials decide about their own information. There is certainly an appeal procedure, but information is often crucial in the immediate period. On the whole, though, even having such a procedure is certainly a positive sign that governments can and will respond to a people’s movement and will come up with a solution that will go some parts to address those problems.

Lack of proper appreciation of environmental information may often lead to decisions going against the interest of the general public. Consequently, priority is given to developmental activities aimed at short-term benefits, over conservation oriented actions with a long term perspective of sustainable benefits.\textsuperscript{1069}

\section*{7.7. Environmental Education}

The right to information is a human right as well as an environmental one. Human rights are implicated because knowledge of environmental risks and information on how to minimize or avoid those risks can directly affect the quality of a person’s life. Freedom of information also provides a kind of due process for persons affected by government-sanctioned harm to the environment.\textsuperscript{1070}

Education is probably the best means of information. Law is a regulation of human conduct, so the professors of jurisprudence say, but no law can indeed effectively work unless there is an

\begin{footnote}{\textsuperscript{1069} Prasad, ‘Silent Valley Case: An Ecological Assessment’, 8 Cochin University Law Review 128 [1984]\end{footnote}
element of acceptance by the people in society. No law works out smoothly unless the interaction is voluntary. In order that human conduct may be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires and there is an element of acceptance that the requirement of law is grounded upon a philosophy, which should be followed. This would be possible only when steps are taken in an adequate measure to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirement of law.

In a democratic polity dissemination of information is the foundation of the system and keeping the citizens informed is an obligation of the government. The society has the responsibility to adequately educate its component. In 1991 when the Supreme Court in *M C Mehta v Union of India* direct the Government to enforce the exhibition and broadcast of environmental messages and information by the media, the issue was whether any direction given by the Court in this regard would be justified. The petitioner had sought the introduction of ‘environment’ as a compulsory subject in schools and colleges. The Supreme Court issued detailed directions regarding the compulsory screening of slides and documentaries in cinema halls and the broadcast of programmes on radio and television. The University Grants Commission was directed to prescribe courses on the ‘environment’ in the Universities and the State Governments and education boards were directed to take immediate steps to include environment in the school curricula.

The Supreme Court observed that

> In order for the human conduct to be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measure to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirement of law.

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1072 *AIR* 1992 SC 382.
1073 Shyam Divan and Rosencranz; *Environmental Law and Policy in India*; 2nd edition, Oxford University Press p 151-152.
1074 ‘Environment’ is probably the only subject introduced by the Supreme Court in India for Law Courses.
1075 In 2004, J Santosh Hedge [Supreme Court unreported judgment] reiterated the same voice on making serious attempts to introduce ‘environmental education’ in all walks of life.
The MoEF has embarked on the mission of disseminating information by setting up the Environmental Information Centres [ENVIS]. Various areas on environment like Science, biotechnology, engineering, law, agriculture, biodiversity, coast, forest, wildlife etc have been chosen to give specialized information to all.1077

7.8. EIA: Source for Information

Environmental Impact Assessment can be defined as ‘an anticipatory, participatory environmental management tool’. In other words, a means of ensuring that an action is taken with knowledge of its environmental impact and consequence. Given its participatory nature, EIA will be most successful where environmental values are 1) implicit and consensual in national culture and 2) are explicit in public law and policy.1078 In India in January 1994, MOEF issued a notification requiring mandatory EIA for 29 specified areas under Sec. 5 of the EPA 1986. That notification required public hearing, an EIA report, an environmental management plan, a project report and all this could be subject to review by an expert body.1079

Sec. 5(2) and (3) requires pre-publication in case the government planned to impose a relaxation restriction on an industry operating in a certain area. In March 1994, this mandatory pre-publication was allowed to be relaxed in cases, where the government thought it fit. In May 1994 using this the government amended the requirement and made public hearing optional and restricted the ‘no work on site till clearance’ rule, only to construction thereby allowing felling of trees and land acquisition even before environmental clearance for the project is obtained. Also in terms of methodology of the EIA itself it allowed a single season or rapid report rather than the comprehensive report required earlier. So that attack in accessibility of information is at two levels. At one level forums of access like public hearing are being undermined by playing down their role. At another level the information available itself is being qualitatively harmed by reducing the rigor of the EIA required by the notification.

A survey has shown that in South East Asian Countries with the oldest compulsory EIA procedure [Thailand and Philippines] has lost most of its resource while the opposite was true of countries with no EAI procedures like Singapore and Bourei.1080 In India it seems clear that

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1077 Visit the ENVIS mode at www.envis.org .
1078 Wood Christopher; EIA –A Comparative Review’ taken from reading Material; Module V CEERA.
1079 Supra at n 66, p 70.
1080 Buffet Clina; Monitoring the Effectiveness of EIA in South East Asia’ CEERA, NLSIU Documentation .
it is not sufficient to have EIA mechanism unless people are involved in resource utilization and conservation no amount of top down effort can really succeed. Given that facet, arguments have been advanced that EIA’s as practiced in India and most of the world is too narrow in focus. It concerns itself with only the environmental impact in that area. One direction suggested is that EIA’s merge into a wider strategic Environmental Assessment. This is a wider plan of the kind of development needed for a Nation or region within. This is not reactive like an EIA but rather provides a framework for future projects and provides a kind of cohesiveness to development within a State.

Centralised top down model like this are discredited the world over and India has itself battled long against such an approach that its own government imposed. An alternative, more interdisciplinary approach is the preparation of a Social Impact Assessment. This kind of assessment looks at how people’s lives will be impacted and so necessarily has to take into its consideration an EIA. This kind of approach is certainly local in focus but their advantage is in its empowering approach. The local user of a resource or habitat gets primacy in the process of planning and development. This is an expansion of the focus of an EIA but again we have seen EIA provisions getting diluted and there is no reason why an SIA would not suffer such a fate if left totally to the State. In both cases, unless there is a rigorous polity to animate the process it is an open invitation to nested interests to take the system over.

**Comparative analysis**

As regards the origins of right to environmental information in the UK, there is Environmental Information Regulation of 1992 and the Freedom of Information Act, 2000. Both of them heavily rely on European Union Information Directive and the provision of the Aarhus Convention\(^{1081}\), which was finally drafted\(^{1082}\) in 1998.\(^{1083}\) The peculiarity of the Right to information in the English contest is that it completely hands over this issue to be determined

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\(^{1081}\) *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* was adopted on 25 June 1998 in the Danish city of Aarhus (Århus) at the Fourth Ministerial Conference in the "Environment for Europe" process.

\(^{1082}\) In December 1997, the Government issued a White Paper entitled *"Your Right to Know"* (Cm 3818) on its proposals for a Freedom of Information Act. It sought views by 28 February 1998. More than 550 responses to the White Paper were submitted. Copies were placed in the Library of both Houses of Parliament and published on the Internet.

\(^{1083}\) Just a few months before the signing of the International Aarhus Convention on access to information in 1998, Kai Barlund, Director of the United Nations Economic Commissions for Europe, argued that "industry and
by the regulation of 1992 and the Freedom of Information Act plays only a very cursory role in endorsing this freedom. The regulation itself is a detailed instrument on promoting the existence of the right to environmental information but nevertheless seems to be tinged with culture of secrecy that had existed with respect to Official documents in UK and other Common Wealth countries. UK is attempting modification of its Information Act with the Aarhus Convention\textsuperscript{1084} which speaks of the right to information, providing opportunity for public participation and lastly making way for a system where there is a smooth access to justice. The UK Freedom of Information Act 2000\textsuperscript{1085} specifically through sec. 39 shifts over the burden of providing information to the Regulation of 1992 and gives the regulation overriding powers. Sec. 39 is also supported by sec. 74 which says that the Regulation shall be made by the Secretary of State keeping in mind the principles of the Aarhus Convention\textsuperscript{1086} and that the ‘obligations imposed by the regulation in relation to disclosure of information is to have effect notwithstanding any enactment or rule of law’.

Under the 1992 Regulations in UK, information on the environment can be got from a wide range of person extending from the executive category [Ministers of the Crown] to bureaucrats at all levels and even those who undertake administrative work outside the public administrative work outside the public administrative system.\textsuperscript{1087} In India on the other hand only the Pollution Control Board are required to give information and no other body.

Information that relates to the environment is very widely interpreted in UK to include the dead state of flora and fauna. This, therefore, is a rather unique extension of right to information because it makes it easier to get information relating to ‘human conditions in the aftermath of a disaster’. The existing Regulation of 1992 works under the assumption that it intends to cover information not accessible otherwise through specific statutory provisions [Regul.2(c)i]. This provision in the Regulation is not to restrict the applicability of the regulation but on the other

\begin{itemize}
  \item The first pillar gives the public the right of access to environmental information;
  \item the second pillar gives the public the right to participate in decision-making processes and;
  \item the third pillar ensures access to justice for the public.
\end{itemize}

\textsuperscript{1084}The Convention calls Right to Information as an essential Green right.
\textsuperscript{1085}Section 1 confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority (the duty to confirm or deny whether it holds information) and, if it is held, to have it communicated to him.
\textsuperscript{1086}The Aarhus Convention lays down the basic rules to promote citizens’ involvement in environmental matters and enforcement of environmental law. The Aarhus Convention consists of three pillars, each of which grants different rights:
\textsuperscript{1087}Gisele Bakkenist; Environmental Information; London: Cameron May Ltd. 1994 at p. 8.
hand seems to be an indication that it is expected of specific legislations that they will allow for a procedure of accessing information.

Environmental information in UK is usually recorded in registers by respective agencies and departments. In India, PCB in India have no statutory duty to maintain registers and whatever reports they maintain from inspections they undertake, are meant purely for the benefit of legal proceeding if any are initiated. Information can be kept confidential, if they are record of internal communication or within the process of completion.

Conservation perspectives requires transparency in all level of environmental and resource management. Resources belong in the public domain and the State is the trustee of all resources, hence withholding of vital and necessary information in terms of management techniques of resource conservation must not only be shared but must be arrived only by public participation in decision making. When people are involved in decision making, development is achieved in true sense. Thus the ‘Managerial’ perspective of resource conservation can be achieved through meaningful public participation in all levels of decision making.

However inspite of how much ever one may provide for the right to information not every person in society will know what information is available and accessible. In light to this problem it has been expressed that there is a need to compile the list of routinely used environmental information and the places/sources from which the same can be obtained. The final dimension of securing information is that is should be in an understandable form.

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1088 Reg. 2(4).
1089 These two ground have been severely criticized.
1090 Though under the EIA process, the Executive Summary of the EIA report shall made available to the general public for scrutiny, the complicated and detailed scientific report is hardly understandable by an expert, leave alone the common man.
Decentralized Environmental Governance for effective Resource Management

7.9. Introduction

Developmental policy in India has long appreciated the importance of environment – poverty linkages in determining the outcome of development. The majority of the poor in India are rural people and particularly dependent on natural resources for their livelihoods. They often live in areas of high ecological vulnerability and relatively low levels of resource productivity and have limited and insecure rights over productive natural resources. These combined factors are significant forces contributing towards the vulnerability of rural livelihood strategies. Much of the debate over development strategies in the last decade has therefore turned around the question of how poverty, vulnerability and access to natural resources are linked and which are these policies that can contribute towards sustainable rural livelihood.

At the outset, let us outline the nature of the channels for communicating sustainability as they exist in India today. At one end, we have a formal general education system, comprising a large number of Universities and colleges, leading to award of degrees and diplomas, often of little practical value. In the area of life sciences, students rarely, if ever, receive a first hand experience of the diversity of life around them and almost never get equipped to monitor environmental resources in their surroundings or check environmental degradation. At the other end, we have the various stakeholders of environmental resources largely in the informal sectors whose livelihood imperatives do not permit a consideration of long-term sustainability. As a result, local people, who enjoy no tenurial or usufruct rights over vast stretches of forests, rivers and other public lands end up over-harvesting resources or using them unsustainably. Similarly, unrestrained commercial use has also led to exhaustion of resources in many parts of colonial and present day India. This combines with lack of information at the local level on final and even intermediate uses of products collected from the wild. Very little is known locally about the trading routes of non timber forest produce, including medicinal herbs, and their price markups and various market points. Consequently, local communities obtain nothing more than the equivalent of a subsistence wage for their collection effort; and hence, their dependence on a resource never translates into a concern for sustainability.
Central to this discussion has been a consensus that decentralizing management over natural resources to local communities is an important step in the right direction. Decentralization, it is argued, can contribute towards sustainable livelihoods through enhanced resource productivity and locally monitored equity in resource use. In India, two formal institutional systems have been isolated as having the legitimacy and potential to foster sustainable livelihoods through decentralized resource management.\(^{1091}\)

1. Partnership models

The State has been reluctant to transfer access rights over natural resources [other than arable land] to local communities or individuals, but in the last decade there have been significant moves towards forming natural resource management partnerships with communities\(^ {1092}\) or ‘user groups’\(^ {1093}\) of a particular resource. The two most popular institutions evolved of these partnership models are Joint Forest Management\(^ {1094}\) and Watershed\(^ {1095}\) management\(^ {1096}\) [WM].

\(^{1091}\) Working paper 230, Institutional Alternatives and Options for Decentralised Natural Resource Management in India, October 2003, Overseas Development Institute, London, UK.

\(^{1092}\) Take the example of the Biodiversity Act 2002, which makes provision to take the assistance of ‘gram sabha’ to conserve the biodiversity of the Nation.

\(^{1093}\) Take the example of the draft on Karnataka Tank Irrigation Act, in which ‘user groups’ will have management rights over tanks in the state of Karnataka. The draft was submitted to the Government of Karnataka in 2004.

\(^{1094}\) Forest management in India continues to be largely a domain of state initiative, but in case of degraded lands, joint management framework has been development after 1990. The failure of the social forestry projects and the high level resource degradation and the inability of the Forest department to protect valuable forest stock gave the way for JFM. The framework for JFM comes from the Forest Policy of 1988, circular issued in 1990 for ‘Involvement of Village Communities and Voluntary Agencies in the Regeneration of Degraded Forests’. Notwithstanding the enabling framework for community involvement in the management of forests, a number of serious difficulties remain in making the arrangement equitable and sustainable. These include the confinement of joint management to degraded lands; non-recognition of self-initiated Forest Protection Groups; absence of legal rights for beneficiaries and communities under JFM, making them subject to the approval of the Officials of the Forest Department and the disproportionately large share of the benefits taken by the Forest Department and its continued power to suspend and even dissolve JFM committees.

\(^{1095}\) Guidelines issues in Feb. 2000 by MoEF attempts to address some of the more obvious defects of JFM, but these recommendation are yet to be worked out and see ground reality.

\(^{1096}\) People’s participation in watershed development and management programmes is crucial for their successful and cost effective implementation. This is so because the watershed approach requires that every field of land located in a watershed be treated with appropriate soil and water conservation measures and used according to its physical capability. For this to happen, it is necessary that every farmer having land in the watershed accepts and implements the recommended plan. There are some components of a watershed development plan such as bunding, leveling etc., which can be implemented by the farmers involved acting individually and there are many other items such as check dams, waterways, etc., that can be implemented only through collective action of the farmers.

\(^{1098}\) High Level Committee were constituted in 1993 [C H Hanumantha Rao Committee] and 1995 [Dharia Committee] to look into the performance of watershed management and institutional mechanisms to make them more effective and equitable. These committees identified three main reasons for the dismal performance of the ongoing schemes for watershed development; the lack of an integrated approach; the relative neglect of non-wastelands’ and the failure to institutionalize genuine participation. The reviews of these committees resulted in the issuing of the ‘Common Guidelines for Watershed Development’ in 1995. Watershed development in India has
2. Local Government

The 73rd Constitutional Amendment of 1993 institutionalizes three tiers of local government at district [usually called the Zilla Parishad], block [variuous local bodies, Taluk Panchayats, city corporations\(^{1097}\), etc.] and village levels [Gram Panchayats\(^{1098}\)], collectively called Panchayati Raj Institutions. Gram Panchayats have been vested inter alia with the responsibility of preparing plans for the management and development of natural resources within their boundaries.

In India it is generally agreed that centralized planning has failed in maintaining environmental sustainability and fulfilling local subsistence demands. The evidence that decentralization policies can contribute towards sustainable livelihoods is far from conclusive and there is an emerging realism about the potential of decentralization. This realism is particularly true in relation to decentralization measures for natural resource management where the optimism in community collective action and indigenous knowledge has been tempered by failed participatory resource management projects.\(^{1099}\)

The co-existence of federalism, local self-government system, innumerable public undertakings, autonomous institutions and voluntary organizations produces plurality of jurisdiction and engenders the problems regarding coordinated efforts. On an international scale many governments at national, regional and local levels have found that as far as environment is concerned, cure is far more onerous and laborious than timely prevention. In light of this fact, it becomes critical that governments\(^{1100}\) secure public participation in environmental conservation. The concept of ‘environmental resource management’ requires a large-scale participation of the people. Pertinently, a noted environmentalist, Nicholas Polunin observed,

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\(^{1097}\) India has 95 city corporations till 2004.

\(^{1098}\) 532 district panchayats, 231,630 village panchayats, 2,055 Nagar panchayats. For more see Ministry of Rural Development, GOI, Institute of Social Studies, New Delhi.

\(^{1099}\) The Kani tribal story in Kerala. For more see CEERA, UGC ASC teachers training Module III, 2002. NLSIU.

\(^{1100}\) Government Departments, such as Forest, Irrigation and Fisheries who control the public resources lease out harvest rights to market-oriented private contractors for a fee. Many industries command sufficient economic and political clout to extend their resource catchment zones to large geographical areas. While the government bureaucracy seldom takes a participatory stance in deciding management options for environmental resources, the industry often maintains secrecy about their sourcing routes.
‘an enlightened understanding by a human being of his or her environment is a prerequisite to saving it’.  

The distribution of biological diversity is extremely heterogeneous in space and time. It is therefore very difficult for a centralized system to monitor what is going on at the ground level. Such monitoring would require a decentralized is going on at the ground level. Such monitoring would require a decentralized system of collecting information as well as management.

Decentralization is the transfer of political, administrative and fiscal responsibilities to locally elected bodies in urban and rural areas, and the empowerment of communities to exert control over these bodies. Decentralization is not unique to India, but a global trend. It is a worldwide phenomenon for at least two reasons: (a) need for political stability—decentralization means a dispersion of formal political power to elected local level politicians; this is due to declining credibility of the centralized state and (b) more effective and efficient service delivery. As laid down in Principle 10 of the Rio Declaration, “Environmental issues are best handled with the participation of all concerned citizens at the relevant level.”

Decentralization is expected to achieve higher economic efficiency, better accountability larger resource mobilization, lower cost service provision and higher satisfaction of local preferences.

India is one of the most politically decentralized countries in the world. In India, locally elected bodies are the Panchayat Raj Institutions at the district, block and village level. The Panchayat and Nagarpalika Amendment Bills of 1993 should not be regarded as the first initiative towards decentralization. In 1952 the establishment of Community Development


Three stages of decentralization; (1) Political Decentralization, means transfer of policy and legislative powers from central to autonomous, lower level assemblies; (2) Administrative Decentralization; means planning and implementation in the hands of local civil servants; (3) fiscal decentralization; means to accord substantial revenue and expenditure to intermediate and local governments. World Bank Report on Overview of Rural Decentralization in India Vol. I, 2000

The potential benefits of decentralisation are:
- Awareness of local priorities: local authorities are more likely to be sensitive and responsive to local circumstances and priorities
- Information flow: local authorities can keep people informed given their closer proximity.
- Revenue: local authorities can optimise revenue by drawing on local taxes, fees and user charges and feeding it directly back into the local area
- Accountability: communities are in a better position to influence politics and policy at the local level and put pressure on local authorities.


Blocks as part of the nation-wide programme was itself a major step in decentralizing development administration. The National Extension Service was established soon thereafter to reinforce the administration at different local levels. However, lack of public participation emerged as a major problem.¹¹⁰⁶

The *Balwant Rai Mehta* Study Team was appointed in 1957 to consider the institutional framework and suggest measures for mobilizing local initiative. Beginning in 1958, with the adoption of the study Team’s report for establishing a three-tier panchayats system, the country witnessed considerable progress in organizing panchayats at the village, at the block and at the district level. Some States like Karnataka, Gujarat, Maharashtra and Rajasthan established innovative structures for decentralized planning and coordination particularly at the district level. In some others, like Tamil Nadu and Andhra Pradesh, progress was notable at the village and at the block level.

However, the success of the decentralization initiative and the ascendancy of the panchayats Raj as the *Asoka Mehta Committee* reported later, contained in themselves the causes of a slow down. The leadership that was emerging at the village, block and district levels, had a strong local identity and a better perception of local problems and it came to be regarded as a potential threat by other level of political leadership.¹¹⁰⁷

The Panchatay Raj initiatives started by Rajiv Gandhi were, therefore, not just a resumption of the decentralization process but an attempt to force the pace of change. The Singhvi Committee’s recommendations were accepted in substance and it was recognized that this time the process should be underwritten by constitutional provisions. The amendment exercise, however, should not be seen as an isolated move; it was part of the rapid learning process that the country was going through.¹¹⁰⁸

The Panchayat Raj and Nagarpalika institutions are obviously the appropriate decentralized system of governance to use this information towards sustainable management of biodiversity. Such institutions are, or will soon be, functional in all parts of the country apart from some scheduled tribal areas of the Northeast¹¹⁰⁹. Other parallel institutions such as tribal and district

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¹¹⁰⁹ Especially after the passing of the Biological Diversity Act 2002.
councils serve a similar function in these Northeastern States. It is these local systems of Government that are most appropriate for management of local stocks of both natural and domesticated biodiversity.

Such involvement of decentralized institutions of governance would be greatly helped by creating a system of positive incentives for the local communities to conserve, sustainably use, and if possible enhance the biodiversity levels in the areas falling within their jurisdiction. This jurisdiction should include private lands [which of course will remain under the control of private owners, who would directly collect any appropriate collection fees], revenue lands and public water areas to be managed entirely by Panchayat Raj institutions, as well as reserved forest lands whose timber resources would continue, at least for the present, to be managed by the Forest Departments, while all the non-timber biological produce, including medicinal herbs and minor forest produce like soapnuts or sal seeds could come immediately under the management of Panchayat Raj institutions. This is already the case for the Scheduled Tribal Areas of Central India under the provisions of the Extension of Panchayat Raj in the Scheduled Areas Act of 1996.

7.10. Constitutional Provisions for Local Self Governance- Panchayats and Nagarpalikas

The 73rd and 74th Constitutional Amendments enacted by the Parliament in 1992 confer constitutional status on all Local Self Government institutions and provide a framework for state level legislation. All States with certain exception must have a three tier panchayati raj system with panchayats at village, intermediate and district levels. The State legislature has to choose the intermediate level. In each village there should also be a ‘grama sabha’ consisting of persons who are registered in the electoral rolls of the village.

The 73rd amendment dealing with rural local self-government institutions has the following provisions:

Under Art 243 G, the State legislature should devolve powers and authority to the rural panchayats to enable them to function as institutions of self government, provisions have also be enacted for the devolution of powers and responsibilities for the preparation of plans and implementation of schemes for economic development and social justice by panchayats on

1110 Art. 243 M.
1111 As per Art. 244.
various subjects entrusted to them including those in relation to the matters listed in the Eleventh Schedule.\textsuperscript{1112}

Art. 243 H pertains to the financial resources for the rural panchayats. The State legislature may both authorize the panchayats to levy, collect and appropriate certain taxes, duties, tolls, fees etc and also assign to panchayats revenues of certain state level taxes subject to such conditions imposed by the State. Further, grants-in-aid may also to provided to panchayats. The State legislature may also require setting up funds for crediting all money received by the panchayats and for their withdrawals.\textsuperscript{1113}

Under Art 243 W, provisions similar to rural panchayats are made for devolution of powers, responsibilities and authority by the state legislature to Municipalities.\textsuperscript{1114} There are 18 subject matters listed in twelfth schedule.\textsuperscript{1115}

Under the Eleventh Schedule to the Constitution, the powers relating to minor irrigation, water management and water development; agriculture, land development and soil conservation; drinking water; fisheries; social forestry and small scale industries have been enumerated, which have bearing on water quality management and conservation. Art.243 G of the Constitution provides that State legislation shall make provisions for devolution of power at the appropriate level with respect to economic development and social justice. \textbf{7.11. The Karnataka Panchayat Raj Act, 1993}, which can be taken as a sample, distributes these powers amidst three levels of Panchayat in an overlapping manner.\textsuperscript{1116} Drinking water is a common subject to all the three layers of Panchayat. But primary responsibility of construction, repairs and maintenance of drinking water wells, tanks and ponds and prevention and control of

\textsuperscript{1112} The Eleventh Schedule entrusts a total of 29 subjects to panchayats which include: 1) Agriculture, 2) Horticulture, 3) Animal Husbandry, 4) Fisheries Development, 5) Soil and water conservation, 6) Social and Farm Forestry, 7) Wasteland development, 8) Cottage Industries, 9) Village Sanitation and Planning, 10) Primary Health Care, and 11) Education [including adult literacy].

\textsuperscript{1113} Though Art 243 I provides for institutional arrangements to periodically review the financial position of panchayats. The State legislature should provide for composition and working of a finance commission within one year and thereafter every fifth year, this is far from a reality in many State which have not devolved powers on the Panchayat to carry out the mandate in the Constitution.

\textsuperscript{1114} The Art 243 Q-74th amendment envisages three types of municipalities in urban areas.
\begin{enumerate}[a.]
\item Nagar Panchayat--Areas in transition from rural to urban area.
\item Municipal Council—- for smaller urban areas
\item Municipal Corporation-- for larger urban areas.
\end{enumerate}

\textsuperscript{1115} Which include:1. Regulation of land use and construction of building. 2. Public health, sanitation and solid waste management 3. Urban forestry, protection of environment and promotion of ecological aspects 4. Promotion of cultural, educational, aesthetic aspects.

\textsuperscript{1116} See Schedules I, II and III of Karnataka Panchayat Act, 1993.
water pollution is vested with the Grama Panchayat. Establishment, repairs and maintenance of rural water supply schemes and prevention and control of water supply schemes is within Taluka Panchayat’s jurisdiction. Promotion of drinking water and rural sanitation programme is the power of Zilla Panchayat. Difficulty arises in delineating the jurisdictions. Regarding minor irrigation, water management and water shed development, the primary responsibility vests with the Zilla Panchayat. This includes: construction, renovation and maintenance of minor irrigation works; providing for the timely and equitable distribution and full use of water under irrigation schemes; water shed development programmes; development of groundwater resources. Taluka Panchayats have the power of assisting Zilla Panchayat’s irrigation works. No power on irrigation is vested with the Grama Panchayats. Hence, it is problematic for them to undertake activities on promotion and development of agriculture; development of wastelands; and development and maintenance of grazing lands, concerning which they have powers. While Grama Panchayat has extensive powers on planting of trees and promotion of social forestry, regarding water shed management, which is key to the success of afforestation, the power is with the Zilla Panchayat. It is not at all possible to have rigid watertight compartment approach. Proper coordination amidst all the bodies is very much required. In fact, state government is contemplated to play significant role by prescribing the conditions within which each layer of panchayat is to exercise powers mentioned in the respective schedules.

Some noteworthy provisions in the Act empowering the Grama Panchayats in the matter of water supply and water quality management can be looked. No place in the Grama Panchayat can be used for installing industries, for hotels or shops or for any offensive trade without the licence of the Panchayat. For providing sufficient and pure water supply for private or public purpose, it has the power of constructing, repairing and maintaining tanks or wells; or acquiring any water source for the purpose; or utilize water with the consent of the owner. Prohibiting pollution of drinking water, making bye laws to prevent injury to water source, obligating owners of drinking water sources to maintain cleanliness, setting apart of public springs for specific purposes, abatement of nuisance from foul water, construction of drainages, obligating the occupiers to arrange for drainages and making provisions for privies are some of

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1118 Section 77.
the powers in the hands of Grama Panchayat.\textsuperscript{1119} Comprehensive powers to deal with village level water requirements in both quality and quantity considerations have been entrusted upon Grama Panchayat for an integrated application.

The Guidelines for Watershed development of the Ministry of Rural Development, Government of India 1994 contemplate a key role for panchayats in watershed development projects. Although at present, the extent of people’s participation is inadequate, the participatory approach is regarded as the single most important factor for fulfilling the targets. In view of the emphasis laid in Rio Earth Summit’s Agenda 21 towards local people’s involvement and participation in the conservation and rational use of natural resources, this is appropriate.

7.12. Panchayat and their new role under the Biodiversity Act 2002

The Act insists for a new role for the Panchayats. Each ‘gram sabha’ is to maintain a ‘biodiversity register’\textsuperscript{1120} a stock of all the different flora and fauna found and existing in their region. This process has already being initiated in some region like the North East and the Western ghats [the biodiversity hotspots] and the Panchayats suddenly find themselves with an important assignment to maintain and preserve the nature and its resources for the future generations. But the basic and most important question is, if the above has to succeed then, the State and Central Government would not only have to devolve moreover to the Panchayats but also give them more powers to raise and manage financial matters.

Panchayat Raj institutions should have full control over exploitation of non-timber biological resources from all these public lands and waters within the revenue boundaries of their constituent villages and have the right to levy collection fees would be a very appropriate addition to local revenue generation by the Panchayats. It would motivate them to encourage sustainable use of such resources, since overuse will reduce future revenue. It would motivate them to encourage local people along with local High Schools to properly monitor stocks of such resources, and thereby promote effective implementation of this component of school science teaching. It would also encourage Panchayats to try and obtain information on end uses and market prices of these products to assess appropriate levels of collection fees. Higher level educational institutions such as degree colleges would be involved in collecting this

\textsuperscript{1119} Sections 82 to 87 and 100 to 106.
\textsuperscript{1120} For more see the Biodiversity Act 2002.
information on trade and processing of biological produce. Panchayats would thereby be encouraged to develop links with them and with the District level Biodiversity cells to access such information serving to enhance awareness and positive action for managing biodiversity. In turn the Taluk and District level Biodiversity Cells would collate the information on the collection fees levied on all the various biodiversity resources from each of the constituent Panchayats through the Junior and Degree Colleges. This would create a very effective system of monitoring biodiversity use, so essential for sustainable management. For this system to function well, the Panchayat Raj Institutions should be involved in supervising the work of educational institutions and biodiversity cells at taluk and district levels as well.  

7.13. Empowerment and Shared Governance

Pluralist power relations imply that all individuals are aware of their ability to recognise what is going on in their name, and that they have a capability to express their needs and reactions in such a manner as to be respectfully heard. Such conditions imply the capacity of empowerment. For Singh and Tiki\textsuperscript{1122} empowerment involves four minimum conditions:

- \textit{Sovereignty, freedom and democracy} through broad political participation;
- People’s control over their own resources, and their access to relevant information
- Building a value system consistent with people’s sense of their humanity and their links to the earth and its resources;
- Mutual self-help amongst people working together for a common good.

Pluralism and empowerment set tough conditions for any representatives democracy. In principle, the following conditions should apply:

- Through \textit{socio-economic empowerment}, communities obtain collective responsibility for their own future and become managers of their own development

\textsuperscript{1121} In the Western Ghats, Kalpavriksh, and NGO based in Pune is working towards the implementation of the action plan under the Biodiversity Act.

• Through political and educational empowerment, people should have the capabilities to understand democracy and justice, to pursue their own thoughts and outlooks, and to feel that they are able to achieve their desired levels of well-being;

• Through technological empowerment, a combination of knowledge of nature and indigenous skills with technologies and management creates an innovative blend of styles of resource use that increase human well-being and reduces environmental burdens;

• Through cultural and spiritual empowerment the perceptions of the meaning of human existence and the connectedness and trust in communities and societies can be given purpose and meaning.1123

The notion of ‘governance, rather than government’ implies a shared responsibility for devising policy, for preparing management plans, for assessing the likelihood of meeting targets, and for auditing performance. Governance means the networking of responsibility, proactive and ‘smart’ management, cooperative endeavour, joined-up budgets and combined sources of income and investment, and evaluation of performance and delivery based on citizen-created measures of support.


The Green Revolution and large scale industrialization contributed tremendously to raise productivity and reduce dependence for good grains and primary industrial goods. However, one could not ignore the human and social consequences of the scale of change and transportation that this path of development recommended. By early 1970s, it was obvious that ‘growth’ and modernization had brought about in their wake:

- Increase disparity between the affluent and the poor
- Absolute poverty for about 50 percent of the population
- Over utilization of natural resources leading to environmental degradation and biomass scarcity to meet even basic needs and

1123 Tim O’ Riordan and Susanne Stoll-Kleemann; Biodiversity, Sustainability and Human Communities; Cambridge University Press. p. 91.
concentration of economic and political power leading to peripheralization of a large majority.

Mismanagement of resources over the past century has made many to believe the only solutions for conservation and resource utilization would lie in making policies oriented towards peoples participation in decision making. There are three major role players in participatory resource management, the Government agencies, Non-Government Organisation and the people. In the last ten years, a great deal has been accomplished.

7. 14.1. Voluntarism

Under traditional views of public international law, only States have rights and responsibility. Nongovernmental actors, industry, and subnational governments are not allowed to participate in, nor are they subjects of, international law. This classical views has undergone a sea change with information, capital and people across national boundaries helping each other to construct a better and viable world for tomorrow. What is undeniable, is that environmentalists, far more than any other nongovernmental community except, perhaps, human rights activities, have forced their way into the previously closed rooms of international diplomacy.

The contribution of voluntary organisation in promoting micro level development is of particular significance in India, where government funds, resources, manpower and interest is limited. Voluntary organisation [NGOs] score over Government agencies in that they have greater freedom to adapt to local needs. They have a better rapport through more personal communication with the people. As a result they can secure the willing participation and trust the people. NGOs are the guidance counselors of micro level development programmes. They set examples, lead, direct, motivate, instruct, synergies etc. they spread awareness, which is crucial for preventive participation from the people.

The developments during last two decades have shown that the mission of water quality management and conservation can effectively work only with strong NGO activity and widespread people’s participation. The Union Government published its policy statement relating to environmental protection in 1992, which has categorically recognized the role of NGOs. It said, “Affected citizens and non-governmental organizations play a role in environmental monitoring and therefore in allowing them to supplement the regulatory system

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In recent years the number of NGOs has exploded in the field of environment. The environmental movement has gone ‘global’. The 2000 edition of the Yearbook of International Organizations contains entries on 29,495 organizations.
and recognizing their expertise where such exists and their commitment and vigilance, will also be cost effective. Access to information to enable public monitoring of environmental concerns will be provided for. Public interest litigation has successfully demonstrated that responsible non-governmental organizations and public spirited individuals can bring about significant pressure on polluting units for adopting abatement measures. This commitment and expertise will be encouraged and their practical work supported.”

Conceding that environmental issues have delicate zones and that the man-nature relationship is to be handled in a coordinated manner, the enhanced role and responsibility of NGOs is within the fitness of things. As can be gathered from the works and methods employed by Rural Litigation Kendra and Tarun Bharat Sangh, avoidance of mining, extensive planting of trees and rainwater harvesting in resolving the problem of water depletion, integrated approach alone is effective.

Law provides for participatory role of NGOs and people in the matter of water quality management and conservation. Under the Water (Prevention and Control of Pollution) Act, 1974 the composition of Central, State and Joint Pollution Control Board is such that it includes not more than three non official members representing the interest of fishery, agriculture, or industry or trade or any other interest which the appropriate government considers as ought to be represented (sec 34 and 14). Usually, office bearers of NGOs find a place for such nominations. In exercising functions under the Act relating to promotion of research, training the officials, organizing the programmes for dissemination of information under sec 16 and 17 of the Act, the Central Board and State Boards involve NGOs in the activities.

Opportunity to participate in the determination of environmental impact assessment and in the public hearing for clearances of projects call for meaningful involvement of NGOs in the enforcement of environment protection laws. According to Schedule III of Environmental Impact Assessment Regulations framed under Environment Protection Act, 1986 the expert committee for EIA shall consist amidst others a representative of NGOs or persons concerned with environmental issues. Scheduled IV provides that in addition to local residents and affected persons, environmental groups (associations whether incorporated or not, but functioning in the field of Environment) also have right to participate in public hearing. The Andhra Pradesh Water Land and Trees Act, 2002 has not only provided for participation of 5 non-official members from the class of people interested in conservation of natural resources,

but also has contemplated an active role of Water Users Association in the optimum use of water in irrigation in command areas and of other organizations in planting and protection of trees and involving in rainwater harvesting.\textsuperscript{1126}

Joint forest management by people and Forest Departments has emerged as an effective model for sustainable forestry in the country. Today nearly 4\% of our forests are under this programme.\textsuperscript{1127} Over a decade, people’s participation has been the vowed policy in irrigation development projects,\textsuperscript{1128} integrated watershed management and wasteland development programmes.

Thus it is clear that where legal mechanisms provide for punishment, and occasionally, cure, the participatory mechanism aims at prevention through community [individually and collectively] involvement and awareness.

Mobilising community support and enthusiasm will be toothless without a strong legal and policy framework. This entails cooperation at the political and administrative level political parties are not often attracted by environmental issues, unless it is perceived that these issues give political mileage. Care for the environment, despite its popular appeal has a major drawback: it can run counter to developmental activities. Thus it is clear that pollution control and prevention is best achieved through collaborative and participatory decision making, rather than the prevailing adversarial strategy.

7.14.2. Breaking the ‘culture of silence’:

For decades government officials, development practitioners and politicians have been going to villages with programmes that aim at improving local resources, income generation and providing health and other essential services. In most cases, the programme agenda is defined by them and whenever people are consulted, the benefits accrue mainly to local vested interests constituting a small minority. With most assets in a rural economy belonging to a vested minority and the majority living a life of subsistence and perpetual dependence, the latter is hardly able to fight against or even express their opinion against the power brokers. In such a

\textsuperscript{1126} See section 3 and 22 of the A. P Act 2002.
\textsuperscript{1127} For more See the Joint Forest Management Policy 1980.
\textsuperscript{1128} See draft Karnataka Tank Management Act. Dr. M K Ramesh, NLSIU, Government of Karnataka, Ministry of Irrigation 2004. The draft makes adequate acknowledgement to the fact of participatory environmental governance in conserve the tanks, ponds and other wetlands in the State of Karnataka.
scenario a’ culture of silence’ gets steeped into local environment. If our aim is to address poverty and resource management, it is this ‘culture of silence’ that we need to break.  

### 7.14.3. Letting people decide ‘development’:

People centered development implies realization of needs which are seen as most crucial by the people. In most cases, it has been observed that the resource which needs to be conserved—trees, fodder, land and water—has been the most important one for survival. Equally important has been the need to ensure equity in resource use and distribution which makes participation attractive to people.

Too much emphasis is being given on collective spirit, cooperation and community management. However, it is important for the external agency to take into account community interests as well as individual interests and aspirations. Therefore, regular assessment by the people of priority of their needs is essential so that individual and community interests do not come into conflict.

### 7.14.4. Sensitivity to local ethos and aspirations

A high level of sensitivity to how people perceive things, local socio-cultural milieu, indigenous knowledge systems and past history and experiences is required so that the direction of change in future does not clash with local ethos. This is particularly tough in a country like India, which has diverse language, culture and ethos and hence the argument of an umbrella policy and likewise decentralized structure at the regional level is viable.

Efforts at participatory resource management at local levels will not have the desired impact in the country as a whole, unless there is a political will at the national level to learn from cases of success and failure. These learning need to be translated into policies and a conducive external environment needs to be built up. They should also be reflected as an integral part of the national agenda.

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1129 In most cases of successful people’s participation, the external agency has been able to stimulate people to express their needs. The attitude of ‘we know what people want’ has been replaced in these cases by letting people define their own needs and priorities. The role of the external agency has been restricted to that of a facilitator and mediator, when required.

The Constitutional amendment mandates political decentralization, leaving issues of design and implementation on sectoral, administrative and fiscal aspects to the States. As a result, rural decentralization while initiated by the center has become a state affair. While key design aspects of rural decentralization have been completed at the center and state levels, implementation is lagging. However issues of accountability remain

Without visible drama and fanfare, India's statute books witnessed a new addition that represents one of the most significant legislative changes in post-Independence India. Those concerned about the social health of the country have been largely oblivious to this historical legislative change. Even those that are concerned about the rights of historically oppressed and discriminated communities seem to have by and large (with a few exceptions) fallen short of adequately responding to the enormous potential it has for one of India's most culturally plural and diverse constituents to secure a future that is dramatically better than today.

The provisions concerning self-government in Scheduled areas (primarily adivasi areas identified for special protection in a special schedule - section - of the Constitution) after the enactment of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. The provisions also question and potentially transform the structure and powers that have been given to Panchayats.

PESA is historic because it legally recognises the capacity of adivasi communities to strengthen their own systems of self-governance or create new legal spaces and institutions that can not only reverse centuries of external cultural and political onslaught but can also create the opportunities to control their own destinies.

If implemented in both letter and spirit, the Gram Sabha of the village would become the focal institution, now endowed with significant powers. For instance, under section 4(d) of PESA: "every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution."

What is not recognised in this critique is that PESA is a dramatic opportunity to undo a history of wrongs and that it is flexible enough to mould to local conditions. For instance, even if an institution called Gram Sabha is unknown or has eroded, it can provide the basis, under
changed conditions, of a new democratic institution that the adivasis themselves would come to recognize as an organic entity that facilitates the restoration of their comprehensive rights. PESA even makes it possible to redraw the administrative boundaries that presently inform their governance. India's administrators and policy makers have been reluctant to even recognize PESA because it empowers the Gram Sabha to approve development plans, control all social sectors - including the processes and people who implement these programmes and policies - as well as control all minor (non-timber) forest resources, minor water bodies and minor minerals. As and if all this happens, it could result in outcomes that may well prove dramatic. For, PESA also gives powers to manage local markets, prevent the manufacture and sale of alcohol and not just control land alienation but seek its restitution.

Understandably, administrators see a grave threat to their power and privilege if local communities were to pave the way for more autonomous systems of self-governance. In effect, the potential of PESA is to make these state functionaries play a transformed role of facilitating processes for the devolution of power. Their role would then also assist in restraining forces that prevent the realisation of the comprehensive rights that PESA provides.

The most far reaching potential and impact will be ecological. PESA would restore primary control over natural resource systems to the Gram Sabha. There is some concern that in the age of commodification and commercialisation, if given rights over resources, adivasis will themselves become predators. 1131

7.16. Conclusion

The system of local self-government, which is spread wide over the country, has shown great potentiality of dealing with the problem of water pollution and water conservation by employing the wholistic approach. People’s involvement and participation through NGOs and self-help groups put forward the creative impact of social capital engendering from group power. 1132 The reason for the failure of the Panchayats in resource conservation and management does not lie with the villager’s incompetence to manage the water resources under the Panchayats Acts, this they had been doing for centuries before the coming of the Acts, but

1131 Dr. Smitu Kothari, 'To be governed or to Self-govern' The author has been involved with PESA, is a tribal rights activist and is with Lokayan, Delhi. Special issue with the Sunday Magazine From the publishers of The Hindu Adivasi : July 16, 2000.

because the Panchayats Acts now, in effect, actually deprive them of the control over resources. Although most Panchayat Acts vests the common property resources [water, grazing lands etc] in the Panchayats, and all these Acts provide duties to the Panchayats to maintain these common property resources, when it comes to the actual financial and economic gains or investments, the Panchayats are superseded by the Zilla Parishads, Block Development authorities and various departments of the governments, such as the Soil Conservation Department, Forest Department etc.¹¹³³

The success of the local self government system, it must be noted, is necessary not only for building strong democratic State but also for the very existence of the common natural resources, such as village tanks, ponds, streams, forests and grazing lands. It is only the local people who can protect, maintain and develop these, and this they cannot do [or will not do] so long the external agencies are beneficiaries of their resources.

One of the predominant purposes of decentralization of power through Panchayat Raj and Nagarpalika institutions is to bring the function of providing amenities and access to natural resources to the level of people by involving them in formulating and implementing appropriate plans. Since the rural development programs like minor irrigation, preservation of tanks, waste land development, groundwater promotion, rain harvesting, drainage and sanitation are interconnected with each other, and all the three levels of Panchayat Raj Institutions are vested with these powers, an integrated approach alone is pragmatic. Concerning avoidance of wastage, prevention of pollution, purification and recycling of water in urban areas also, the need for an integrated approach is to be realized. A bottom up approach, which is most essential for environmental protection, is feasible with systematic functioning of the Local Self Governments. Concerning overlapping and conflicting jurisdictions of governmental departments and public undertakings upon water related subjects also, it is possible to find solutions through the application of duties correlated with rights to environment and purposive character and function of these bodies.

Although there could be some arguments for centralized control for the sake of uniform and stringent norms and for avoidance of cross border pollution and depletion of natural resources,

¹¹³³ Under the Panchayat Acts, the financial gains made from the village resources do not go to the gram panchayats but to the Zilla Parishad or straight to the State exchequer. The investment to maintain or develop the village common resources also do not come to the gram panchayats, it goes to the Block Development Officers or various government departments as one may notice in the social forestry or soil conservation projects. Merely having ownership rights over common resources, without having the benefit from the resources or the economic power to maintain it, cannot be the grounds for a successful panchayats systems.
in the background of actual experience and diversity of geographic and climatic factors, better co-ordination rather than centralization is required of the system. Many of the environmental problems are local specific ones affecting the local community and asking for fitting response by the local environmental activists and local administration towards solving the problem. The possibility of using modern communication technology to have rapport between the Centre and the local community cannot be overstated.

Part III

Customary Rights, Common Property, and Natural Resources

7.17. Introduction

The linkages between people and nature are as old as humans themselves. Long before the rise of modern global society, communities throughout the world prospered by husbanding natural resources in an attempt to adapt to the local natural environment. In the process, a wide-rang- ing body of knowledge, innovations and practices evolved, inextricably linked to the use of natural resources. It enabled most communities to live within the limits of their local environment and contributed to shaping their cultural and spiritual identity as well. Any effort to conserve nature and ecosystems, therefore, must take into consideration the interface between nature and culture.1134

A custom must be ancient, immemorial: The court of law recognizes only those customs that are prevalent from ancient times. A custom, in order to be binding must derive its force from the fact that by long usage it has obtained the force of law. But the rigid standard of the English common law are not strictly applied to Indian conditions. All that is necessary to prove is that the usage has been in practice for a long period and with such invariability that it has by common consent been submitted to as the established governing rule of a particular locality.

The right must be proved by clear evidence showing a continuous user as of right, *nec ni nec clam nec procario*. It should not have been exercised under a permission. In a Madras case, the right to catch fish in a tidal river at a certain place by putting stakenets across the river was claimed on the basis of a custom and was held established as customary right of the locality on proof of thirty years use.\(^{1135}\)

Custom must be reasonable: A custom derives its validity from being reasonable at inception and present exercise. The Indian decisions are in harmony with the English authorities. A customary right, namely the right to take earth for making pots, was claimed by the kumbhar community of a village and upheld in the Nagpur case of *Bhiku v Shooram*\(^{1136}\), though it was a case of profits. In *State of Bihar v Subodh Gopal*\(^{1137}\), the Supreme Court held that a customary right in the exercise of which the residents of a locality were entitled to excavate stones for purposes of trade (and not for domestic or agricultural purposes) would ex facie be unreasonable, because the exercise of such a right ordinarily tends to the complete destruction of the subject matter of the right. The custom was therefore unreasonable.

Custom must be certain and invariable: The court will not recognise a custom as valid unless it is certain in its extent and mode of operation. The requirement that a custom should be certain is also expressed by saying that it should be definite, or that it should be invariable.

Other features: (i) customary rights are not public rights. Public rights are in favour of the general public at large, but a customary right is in favour of a limited section of the public, like the inhabitants of a village or members of a community. The way in which a public right arises is known as ‘dedication’. (ii) Customary rights are rights partaking of some of the characteristics of an easement, but are not easements in the proper sense; customary rights are not appurtenant to a tenement but exist in gross, i.e., they are not for the beneficial enjoyment of a dominant heritage but exist for a personal benefit. Easements are private rights belonging to a particular person while customary rights are public in nature annexed to the place in general. Customary right are specifically excluded from the purview of the Indian Easement Act, 1882.

When the courts in India recognised customary rights based on long usage, they become customary laws. These customary laws were the creation of Indian courts. Customary rights, by

\(^{1135}\) *Ibid.*  
\(^{1136}\) Unreported case.  
\(^{1137}\) *AIR* 1968.
definition cannot be the creature of a written instrument. Neither were the principles of customary laws codified nor were the said customs listed out separately by legislation in India. However, customary rights were recognised as early as 1872, when the Indian Evidence Act was enacted. Section 13 of the act deals with the facts relevant for the proof of customary law. The Indian Forest Act 1927, under Sections 12 to 16 recognises rights to pasture and forest produce at the stage of settling rights before a given area of forest is classified as reserve forest. These rights are, no doubt customary rights. But these rights were seldom transformed into customary rights in the field. The reasons were twofold. Either the forest dependant communities were ignorant about their rights or the settlement officers, with their narrow and rigid pre-establishment mindset, were not inclined to grant such rights to the people. However, it should be admitted that the early colonial legislations enacted over a century ago did recognise customary rights, though such legislations were very few.

The Constitution of India, under Article 13, treats customary law along with other branches of civil law. A custom or usage if proved would be law in force under this article. These customary rights having the force of law can be taken judicial notice by courts under Section 57 of the Indian Evidence Act 1872.

Community level customary laws evolved out of area-specific traditional usage and practice. Hence they reflect the cultural ethos and traditions of the local people. Since these practices had emerged out of specific natural environments, they supported local livelihoods. These practices helped the local communities to be self-reliant and self sufficient, since their needs were few. However, with the advent of colonial rule and introduction of formal legislative laws, customary regulations gradually receded to the background.  

The Constitutional 73rd and 74th Amendments are giant steps in regard to community conservation based on customary law. They pave the way for self-rule for local governments. Under Article 243G, state governments are required to devolve power and authority to local governments to enable them to function as institution of self-government with reference to matters in the 11th Schedule of the Constitution. Subjects, including social and farm forestry, soil and water conservation are listed out in the said schedule. The Panchayats (Extension to

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1138 Supra n. 1. B J Krishnan.
Schedule Areas) Act of 1996 mandates that states shall not make any law under (Part IX of the Constitution), which is inconsistent with customary law, social and religious practices, and traditional management practices of community resources.

The Supreme Court in *M.C. Mehta v Kamal Nath* and others (1997-ISCC 388) had ruled that the ‘doctrine of public trust’ applies to natural ecosystems and the government as public trustee should protect the same for the benefit of the society at large and that private commercial and industrial establishments should not be allowed to misappropriate them. The judgement is a reassurance of peoples right to their commons. The common-land case of Karnataka represents another case of people’s resistance to the take-over of common property resources by the state for the benefit of commercial corporations. 1139

Communities in many places are regaining control over natural resources. The accelerated loss of natural biological resources represents not only a loss of species and ecosystems, it also tears apart at the very fabric of human cultural diversity which has co-evolved with, and depends on, their continued existence. As the communities, cultures, languages and harmonious customary practices of local people die out, lost forever is the vast library of ‘biodiversity related knowledge’, accumulated in some cases over thousands of years. Revival of community customary practices conducive to community conservation assumes significance in such a scenario. What is lacking is the political will and social determination. Global civil society can certainly shape the socio-political forces in this regard.

Principal 24 of the UN environment 1972 has been reiterated by the UN general Assembly of several occasion- the last being devoted to co-operation in the field of protecting the environment of shared natural resources inspired by the 1978 UNEP Principle of conduct or shared Natural resources. Natural resource within the “…….Jurisdiction of one state or outside the territorial jurisdiction – one to be protected by humankind”. Thus the agreement of co-operation in relation to protection of Natural resources situated in the territories of more than one state against all threats emanating from activities conducted in the territories or under

1139 *Bangalore Medical Trust v B S Mudappa* AIR 1991 SC 1902.
control of one or more States should be based on sound equitable and reasonable use of the said resources.  


Property rights and collective action issues are important constraints to the adoption of improved technologies and natural resource management practices that can help poor people and reduce environmental degradation. Many improved natural resource management practices require long-term investments, and farmers will only make these investments if they have sufficiently secure and long-term rights to their land so that they know they will reap the benefits of their investment. Many natural resource management practices have to be undertaken by groups of farmers working together or they require effective community management of common property resources. Ineffective collective action at the local level becomes a constraint on the adoption of these types of natural resource management practices. Property rights and collective action affect a wide-range of resource use and investment activities in the developing world. Prominent examples include grazing land practices and investments, forest and agro-forestry resource use and management, soil fertility, management and upkeep of indigenous irrigation schemes, watershed management, and fisheries management. In many countries, land reform agendas have concentrated almost exclusively on privatization and individual titling, even though there is a general acknowledgement that privatization may not always offer the best solution to address certain efficiency, equity or resource sustainability objectives in either the short- or long-term. The key question that remains, however, is what types - and perhaps combinations -- of property rights and collective action institutions are needed in different situations, in order to achieve the best patterns of development.

Property rights and management institutions typically have their roots in local indigenous arrangements, and they are evolving over time with mixed success in response to growing population pressure and agricultural commercialization. At the same time, many governments

1141 The efforts of the people in Alwar district of Rajasthan showed the pathway for watershed management in the country.
1142 Minoti Chakravarty-Kaul; Common Lands and Customary Law; Institutional Change in North India Over the Past Two Centuries; Oxford University Press, 1996, p. 26.
continue to promote such policies as sedenterization of pastoralists and privatization of shared resources, or they designate land as state owned without supplying well-defined or well-enforced policies regarding access and use of those lands. These factors have led to increasing pressure on the natural resource base as well as the institutions charged with managing those resources, and in some cases have led to damaging competition and conflict over resource access and use. There are some key issues involved in conservation of Common resources like grazing lands, open areas, lakes, pones, villages forest areas etc. They may be:

- How important are property rights and collective action in the adoption of sustainable natural resource management practices?
- What are the most effective ways of providing secure property rights to farmers? When are land titles required? When are customary rights sufficient, and how can these be strengthened in situations where conversion to formal systems is not economically or socially justified?
- Under what conditions do communities successfully organize and sustain collective action for natural resource management and how can policies create a more enabling environment?
- What policies can best promote the development of efficient markets for natural resources, both to increase the efficiency of allocation of resources across users, and to encourage long-term investments in resource improvements?

7.18.1. Defining CPRs

Common property resources can be broadly defined as those resources in which groups of people have co-equal use rights. Membership in the group of co-owners is typically conferred by membership in some other group, generally a group whose central purpose is not the use or administration of the resource [per se], such as a village, a tribe, etc. In the context of Indian villages the resources falling in this category include community pastures, community forests, waste lands, common dumping and threshing grounds, watershed drainages, village ponds, rivers, rivulets as well as their banks and beds. Even when the legal ownership of some of these resources rests with another agency [e.g waste lands belong to the revenue department of the State], in a de facto sense they belong to the village communities. CPRs are faced with a serious tributions, crisis, as reflected by their area shrinkage, productivity decline and

management collapse. The physical degradation of CPRs is a product of their over-exploitation and poor upkeep. Both the reduction in their area leading to overcrowding, and the absence of usage regulations, have encouraged overexploitation of CPRs. The inability to enforce obligations of CPR users [in terms of grazing tax or compulsory labour input for trenching, fencing etc] has led to their poor upkeep.

The current status of CPRs represents an indivisible dimension of rural poverty in dry areas. In the dynamic context, the depletion of CPRs and the implied decline in access to bio-mass is an important indicator of ‘pauperization of rural areas’. This becomes clear on realization of the fact that the functions and contribution of CPRs, have neither been recognized nor reflected by the laws and polices of the State. More over population growth, market forces, public interventions, technological changes and environmental stress like drought have contributed significantly towards their degradation.

7.18.2. Public Intervention Affecting CPRs

In the now epic paper, The Tragedy the Commons (reprinted in Science in December 1968), Dr Garrett Hardin defined (mistakenly) common property resources as unmanaged, "open access" no-man's-land, inevitably doomed to degradation as each individual withdrew more of the resource than would be optimal from the perspective of the users as a whole.

The Hardin paper (and its prevailing argument, echoed and elaborated in numerous subsequent publications) had a powerful influence in promoting policies in favour of individual privatization or government appropriation and management of common property natural resources, including forest land and trees. Unfortunately, the resources nationalized by governments often were not open access lands, but rather shared private property which was carefully managed by local communities through internally coherent rules that regulated use and controlled access. In a paradoxical situation, by assuming ownership and responsibility for resource management, Governments caused many of these common property management systems to break down, creating in fact the very type of open access situations they were intended to control. The Hardin paper also helped focus the attention of an entire generation of social scientists on the challenge of resource degradation and the role of local communities in sustainable management.

Now, nearly 30 years after the publication of the tragedy of the commons, the negative experiences of governments with expropriation of common property resources have led to a
reexamination of the potential of collective management; and there is a growing database of information on practical experiments with the restoration or strengthening of common property resource management systems.\(^{1144}\)

Public Policies and programmes influencing CPRs can be grouped under three categories, namely,

a) those affecting the area of CPRs; b) those relating to products and productivity of CPRs; and c) those influencing the management, usage and upkeep of CPRs.\(^{1145}\)

The change in the extent of management of CPRs was closely associated with the land distribution policies of the government. They followed the introduction of land reform in the early 1950s and are continued to-date under various populist programmes. They encouraged privatization of CPRs. Practically all the programmes designated to provide land to specific beneficiaries mainly landless people have resulted in the curtailment of the CPRs. Having failed to acquire land for redistribution through land ceiling laws or through voluntary donation under movements like *bhoodan*, the curtailment of CPR lands was found to be the easiest option for the purpose. The privatization involved either formal distribution of land to landless or other groups under different welfare and development schemes or legalization of illegal grabbing of CPR lands by people.\(^{1146}\) Thus the government’s policies to help the rural poor through land distribution did not work as intended. *It is quite doubtful whether the poor people’s collective loss through reduced CPRs has been compensated by their individual ownership of the erstwhile CPR lands.*

The policies and programmes for raising the productivity of CPRs adopted since the early 1950s generally lacked a CPR perspective. Sec. 28 of the Forest Act 1927 may have been intended application of protecting the village forests, but the notion is often never found in the Indian rural community. Another related feature of the programmes emphasized on techniques rather than community involvement and the user perspective. Through the user perspective, virtual conversion of CPR land into commercial production fields as witnessed in a number of social forestry projects was the resulted fallout. The traditional management system involving the Panchayat and their powers under the Constitution over minor forest produce and CPR and

\(^{1144}\) http://www.fao.org/docrep/v3960e/v3960e02.htm.  
\(^{1145}\) N. S Jodha; *Rural Common Property Resources: Contribution and Crisis*, Economic and Politically Weekly June 30, 1990 [A-65].  
\(^{1146}\) Ladejinsky. W 1972 ‘Land Ceilings and Land Reforms’, Economic and Political Weekly, Vol. 7 [5-7]. The privatization of CPRs in the name of helping the poor, brought more land to the already better off households.
management of local resources have failed to recognize the importance of protecting these vital resources. Despite their legal powers, the village Panchayats are generally unable to enforce any regulation about CPRs. The dependence of Panchayats on community votes, compelling them to avoid unpopular steps like enforcing CPR user obligations, and their domination by the influential with little interest in CPRs, makes these new institutions ineffective.\textsuperscript{1147}

7.18.3. Saving Common resources: Judicial Activism

The people who are most deeply affected by the environmental deterioration are the poor. In recent times, the issue of CPR seems to have caught the attention of policy makers, with the deterioration of the rural institutional framework and thereby increase in the vulnerability in use and management of CPRs have made livelihood difficult for the rural poor. If there is a growing population pressure to reduce the area of forests and grazing lands, there would be a shortage of firewood. This would force people to burn cowdung as cooking fuel, leaving little manure to fertilize cropland. And as fodder sources decline, animals will starve and will not produce much cow dung. As a result, the biomass production will steadily go down. The system will soon take the shape of a pseudo-desert. What the country desperately needs is an integrated and sustainable village ecosystem planning and management involving people’s participation.

Nabipur, a village in Gujarat [Bharuch District], inhabited by 4000 [people belonging to various creeds of Adivasis and Harijans, depending on agriculture for their sustenance. At the outskirts of the village survey No. 1048 was utilized for grazing cattle from ‘times immemorial’. Under a Central Government scheme the Taluka Development Officer wrote a letter to the petitioner –Nabipur Gram Panchayat\textsuperscript{1148} to mutate the aforesaid grazing land into Gamtal land with a view to plotting the same for landless persons. Objections were called for by the Panchayat and led to protest against any such conversion of the grazing land. The petitioner argued that the said land in dispute was grazing land for cattle and hence was crucial to the survival of the cattle population of the Panchayat. The Court while admitting the petition, held that ‘it is no doubt true that Sec. 96 (4) of the Gujarat Panchayat Act 1961 does confer

\textsuperscript{1147} However the Panchayats never miss an opportunity to seek government grants in the name of CPRs. The default on the part of the panchayats has thus converted CPRs into open access resources and what follows in terms of the tragedy of ‘open access resource’. A. K Gupta, 1987, ‘Why Poor People Do not Co-Operate? A Study of traditional Forms of Co-operation with implications for Modern Organisations’ in Politics and Practice of Social research (ed), Wanger G C George Allen and Unwin, London.

\textsuperscript{1148} Nabipur Gram Panchayat v State of Gujarat AIR 1995 Guj. 52.
power upon the Government to resume land including grazing land for any **public purpose**, such power need reasonable exercise. The Collector had obvious failed to apply reasonably mind to the above case.\(^{1149}\)

In *Om Prakash Bhatt v State of U. P.*,\(^{1150}\) the issue was of removing of pastures for setting up of a tourist resort at Junghath by the State Agency. The State had set up Tourist Camp resorts on pastures and meadows on mountains in Garhwal region causing ecological imbalance. It was also brought to the notice of the Court that indiscriminate import of plastic and non biodegradable material is playing havoc with the environment of the Bugiyal hills. The Court held that pastures and meadows belongs to the people and it is not for man to erode the sanctity of this area. It must be returned to nature to provide for whom it was meant. Putting a tourist lodging house on the same was a mistake. Natural resources like pastures, meadows, river fronts etc belong to the people and no interference ought to be made with the same.

Issuing show cause notices as to why exemplary damages be not imposed on companies which defaced eco-fragile rock faces with product advertisements, the Supreme Court in the now famous **Rock defacing case**\(^ {1151}\) has asked eight companies to pay up Rs one crore as cost for restoration of ecology.\(^ {1152}\) A three-judge Bench comprising Chief Justice B N Kirpal, Justice K G Balakrishnan and Justice Arijit Pasayat directed Malhotra Book Depot (MBD) and Coca Cola to pay Rs 30 lakh each, Pepsi - Rs 15 lakh, Grasim and Fena - Rs 10 lakh each, Amaron batteries Rs 2.5 lakh and State bank of India and Sleepwell Rs 1.25 lakh each. The Bench, taking serious view of the defacement of eco-fragile rocks of Himalayan range on the Rohtang-Manali stretch as pointed out by Solicitor General Harish Salve and Central Empowered Committee, had proposed a Rs five crore corpus for eco-restoration and had imposed cost of Rs one crore on Himachal Pradesh Government for neglecting its duty to protect ecology. The Bench directed the money to be deposited with the Central Empowered Committee headed by Environment and Forest Secretary P V Jaikrishnan and asked it to immediately find out the agency which could do the restoration job. It also asked the Committee to find out as to who

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\(^{1149}\) Though the Judgment fails to appreciate the importance of common property resources, the Court failed to question the discretion of the Executive where the statute expressly provides for the exercise of it, unless there are compelling reasons for the same.

\(^{1150}\) AIR 1997 All 259.

\(^{1151}\) I.A In the *T. N Godavaraman series of cases*.

\(^{1152}\) For more information see Article by Bhat Sairam, The Indian Express and The Times of India 26\(^{th}\) September 2002 and 30th September 2002.
were the other delinquent companies who had indulged in the painting of rocks in violation of the Forest laws.

Practices with respect to common pool resources are largely based on a system of norms, taboos and mores. These result in (a) complex kin-based webs of access that extend beyond source villages; (b) boundary mismatches between resource units, user groups, social groups and administrative units; (c) rent capture by the elite; and (d) numerous instances of failure of local organisations.

7.18.4. Property right to CPR

Hardin [1968, pp 1247-8] prescribes two means of restricting access and use, which he combines under the heading, ‘mutual coercion, mutually agreed upon’. The first is privatization: convert the open access pasture to private [but not necessarily individual] ownership. On a privately owned pasture, the costs of any decision to add an extra animal would be internalized by the pasture owner(s). They would continue to use the pasture but not to the point of destruction because, Hardin assumes, over exploitation would generate net costs for the presumptively rational pasture owner(s).

Hardin’s second means of averting the tragedy of open access is regulation, which may either external [government regulation] or internal [self-regulation by the users themselves]. Under this regime, the economic incentives favoring overexploitation might be reduced or eliminated through [self] imposed restriction on all herds. Assuming that the restrictions are enforceable and that penalties for noncompliance are sufficient, entry and use regulation would raise the [internal] cost of adding animals to the common, but no longer open access, pasture. Scholars have discussed and distinguished Hardin’s two solutions to the tragedy of the commons, but almost all have failed to recognize that both are property-based: each involves the imposition of property rights on formerly open-access [or non property] resources. This is obviously true of privatization, but it is also true of many forms of government regulation. A government can, of course, assert public rights by explicitly claiming the resources as public

Daniel H Cole; Pollution and Property: Comparing Ownership Institutions for Environmental Protection; Cambridge University Press. p. 7.
property. Most countries have done precisely this in establishing ‘national parks’, and other ‘public lands’.\textsuperscript{1154}

7.19. Conservation Initiative for Protection of Wetlands

The UNCED conference on environment and development as well as global conservation organizations, including RAMSAR convention, have identified the aquatic biodiversity to be the most threatened of all biodiversities. There is, therefore, an urgent and felt need to conserve the aquatic biodiversity including the ecosystem processes. Wetlands cover an area of about 5.5 million ha, of which 1.5 million ha enjoy complete protection and 1.6 million ha partial protection. India being a developing country supporting the second largest population in the world, having mainly agrarian economy, has a significant impact on all natural resources including that of wetlands. It is in this context, an inventory of the important wetlands is essential. The Directory of Asian Wetlands (1989) lists 93 Wetlands of International importance in India. Information on the type and extent of wetlands is lacking in India. Hence, this information is a baseline requirement for forming protected area network and conservation.

However, so far in India there has been no systematic attempt to evolve conservation preserves analogous to terrestrial protected areas. While many developing countries such as China and south-east Asian countries have progressed substantially in formulating an action plan for conserving aquatic biodiversity, similar task of identifying such reserves for India is lacking. While a country like UK could designate 161 Ramsar sites, obviously India being a mega diverse country will have many more than the 20 sites presently identified by the national wetland programme. Such a task is daunting given the size, diversity of India.\textsuperscript{1155}

Wetlands are lands transitional between terrestrial and aquatic system where the water table is usually or near the water surface and land is covered by shallow water. They are life support systems for people living around and are effective in flood control, waste water treatment, reducing sediment, recharging of aquifers and also winter resort for variety of birds for shelter and breeding and provide a suitable habitat for fish and other flora and fauna. They also act as buffer against the devastating effect of hurricanes and cyclones, stabilize the shore-line and act as bulwark against the encroachment by the sea and check soil erosion. Apart from that, they are valuable for their educational and scientific interest and provide durable timber, fuel wood, protein rich fodder for cattle, edible fruits, vegetables and traditional medicines.

Identification of wetlands can be attributed to following three main factors, viz., :

- When an area is permanently or periodically inundated.
- When an area supports hydrophytic vegetation
- When an area has hydric soils that are saturated or flooded for a sufficiently long period to become anaerobic in the upper layers.

On these criteria, Ramsar Convention defines Wetlands\textsuperscript{1156}

*as areas of marsh or fen, peat-land or water, whether artificial or natural, permanent or temporary, with the water that is static or flowing, fresh, brackish or salt including areas of marine water, the depth of which at low tide does not exceed 6 m.*

[Mangroves, corals, estuaries, bays, creeks, flood plains, sea grasses, lakes etc. are covered under this definition.]

\textsuperscript{1154} In the United States, the lands owned by the federal, state, and local governments comprise 42 percent of the country’s total area. Natural Resource Council 1992.

\textsuperscript{1155} http://www.gisdevelopment.net/application/environment/wetland/envwm0001.htm.

\textsuperscript{1156} As per the Ramsar Convention 1971. For more see Ramsar site.
Taking into consideration deterioration of water bodies, a programme on conservation of Wetlands was initiated in 1987 with the basic objective of assessment of wetland resources, identification of wetlands of national importance, promotion of R&D activities and formulation and implementation of management action plans of the identified wetlands which are at present 20 covering 13 States. Activities also include international cooperation, monitoring and evaluation. These areas have been identified under National programme which subjected to encroachment resulting in shrinkage of area, anthropogenic pressures resulting in habitat destruction and loss of biodiversity, subjected to unsustainable aquaculture and uncontrolled siltation and weed infestation including discharge of waste waters, industrial effluents, surface run-offs etc. 1157

The Chilika Development Authority (CDA) received the Ramsar Award 2002 for its impressive work and outstanding achievements in restoring the Chilika Lake Ramsar Site. This restoration has been carried out based on the principles of wise use and integrated management, and with a major emphasis on the participation of the local population and their shared decision-making, as well as capacity building. Chilika Lake is a striking example of how restoration of the ecological characteristics of a site can result not only in increased biodiversity (plant and animal species, notably birds), but also in a spectacular increase in fish catches (including the reappearance of some economic species) and other socio-economic benefits to the local population. 1158

Analysis of the law in relation to the developmental activities in the sensitive coastal eco-system and the directions issued by the courts for better management of the coast make fascinating reading. The case law provides an insight into the judicial mind that includes devices employed by the judges to understand and grapple with myriads of technical issues and the conscious efforts made in balancing the concern for conservation and protection of the

1157 http://envfor.nic.in/divisions/csurv/wetland.html

Thrust areas for Xth Five Year Plan on Wetlands [Tenth five year plan is currently running]

The implementation of the National Wetland Programme has substantially helped to generate awareness about the values and functions of wetlands and the need for their conservation. Focus will be on following activities during the Xth Five Year Plan:

i. The traditional knowledge of people intimately associated with the water bodies has not been analysed to assess the efficiency of adopted strategies in relation to the traditional technology adopted by the local people. This will be one of the thrust area.

ii. A lot of emphasis has been laid on engineering measures which may have serious implications on the natural ecosystems. Such impacts have been noticed in several cases for example the red algal bloom formation in Dal lake. Emphasis will be given on ecological activities for catchments area treatment than on typical engineering activities unless absolutely necessary.

iii. There is no monitoring mechanism to assess the positive/negative impacts by implementation of management action plans over a period of time. This will be attended to.

iv. No proper analysis of stakeholder groups has been carried out to resolve the conflicting issues so as to adopt an integrated approach. This has invariably lead to the sectoral approaches which is concomitant with environmental implications. As such major expansion on this aspect will be undertaken in the Xth Five Year Plan period.

v. Formulation/seeking projects for external financial assistance for Wetland Conservation Programme.

vi. Organising training programmes/workshops for various wetland conservation components for senior managers/Research Organisations/Policy makers/ stakeholders in different parts of the country. 1158

Chilika Lake (Orissa, India), the largest lagoon on the east coast of India, was added to the Ramsar List of Wetlands of International Importance in 1981. It is a 116,500 hectare brackish lagoon separated from the Bay of Bengal by a long sandy ridge. Because of serious degradation brought about mainly by siltation and choking of the seawater inlet channel, resulting_inter alia_in the proliferation of invasive freshwater species, the decrease in fish productivity, and an overall loss of biodiversity, Chilika Lake was added to the List of Ramsar sites in danger (the Montreux Record) in 1993. In addition to its importance for waterbirds (over one million migratory birds winter there) and biodiversity in general, significant numbers of people are dependent upon the lake's resources.
The study, in a way also demonstrates the legal possibilities and limits of judicial reasoning in rendering environmental justice. The case of *Indian Council for Enviro-Legal Action v Union of India* involves examination of the processes of rule-making concerning the coast. Judicial intervention in this case brought into sharp focus and critically reviewed the factors responsible for issuance of the original notification and the rationale for subsequent amendments to the same. Some of the observations made by the apex court in the case are worth noting and should act as a beacon light for the rule making and its implementation by the State. Strongly criticizing frequent changes effected in the law concerning the coastal environment, the Supreme Court impressed upon the government the need for proper preparation and abundant precaution in fashioning rules and regulations and to implement the same with all seriousness. Cautioning the government, the court observed that enactment of a law without bothering to enforce the same or becoming oblivious to its infringement would shake the confidence of people in both the law and institutions of its enforcement.

Ambiguity in the demarcation of the High Tide Line was the bone of contention in the cases of *Jacob Vadakan Cherry v State of Kerala* and *Institute of Social Welfare v State*. In both the cases, the government took advantage of the discrepancy and successfully reclaimed land on the coast for construction of bridges. The court advised the government to explore the possibility of going ahead with the proposed activity without taking recourse to reclamation.

The right to relevant environmental information received a boost through judicial pronouncements made in *Goa Foundation v Goa State Committee on Coastal Environment* (W.P. 115/1992) and *Kaloor Joseph v State of Kerala and Ors.* In both the cases the court ordered the appropriate governmental authorities to make available the Coastal Zone Management Plan in all public places, for the information and scrutiny of the people.

*Prof. Sergio Carvalho v The Staff of Goa and Others* and *Goa Foundation and Ors. v North Goa Planning and Development Authority and Ors.* are cases concerning *Eco-Tourism* decided by the Bombay High Court. The activist stance taken by the higher judiciary on environmental issues appeared to have been greatly tempered by the economic considerations for facilitating construction of hotels and beach resorts on the coast in these two cases. The judicial mind appears to have been convinced by the kind of guidelines evolved for promoting eco-tourism in the area.

Upon an examination of these cases, one feels that the cause of environmental justice would have been served better if expert opinion on such highly sensitive and technical subjects was sought before the Court arrived at its judgment. In contrast to these decisions is the stand upheld by the Orissa High Court in *Dinabhandu Sahoo and arr v Ministry of Tourism and Ors.* (Writ Petition (Civil) 899/93) that kept the Petitioners’ option open to approach the High court if and when the government violated any of the stipulations under the Coastal Regulation Zone Notifications to promote development of beach resorts in the area.

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1159 1996(3) SCALE 579.
1160 The Center setup the M. S Swaminathan Committee to review the working of the CRZ notification. IN April 2005 the Committee submitted its report wherein it recommended for the repeal of the existing notification and significant changes for the useful implementation on any law to regulate activities on the coast.
1161 1998 AIHC 1688.
1162 1996 (1) KLT 718.
1164 1989 (1) GLT 276.
1165 1995(1) GLT 181.
The approach of the courts of law in encouraging developmental activities on the coast appears un-uniform. In the *Konkan Railway Case*, the Court chose the path of supporting a developmental activity notwithstanding the damage it caused to the fragile environment. The reasons given were that the court chose not to interfere in a policy decision of the government in which heavy investments were already made. The legal basis of drawing conclusions is debatable as provisions of Railways Act were interpreted to prevail over the stipulations under the Environment Protection Act.

Meeting the demands of energy by the government weighed heavily on the judicial mind when the Supreme Court in the *Dahanu Taluka Environment Protection Group and anr v Bombay Suburban Electricity Supply Company Ltd. and Ors* and *Bombay Environment Action Group and Anr v The State of Maharashtra and Ors*, gave the go ahead to the proposed thermal power projects. Flouting of government guidelines and adverse impact on the coastal environment did not cut ice with the court as it felt power generation and making the same available as most essential for over all economic progress. All the same, there was a praise worthy element in the judgment that required the involvement of well informed groups in the decision-making processes of the government concerning such developmental activities.

In a few cases the apex court and High courts have taken pains in the protection of traditional rights over resources that are environment friendly. In the *Aqua culture cases* (*S. Jagannath v Union of India* (1997) 2 SCC 87 and *Gopi Aqua Farms v Union of India* 1997 6 SCC 577) the Supreme Court issued a number of directions that wamed against the practice of intense aqua farming that violated a number of principles of good environmental management and encouraged promotion of traditional aqua farming methods. *Chilika Lake Case* (*Kholamuhana Primary Fisherman Co-operative Society and Ors. v State of Orissa*) is an interesting case, in which the Orissa High Court upheld the fishing rights of both the fishermen and non-fishermen. The Court took stock of the prawn culture at Chilika lake. It observed that the Chilika lake was getting chokec as a result of extensive prawn farming which had taken big dimension, leading to massive degradation of the ecosystem. The massive adoption of extensive and intensive culture fishery for prawn is positively harming the fresh water lake. While the High Court held that, the fishermen enjoy the traditional right to fishery sources at the lake, this is not absolute so as to cultivate intensive prawn farming. Any fishery related activity which may result into environmental degradation and disturbance of ecosystem cannot be permitted.

A number of cases decided by the higher judiciary project their concerns for conservation. In *Centre for Environmental Law v State of Orissa* the Orissa High Court issued a number of instructions to be observed by the governmental agencies in permitting any activity within the Bhitarakanika wildlife sanctuary. The instructions were aimed at protecting the flora and fauna, of which some were endemic to the region. The *Adyar Creek Case* (*Consumer Action Group v Union of India* MLJ 1994, 61), in which conservation of wetlands was the issue, could have flared up emotions. It concerned erection of a memorial in honour of Dr. Ambedkar on a wetland. The court deftly handled the inflammatory issue by counseling the government to reconsider the proposal in a more rational way and ensure the ecological integrity of the wetlands. The case of *People United For Better Living in Calcutta v State of West Benga* related to the establishment of World Trade Center on wetlands. In the absence of

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1167 AIR 1991 SC 910.
1168 AIR 1994 Orissa 191.
1169 Sustainable development would mean systematic exploitation of resources in proportion to its recharge and regeneration capacity. This is also known as carrying capacity of the ecosystem.
1170 1998 (86) CLT 247.
1171 AIR 1993 Cal. 215.
relevant information before the court that would have justified undertaking of a developmental activity without adversely affecting the integrity of a very special eco-system, the Calcutta High Court did not approve of the proposed state action.

7.20. Conclusion
The trend of justice delivery concerning the coastal eco-system is indicative of the preliminary stage of preparedness of the courts of law in dealing with issues of development, protecting traditional rights and conservation of the sensitive ecological conditions of the area. In order to ensure environmental justice the courts of law in India would be better served by the availability of expert knowledge, specialized legal knowledge and well trained administrative apparatus.

The robbery of commons thus must be seen in wider perspective of an overall reduction in access of and to various types of public and private, permanent and temporary fellows, not of all, which have been degraded. For instance, in some cases the hillocks used for mining purposes, in other cases wasteland ‘used for plantation or afforestation purposes’. The programmes for management of commons could be developed in such a manner that poor who have greater dependence and greater stakes in the improvement and management of commons do not bear the excessive burden of the improvement, simply because they are not the only ones who led to the degradation in the first place.

All are convinced that there is no reason to dispute the need for development of common and private wastelands and their productivity. However, the survival needs of poor in the short run must be explicitly provided for in any developmental strategy so that the ability of the poor to participate in the contest for control of value added commons in long run is enhanced. The tragedy will be far more severe if commons improve without improving the lot of commons poor. This is indeed the paradox for which solutions exist if only we would discuss them amongst ourselves and with poor as well as their official developers—the policy makers. In protecting the global commons, parks and protected areas are not the only answer. Living sustainably is. Commons issues and long term land use cannot be realistically addressed outside the context of sustainability.

Underlying the choice of particular frameworks of governance of natural resources, are specific politico-economic, socio-cultural and environmental ideologies. In India, frameworks of natural resource governance have changed and evolved over time in response to the characteristics of

1172 Anil Gupta; How Common is Commons Political Economy of Wasteland Development; Paper prepared for seminar on Control of Drought, Desertification and Famine, 17-18 May 1986, India International Centre, New Delhi.
1173 Townsend, Amy K, Protected Areas as Common Property and India’s Sundarbans National Park [1992]; http://www.Indiana.edu/-iascp/abstracts/644.
different historical periods. In present times, the stakeholders in natural resources use and management in India occupy a broad spectrum stretching from the localized community to international entities. The determination of the size of this spectrum is itself a political decision, reflecting the environmental ideology of the State, a primary, thought not he only stakeholder in the issue. On the human side, at a minimum, stakeholders include individuals, groups, communities, institutions, and the State. Nature is itself a stakeholder, sustaining and promoting innumerable vegetative, animal and other life forms.

Few States like Andhra Pradesh in India have recognized and passed specific legislations for the protection of common property resources, while some States like Karnataka have schemes for implementation. Thus unless protection is showered with an umbrella of conservation strategies, common property resources in India seems lost. There is more to despair than hope, of some dramatic holistic approach towards conservation efforts.

1174 M S Vani, Customary Law and Modern Governance of Natural Resources in India, Conflicts, Prospectus for Accords and Strategies, submitted to the Commission of Field Law and Legal Pluralism, Chiang Mai University, Thailand, April 2002.
1175 Like the Andhra Pradesh Water, Land and Tress Act 2002.