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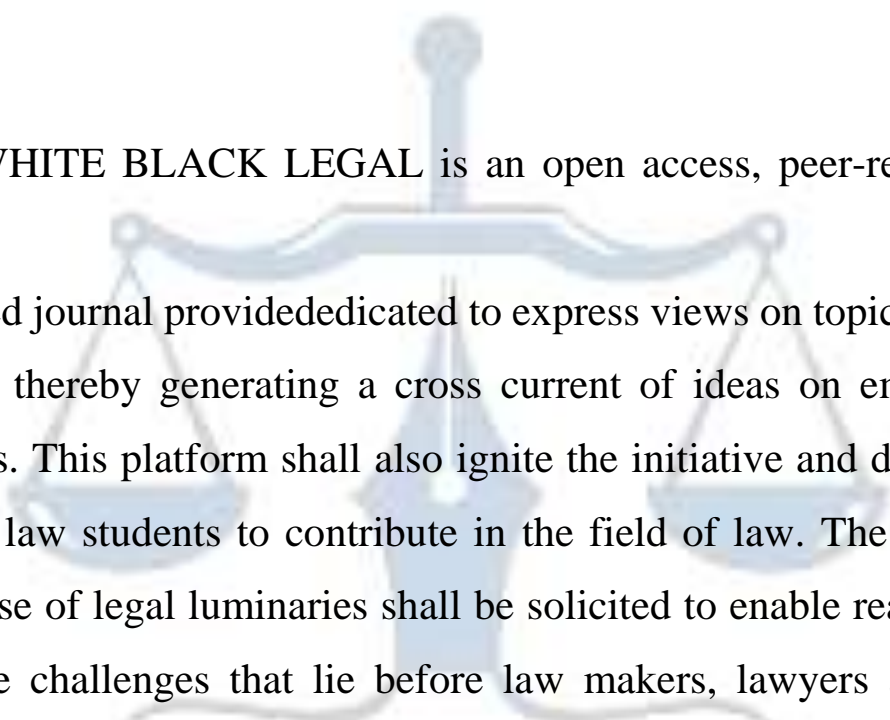


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With this thought, we hereby present to you

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING: NOTION AND FRAMEWORK

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Abstract:

This Article aims to provide a vital understanding of the notion and outline of public participation in environmental decision-making. It also highlighted how communities' involvement in the decision-making process promotes local democracy and enhances transparency and accountability in administrative decision-making. It examines and highlights the importance and advantages of public participation, shedding light on its significance and benefits. Further, it tries to evaluate the mandates of the Aarhus Convention 1998 of participatory approach in different parameters of environmental decision-making for better sustainable development management. Furthermore, the significant role of the Indian judiciary in ensuring public involvement in environmental decision-making by interpreting the related laws and policies, highlighting the need for mandatory implementation of Environmental Impact Assessment notification, is also discussed. Lastly, it also identifies the challenges, obstacles, and legal mechanisms for implementing public participation in the environmental decision-making process.

Keywords: Public Participation, Aarhus Convention, Role of Indian Judiciary, Environmental Impact Assessment Notification.

1. Introduction and Notion of Public Participation

The common terminology used for the term 'Public Participation' can be described in many ways, such as 'people's participation,' 'citizen participation,' 'popular participation,' 'community involvement or participation,' and so on. Similarly, Oxford Reference defines public participation as citizens' involvement in governmental decision-making. Participation ranges from being notified of public hearings to being actively included in decisions affecting communities. Arnstein fittingly expresses the connotation of participation in the following

words:¹ “The idea of citizen participation is like eating spinach: no one is against it in principle because it is good for you. However, there has been little analysis of the content of citizen participation, its definition, and its relationship to social imperatives such as social structure, social interaction, and the social context where it takes place.” The meaning of public participation cannot be defined conclusively. But in a popular sense, it implies purposeful activities in which the concerned community takes part concerning the government.

The phrase ‘public participation’ cannot be conceptualized uniformly as it takes various ways and forms according to the circumstances and field where it applies. Public participation, in its broadest sense, may encompass necessary information and education within its ambit. Accessing information and providing education leads to review and reaction, and ultimately, it attains consensus-building with the help of dialogue and interaction. The public participation process can be taken up by different methods, such as the public or community themselves, the electoral process, or the provisions of law. The mode of public participation can be of various forms like 'public hearings,' 'solicitation of public comments,' 'public advocacy and protest,' 'lobbying,' 'voting,' 'political party involvement,' and 'jury service.' The public participation process can also be done through 'interest group involvement,' 'information-gathering activities,' and 'simple contact with elected officials.' Public Interest Litigation (PIL) is one good example of public participation.

2. Public participation vis-à-vis Democracy

The main concern and issue that the world has been facing over the past few decades is the rapidly rising environmental degradation coupled with the continuous depletion of natural resources such as air, water, land, energy, forests, and ecosystems. The old economic growth strategy, which promotes development over environmental conservation, has resulted in an unsustainable environment with potentially irreversible social and economic consequences. At the same time, it is insufficient to ensure growth, development, and poverty reduction. Protection of the environment can be ignored and compromised in the name of developmental activities. The need of the hour is a sustainable economy that improves or considers overall environmental conditions for all living beings. Environmental protection and activities of any developmental scheme require balance. They must go hand in hand so the concerned public

¹ Sherry R. Arnstein, “The Ladder of Citizen Participation”, 35 *Journal of the American Institute of Planners* (1969) pp. 216 - 224

must be given opportunities to manage environmental resources for better sustainability on earth. Public participation in environmental decision-making promotes a healthy and stable society. Also, the decision-making process, which includes the voices of the concerned community, helps to attain a well-balanced balance between the environmental needs of society and the economic development of the country. Further, the public's participation in developmental decisions is crucial for establishing sustainable and lasting solutions. Active involvement of citizens and concerned communities in the decision-making process boosts the function of real democracy. To enhance local democracy, it is necessary to integrate participation into representative democracy. This implies giving environmental decision-making power to those most at risk and establishing a permanent relationship between the governed and those in power. Local democracy links authority and stakeholders, thereby promoting sustainable development. This relationship leads to a more logical decision as it accommodates the larger voices of citizens, enhances understanding of issues concerning the management of environmental resources, and achieves collaborative efforts towards better solutions. Transparency and accountability in environmental decision-making can be improved when the concerned populations who are directly affected participate meaningfully in the decision-making process. It also reduced corrupt practices.

Building a participatory democracy requires providing citizens with a framework for successful public participation in issues such as environmental laws and policies. In Local democracy, the affected communities are ensured accountability from the government without compromising their needs and goals. This technique ensures that communities are involved when decisions likely impact their daily lives and livelihoods. Transparent and accountable decision-making empowers local leaders to represent their communities' interests in public affairs, such as the environment. Consequently, it encourages the concerned communities to participate in environmental decision-making, enabling the local people to demand their needs and hold authorities responsible. Moreover, some advantages of local democracy include consistency, sustainability, efficiency, legitimacy, and incentives.

3. Importance of Participation in Environmental Decision-Making Process.

In recent decades, public participation in environmental decision-making has become an indispensable feature of the global ecological regulatory systems. The general public and other

organizations impacted by major developmental activities, such as land use plans, pollution licenses, and any other kinds of regulatory processes, have gradually demanded larger consultation, participation and more accountable and transparent decisions. Consequently, the decision-making can be more meaningful, keeping in mind the environmental factors in it. Parliamentary democracy, as established via periodic electoral contests, is usually regarded as insufficient to enable meaningful public involvement in day-to-day ecological decision-making. Governing elites' opposition to independent protest and community self-expression has led to "surrogate political processes,"² Wherein citizens' opinions are fed into and considered in alternate administrative and judicial systems.³

Public participation in environmental decision-making can take several forms. It can be done in various forms, including providing education, access to environmental information and its dissemination, submissions, review boards, public hearings, public advocacy, advisory panels, and also through litigation.⁴ By applying all these forms of participatory methods, the decision-makers may find it easy to comprehend and recognize the interests of the general public while formulating environmental policies.⁵ More extensive people participation could support environmental justice and aid in incorporating social and ecological factors into governmental decisions.⁶ Furthermore, public participation may increase the decisions' accountability, and as a result, such governmental decision-making is accepted by the majority of the public.⁷ Consequently, this could result in less litigation, avoid delays, and aid in the better implementation of environmental decisions.⁸

Public consultation in decision-making is significant, especially when it comes to sustainable development. The consideration of important factors such as social, economic, and environmental factors during the decision-making process is crucial for the sustainability of

² See, R.B. Stewart, "The Reformation of American Administrative law", 88 *Harvard L. Rev.* (1975) pp. 1660 – 1712

³ See, C. Offe, "New Social Movements: Challenging the Boundaries of Institutional politics", 52 *Social Research* (1985) p.817

⁴ See, S. Stec & S. Casey Lefkowitz, "*The Aarhus Convention: An Implementation Guide*", UNECE, 2000, P. 85

⁵ See, E. Petkova, C. Maurer, N. Henninger & F. Irwin, *Closing The Gap: Information, Participation and Justice in Decision Making for the Environment*, World Resources Institute, 2002, pp. 66 - 67

⁶ See, M. Lee & Abbot, "The Usual Suspects? Public Participation under the Aarhus Convention", 66 *Modern Law Review* (2003) pp. 80 - 85

⁷ See, NP Spyke, "Public Participation in Environmental Decision making at New Millennium: Structuring New Spheres of Public Influence", 26 *Boston College Environmental Affairs Law Review* (1999) pp. 269 - 270

⁸ See, D.A Wirth, "Public Participation in International Processes: Environmental Case Studies at the National and International Levels", 7 *Colorado Journal of International Law and Policy* (1996) p. 1

developments. The discourse on sustainable development places great emphasis on social justice and public consultation, which is reflected in the principles of inter- and intragenerational equity.⁹ Also, implementing the 'precautionary principle', one of the principles of environmental protection, requires public involvement in assessing acceptable risks. Environmental risks, including genetically modified organisms, irreparable environmental harm, climate change, global warming, etc., are frequently marked risks and uncertainties related to science and technology, for which people have conflicting and often very diverse preferences.¹⁰ Incorporating public participation in the decision-making process can properly assess and weigh these risks and uncertainties against perceived benefits.¹¹

Several interconnected variables have contributed to the growth of the participatory method in environmental decision-making. The foremost is better awareness and concern among the general public regarding the interlink between ecological well-balanced and human well-being.¹² Second, people's expectations of being involved in policymaking have increased due to the expansion of human rights in legal and political institutions.¹³ Third, there is growing interest in using participatory processes due to the global community's prevailing concerns about 'good governance' and the development of civil societies.¹⁴ Additionally, the increased demand for greater grass-wood participation in decision-making is due to a lack of trust in the state machinery and the government's weakness.¹⁵ The general public is involved in environmental law and decision-making in several ways. These range from more direct involvement, like local consultation on individual planning or pollution control applications, to democratic accountability through the election of politicians who create environmental laws and policies or the availability of legal remedies for those with strong enough interest.

⁹ See, I. Voinovich, "Inter-generational and Intra-generational equity requirements for Sustainability", 22 (3) *Environmental Conservation* (1995) p.223

¹⁰ See, J. Ebbesson, "The Notion of Public Participation in International Law", 8 *Year Book on International Environmental Law* (1997) p. 59

¹¹ See, J. Steel, "Participation and Deliberation in Environmental Law: Exploring a Problem-solving Approach", 21 *Oxford Journal of Legal Studies* (2001) p. 426

¹² See, B. Barton, "Underlying Concepts and Theoretical Issues in Public Participation in Resource Development in Zillman, (2002) pp. 81 – 83.

¹³ *Ibid.*

¹⁴ See, M. Pimbert and T. Wakeford, "Overview-Deliberative Democracy and Citizens Empowerment" (2001) PLA Notes, available at <https://www.iied.org/g01305> (Access on 7 August 2024)

¹⁵ *Ibid*, 24 - 25

4. The Aarhus Convention and its Implementation

The 1998 Aarhus Convention is one of the notable advancements in public participation in the decision-making process. Although community involvement is included in other international instruments,¹⁶ the Aarhus Convention is the only treaty specifically focused on participation. Despite the creation of the United Nations of Economic Commission for Europe, with the parties' permission, it is always open to accession for any member of the United Nations. The Convention is a worldwide noteworthy illustration of the legal consolidation measures for greater community involvement concerning administrative decision-making, freedom of information, and access to justice. Public authorities must adhere to participation requirements for decisions, as stipulated by the Aarhus Convention. Those are the activities that could have an adverse impact on the environment, such as development schemes, plans, policies, programs, etc.

The Aarhus Convention's main target is to provide participation in administrative decision-making. To allow public comment and opinion into the decision-making process when 'all options are open', Article 6 prescribed public notice to be given regarding the environmental decision process.¹⁷ The public's input must be considered by the public authorities¹⁸ before reaching final decisions. Further, the Convention mandates the government to provide the public with the necessary information upon request and stipulates time-bound for replying to those demands.¹⁹ As mentioned in Article 4, the convention established a presumption in favor of information disclosure, and public authorities may only refuse a demand for information based on a list of specified grounds for such refusal.²⁰ Public authorities also have the right to withhold information that could compromise someone's right to a fair trial or have a negative impact on public safety of national defence.²¹ Furthermore, the other important mandate in the Convention is "access to justice". These mandates are interconnected with the other above-mentioned in the treaty. A review provision is also provided in Article 19(1) in case of failure to respond to a request or denial for access to information. Save as Article 6 and any other provisions provided under national law, substantive or procedural legality of decisions may be

¹⁶ See, Eg. Convention on Environmental Impact Assessment in a Transboundary Context (1991) 30 ILM, 800, Art. 16; North American Agreement on Environmental Cooperation (1993) 32 ILM 1480, Arts. 13 - 14

¹⁷ Article 6.

¹⁸ Public authorities are defined in Article 2(2) and cover anybody or any natural or legal persons performing public administrative functions and may include privatized companies providing public services.

¹⁹ Arts, 4 and 5.

²⁰ Art 4(3)

²¹ Art. 4(4)

challenged as prescribed under Article 19(2).

Lastly, Access to administrative or judicial procedures to counter the acts or omissions made by private or public that violate national law concerning environmental conditions is incorporated in Article 19(3). The Convention further stipulates that there must be “adequate and effective remedies” and proceeding must be “fair” “equitable” and “not prohibitively expensive”.²² In a nutshell, the Aarhus Convention plays a crucial role in providing a helpful framework for community involvement in the environmental decision-making process, which is consistent with the liberal-democratic paradigm. Its participation rights are connected to various administrative, legislative, and judicial decision-making facts. However, State authorities must provide sufficient political support to implement these requirements effectively.

5. Benefits of Participation in Environmental Decision-making Process.

The rationale and benefits of public participation in the environmental decision-making process can be summarised under the following:

- a) Public participation in the decision-making process improved access to environmental information and promoted better access to environmental justice, which helped to maintain good and quality implementation of decisions. This can be accomplished, for instance, by soliciting social and cultural values or by incorporating the public’s specialized knowledge.
- b) It helps in solving the problems of the environment logically. Techniques of deliberation, also known as the bottom-up method, in which every angle of an issue is discussed to reach a consensus on an issue, is one way to resolve conflicting values.
- c) Adopting a participatory approach enhances ownership and promotes public responsibility for protecting the environment. Encouraging citizens to engage in environmental decision-making and providing education regarding environmental issues are fundamental to endorsing community duty to protect the environment.
- d) Greater participation in the decision-making process, access to necessary environmental information, and ex-post review mechanisms through judicial

²² Article 19(4)

review promote transparency and accountability of the decision maker, ultimately creating confidence in the process in the mind of the public.

- e) Allowing public participation and ensuring the right to information will not be much use without proper access to justice. The right of access to justice helps the public enforce environmental laws and provides a speedy remedy in case of any violation; accordingly, it establishes a right to a clean environment.²³

6. Mechanism for implementing public participation in environmental decisions.

a. Provisions under the Constitution

The National Constitution is vital in implementing public participation in environmental decision-making. The Constitution of a nation assumes the supreme position and is considered the highest law of law, all other laws derive their validity from the parent law i.e National Constitution. Gradually, fundamental rights related to the environment were also incorporated into the Constitution.²⁴ The rights incorporated in the National Constitution as environmental rights are the basis for judicial review and public interest litigation for the protection of the environment.²⁵ The right assigned to environmental protection as Constitutional status offers a significant position as it obliges the government to protect the environment and ensures citizens enforceable rights to a clean and healthy environment. These rights are not subject to alteration or repeal and are more secure than any other rights provided by the statutes, which are sometimes more susceptible to change or repeal by the government. Yet, the Constitution does not offer an appropriate framework for prescribing in detail environmental standards and rules, including participation provisions, which are provided through legislation. Therefore, on account of their generality, the effectiveness of the Constitutional norm in determining environmental law largely depends on the Court's willingness to interpret and clarify their application.

²³ See, T. Hunte and K. Lunde, "Access Justice and Environment Protection: International and Domestic perspectives", *Journal of Environment and Development*, 7 (1998) pp. 437 - 441

²⁴ C. Bruch, "Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa", 26 *Columbia Journal of Environmental Law* (2002) p. 131

²⁵ J. Razzaque, "Public Interest Environmental Litigation in India, Pakistan and Bangladesh", *Kluwer Law International*, (2004), pp. 63 - 116

b. Participation in Administrative Decision making

The Aarhus Convention strongly emphasizes public participation in the administrative decision-making process. Such participation can occur through various means, such as decisions on particular plans, programs, policies, and development proposals, as well as rule-making processes.²⁶ It is indispensable that the decision-making process follow the requirement procedures contained in the environmental impact assessment, which is the need of the hour for the best interest of the present and future generations' welfare. Environmental Impact Assessment upholds democracy and the principles of natural justice to the extent that they provide the concerned community with a chance to be heard and allowed to be involved in decision-making that affects their environment. "It also facilitates democratic decision-making and consensus building regarding new developmental projects. Further, it also helps to balance the conflicting views of developers, commons, and state agencies by facilitating the reasoned examination of their contending views in the factually informed context of Environmental Impact Assessment."²⁷

c. Access to Information

Access to information is an essential component of a democratic society. It allows citizens to make informed decisions about their lives and communities and enables the public to participate in administrative and judicial processes; it encourages more balanced, informed decision-making; promotes transparency in government actions, decisions, and policies, and citizens can hold elected officials accountable for their actions and decisions.²⁸ It also empowers citizens to engage in civic activities, promoting democracy and good governance. Further, access to information is essential for upholding human rights, as it enables citizens to access information about government actions and policies that impact their rights. For effective access to information, in addition to providing broad information access, laws should mandate that agencies collect and update relevant information, respond

²⁶ See, A Boyle and MR Anderson (eds), *Human Rights Approaches to Environmental Protection*, (Clarendon Press, 1996).

²⁷ See generally, A. Biswas & S.B. C Agarwal (eds), *“Environmental Impact Assessment for Developing Countries”*, Oxford, 1992

²⁸ See, J. R. Robinson, “Public Access to Environmental Information: A Means to What End?”, 8 (1) *Journal of Environmental Law* (1996) pp. 19 - 20

to requests on time, and keep fees low and accessible to all.²⁹

d. Access to Justice

One way for the general public to participate is by filing litigation to question the validity of administrative decisions made under the legislation. This can be achieved through Public Interest Litigation (PIL) or Judicial Review, which allows courts to challenge environmental decisions and public bodies to exercise their statutory authority appropriately. Generally, it addresses the methodology behind decision-making rather than the actual decision.³⁰ Public Interest Litigation is a legal framework that empowers individuals and any public spirit like NGOs to advocate for the public's interest, seeking redress for harm inflicted on the public at large. A public Interest Litigation (PIL) concerns a breach of right affecting the public collectively, even if no specific individual is directly affected.³¹

7. Roles of Judiciary in India

The judiciary in India plays a significant role in public participation in environmental decision-making by interpreting environmental laws and policies to ensure the concerned communities' involvement. On many occasions, the Supreme Court and High Court have explicitly or impliedly encouraged public participation in environmental decision-making by insisting on the mandatory implementation of the Environmental Impact Assessment. The Court made it clear that³² the mandatory procedure under Notification 24. 04. 1994 of environmental clearance must be strictly followed. The State Government of Andhra Pradesh is required to obtain clearance from the Central Government's Impact Assessment Agency before proceeding with the dam construction project. The Court emphasized that Environmental Impact Assessment (EIA) is mandatory, even for minor minerals not covered under the notification dated 29-01-1994, due to the potential for environmental degradation and risks to human health and ecology.³³ The notification also governs the Aravalli hills in Delhi and Haryana, where the renewal of mining operations was challenged due to environmental degradation. The Supreme Court constituted a Monitoring Committee to probe the issue and provided specific instructions. Through its decisions in numerous Public Interest Litigation cases, the Supreme

²⁹ *Supra* n. 35 at pp. 37 - 40

³⁰ *See*, Lord Woolf, *Woolf and Jowell's Principles of Judicial Review*, Sweet and Maxwell, (1999), p. 59 - 66

³¹ *See*, Sorabjee, "Introduction to Judicial Review in India", 4 (2) *Judicial review* (1999) p. 128

³² *Vadire Vankatta Reddy v. Union of India* AIR 2005 AP 155

³³ *M. C. Mehta v. Union of India* (2004) 12 SCC 18: AIR 2004 SC 4016

Court emphasized the importance of environmental awareness and literacy. It directed the introduction of environmental education at both secondary and higher education levels. The Supreme Court emphasized the importance of implementing such a scheme,³⁴ “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 can be achieved only by taking adequate measures to educate people about the essential need for their actions to align with the requirements of the law.³⁵ The Bar Council of India’s introduction of Environmental Law as a compulsory paper at the graduate level is a direct consequence of the Supreme Court’s emphasis on environmental awareness. The Gujarat High Court’s judgement³⁶ has been instrumental in shaping public participation in India, with specific directives that have enhanced community involvement in environmental decision-making:

- The public hearing venue should be located as close as possible to the proposed site while also being reasonably distant from the taluka headquarters where the site is situated.
- A notice of public hearing must be published in at least two newspapers with widespread circulation in the region, and the local government should be requested to publicize the notice. The notice period shall be a minimum of 30 days.
- An executive summary of the project should be available at local locations at least 30 days before the public hearing date. Furthermore, a summary of the Environmental Impact Assessment report in the local language will be provided to concerned persons upon request.
- The quorum for the hearing panel shall be fifty percent of the total membership. It must include representatives from the board and state government department, a senior citizen, and an environmentalist nominated by the collector.
- The committee has the discretion to determine the number of hearings necessary, based on the project’s potential environmental impact, without being bound by a rigid formula.
- The state pollution control board shall provide the hearing minutes on time upon request. The state or central government will then publish a brief summary of the clearance certificate in the same newspapers that advertised the public hearing.

³⁴ M. C Mehta v. Union of India, AIR 1992 SC 362.

³⁵ *Ibid* at p. 384

³⁶ Center for Social Justice v. Union of India AIR 2001, Guj 71.

The Environmental Impact Assessment (EIA) Notification 2006 incorporated several principles outlined in the judgment, as mentioned earlier, except for the guidelines on public inquiry quorum. The expanded rule of locus standi, however, has empowered individuals or public spirit persons to advocate for environmental causes, as exemplified by several cases filed by M.C. Mehta and various Non-governmental organizations (NGOs). This increased participation has yielded positive results, contributing to the successful implementation of sustainable development principles in India and the enforcement of citizens' fundamental right to a clean environment.

8. Challenges and Obstacles to Participation

Public participation in environmental decision-making is critical for ensuring that decisions are complete, transparent, accountable, well-balanced, and inclusive. However, there are various impediments which hamper the effective participation of the public in the decision-making process:

- a) Lack of Awareness: The general public's limited knowledge of environmental information, problems, and decision-making processes often results in limited community participation.
- b) Inadequate Information: Complicated and deficient information leads to confusion in the minds of the public, which in turn makes it hard to comprehend and be involved in environmental decisions.
- c) Barriers to Access: Due to disadvantages of economic, social, and physical nature, the marginalized sections of society may be prevented from participating in the decision-making process regarding environmental issues.
- d) Power disparity: Public participation in environmental decision-making can be undermined since there is an unequal distribution of power between stakeholders, such as corporations, governments, and communities.
- e) Technological disparity: Lack of access to technology development like internet facilities, social media, and online platforms can hamper public participation for communities who are residing in remote areas.

Further, several other obstacles can hinder the participatory process in environmental decision-

making. Some of them are mentioned below:

- i. The Public often lacks the technical expertise and emotional objectivity to engage with complicated issues effectively.
- ii. Participation processes require significant time commitments.
- iii. The process of managing the public for consultation can be problematic.
- iv. The administrative goal of efficiency may be disrupted by a participatory process due to different opinions from various sections of society involved in the decision-making process.
- v. Like other administrators, environmental decision-makers are hesitant to relinquish power and face challenges such as understaffing and limited resources.
- vi. The general perception is that technical experts may not understand the participatory process and do not consider their opinions seriously. Environmental agencies tend to react merely to public input rather than anticipate it and eventually arrive at politically motivated decisions.

9. Conclusion.

Thus, we may conclude from the above discussion that public participation in environmental decision-making is indispensable, particularly for overall sustainable development, which facilitates the balanced integration of economic, social, and environmental considerations in decision-making. Public input is crucial for implementing the precautionary principle, a key component of sustainability, as it informs the evaluation of acceptable risks and ensures a cautious approach to decision-making. Meaningful democracy is strengthened when citizens and affected communities actively participate in decision-making. To vitalize local democracy, participatory elements must be incorporated into representative democracy, empowering those most vulnerable to environmental impacts and fostering a continuous dialogue between the governed and their representatives.

Further, the Aarhus Convention serves as a vital framework for fostering community engagement in environmental decision-making, aligning with liberal-democratic principles. The Convention provides a comprehensive approach by establishing participatory rights tied to various administrative, legislative, and judicial decisions. Nevertheless, effective implementation of these provisions relies on robust political support from state authorities.

Furthermore, India's judiciary significantly contributes to public participation in environmental decision-making by interpreting environmental laws and policies in a manner that facilitates the involvement of affected communities, thereby ensuring their voices are heard, and interests are represented. The Supreme Court and High Courts have played a significant role in promoting public participation in environmental decision-making by consistently highlighting the necessity of Environmental Impact Assessment notification. The widened scope of locus standi rule has empowered individuals, including environmentally conscious citizens, to take up environmental causes and seek judicial remedies for ecological protection.

BIBLIOGRAPHY:

A. PRIMARY SOURCES

1. Acts/Legislations/Statutes

- The Constitution of India, 1950
- The Environment (Protection) Act, 1986
- The National Green Tribunal Act, 2010
- The Environmental Impact Assessment Notification, 2006

2. International Instruments

- The EU Directive on Environmental Impact Assessment 2014
- The Stockholm Declaration 1972.
- The Aarhus Convention 1998
- The Brundtland Report, 1987
- The Rio Declaration, 1992
- Rio Declaration 2012

B. SECONDARY SOURCES

1. Books

- A. Biswas *et al.*,(eds), *Environmental Impact Assessment for Developing Countries*, Oxford University Press, 1992
- A Boyle and M. Anderson, *Human Rights Approach to Environmental Protection*, Oxford Press (1996)

- E. Petkova, C. Maurer, N. Henninger & F. Irwin, *Closing The Gap: Information, Participation and Justice in Decision Making for the Environment*, World Resources Institute, 2002
- J. Razzaque, *Public Interest Environmental Litigation in India, Pakistan and Bangladesh*, Kluwer Law International, 2004
- Lord Woolf, *Woolf and Jowell's Principles of Judicial Review*, Sweet and Maxwell, 1999
- Sorabjee, *Introduction to Judicial Review in India*, Judicial Review 1999

2. Journals

- C. Bruch, “Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa”, 26 *Columbia Journal of Environmental Law* (2001)
- C. Offe, “New Social Movements: Challenging the Boundaries of Institutional Politics”, 52 *Social Research* (1985)
- D.A Wirth, “Public Participation in International Processes: Environmental Case Studies at the National and International Levels”, 7 *Colorado Journal of International Law & Policy* (1996)
- I. Voinovich, “Inter-generational and Intra generational Equity Requirements for Sustainability”, 22 (3) *Environmental Conservation* (1995)
- J. Ebbesson, “The Notion of Public Participation in International Environmental Law”, 8 *Year Book of International Environmental Law*, (1997)
- J. Steele, “Participation and Deliberation in Environmental Law: Exploring a Problem-Solving Approach”, 21 *Oxford Law Journal* (2001)
- J.R Robinson, “Public Access to Environmental Information: A Means to What End?”, 8 (1) *Journal of Environmental Law* (1996)
- M. Lee & Abbot, “ The Usual Suspects? Public Participation under the Aarhus Convention”, 66 *Modern Law Review* (2003)
- NP Spyke, “Public Participation in Environmental Decision Making at New Millennium: Structuring New Spheres of Public Influence”, 26 *Boston College Environmental Affairs Law Review* (1999)

- R.B Stewart, “The Reformation of American Administrative Law”, 88 *Harvard L. Rev.* (1975)
- Sherry R. Arnstein, “The Ladder of Citizen Participation”, 35 *Journal of the American Institute of Planners* (1969)
- T. Hunt. & K. Lunde, “Access to Justice and Environmental Protection: International and Domestic Perspectives”, 7 (4) *Journal of Environment and Development* (1998)

