

**Right to Information and Good Governance**  
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**Lecture – 72**

**Ecological Perspective of Right to Information**

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**ECOLOGICAL PERSPECTIVE  
OF RIGHT TO INFORMATION**

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Hello I am Madhubanti Sadhya from the National Law School of India University Bangalore. Through this course on RTI being offered by the National Law School, different aspects of right to information have been discussed and covered. In this session, I shall be talking about the ecological perspective of right to information or the importance of information disclosure for the well being of our ecology. Now, Alexander Nikitin who is a Russian environmentalist had once mentioned that any attempt to conceal information about harmful impact on people and the environment is a crime against humanity.

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## IMPORTANCE OF ENVIRONMENTAL INFORMATION

- Information on environment is important for effective national and international environmental management, protection and co-operation
- To ensure sustainable development, the common man must be made aware of his role in environmental conservation
- Right to know strengthens participatory democracy
- Lack of environmental information may often lead to decisions going against the interest of the general public.



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Now, I am sure there have already been enough discussions on why right to information is information for improving transparency in the government machinery on the government working, how it is important for participatory democracy, but why is information or access to information on environment important. Now, let us look at some of the reasons. First, improving the availability of information on the state of the environment and on activities that can adversely affect or have damaging effects on the environment are well established objectives and principles of international environmental law. Information on environment is considered to be a prerequisite to effective national and international environmental management, protection and cooperation. The availability and access to information allows citizens to participate in national decision-making processes.

And they can also influence consumer behaviour if we know how our behaviour impacts the environment if we have adequate information on that. It can help people bring about changes in their lifestyles, in their eating habits, in their consumption habits. So, it is very important to ensure sustainable development that the common man is made aware of his role in environmental conservation.

And how can this be achieved? By ensuring that people are adequately informed about the environment. Now, right to know also helps to strengthen participatory democracy because when the common man is armed with information on the different governmental programmes they can influence the decision making through representation law being in public debate.

Lack of proper appreciation of environmental information often leads to decision which go against the interest of the general public. And this is something that the country or the world at large has witnessed time and again.

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### ENVIRONMENTAL LAWS THAT MANDATE DISCLOSURE OF INFORMATION



- Water (Prevention and Control of Pollution) Act 1974 - requires every state to maintain a register of information on water pollution
- Similar provision in the Air Act, 1981
- Both laws allow for withholding of information if disclosure is 'against the public interest'
- EIA notification 2006 - for public hearing – scope for public participation
- Public participation seeks to ensure that members of the public have the opportunity to express their opinions and influence the decisions regarding projects, programmes, policies and regulation



Now, if we look at the different environmental laws that we have we can pinpoint some of the legislations that require disclosure of information. Now, first I would like to give the example of the Water (Prevention and Control of Pollution Act) of 1974. The Water Act under section 25(6) requires every state to maintain a register of information on water pollution and so much of the register as relates to any outlets or any affluent from any land or premises shall be open to inspection to all.

At all reasonable hours by any person who is interested in or who is affected by such outlet land or premises. So, this basically provides for information disclosure. Now, similar provision also exists under the Air Act of 1981, but both these laws allow for withholding of information if the disclosure is against public interest. Now the ambit of this vague term is not specified unfortunately.

Now, if we look at the EIA notification of 2006 which provides for environmental impact assessment, that is again a very important technique for acquiring environmental information. Now, EIA has been called as one of the important rules of decision making which provides space for people's participation. Now, what does it do? The Environmental Impact Assessment Notification provides a procedure for public hearing.


And it also requires the project proponent or the developer to publish an executive summary of a proposal for any project which can affect the environment. Now, there are numerous reasons for involvement of the public in decision making process. From human rights perspective people have the right to be involved in decisions that affects their health and their environment.


And public participation seeks to ensure that the members of the public have the opportunity to be notified to express their opinions and also ideally to influence the decisions regarding projects, programmes, policies and regulations that could affect them. Now public participation is actually a privilege of the citizens more often than not the local communities are the ones that are adversely affected by developmental activities. And this makes all the more important for them to be a part of the decision-making processes.

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### INTERNATIONAL INSTRUMENTS THAT MANDATE DISCLOSURE OF INFORMATION

- Principle 2 of the Stockholm Declaration, 1972 - 'free flow of up to date scientific information and transfer of experience'
- The 1982 World Charter for Nature -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.
- Rio Declaration, 1992 calls for
  - exchange of knowledge;
  - 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 on sustainable development - to bridge the 'data gap' and to improve information availability





There are several international instruments that concern the environment that mandate disclosure of information. International agreements in practice have developed several techniques for ensuring that states and other members of the international community are provided with information on the environmental consequences of harmful activities or certain activities.

Principle 2 of the Stockholm declaration 1972 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 obligation relating to information calling for dissemination of knowledge

of research, the monitoring of natural processes and the ecosystem and the participation of all persons in the formulations of decisions of direct concern to the environment.

So, this is not a new concept it dates back to 1972 when the first call for free flow of scientific information and transfer of experience was called by the Stockholm declaration. Now if you look at the Rio declaration of 1992 no fewer than four of the declarations 27 principles concern themselves with improving the provision of an access to environmental information. The Rio Declaration calls for exchange of knowledge.

Then individual access to environmental information, public awareness, notification of emergencies, prior and timely notification on certain potentially hazardous activities. Now, chapter 40 of Agenda 21 which goes by the title information for decision making recognizes the need for information arises at all levels from senior decision makers at the international level to the grassroots and individual level. And to that end the Agenda 21 calls for the development of two program areas to bridge the data gap and to improve information availability.

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### IMPORTANCE OF INFORMATION EXCHANGE



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- Information exchange' - 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.
- Endorsed by Principle 20 of the Stockholm Declaration and Principle 9 of the Rio Declaration, - 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
- 1982 UNCLOS -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 'available information', on emission data major changes in national policies and general industrial development, control technologies for reducing air pollution, etc.



Now, there is something which is very interesting in international law that is information exchange. The different environmental agreements, international environmental agreements or treaties that the different countries enter into call for exchange of information and this information exchange can be with regard to different aspects many of which directly or indirectly impact the environment.

Now, we look at that a little later, but closer home, if we look at the Bhopal gas leak disaster which literally engulfed the country in 1984, December 1984. Now, if we are to learn some lessons from that disaster it would become quite evident that the use of methyl isocyanide and its release into the environment which could not be controlled by the Union Carbide. It was clearly reflective of the failure of the corporation to adequately inform the Indian government.

Its workers and the surrounding community of the danger that were there within its premises. Now, in order to avoid stringent safety regulations Union Carbide hid very, very important information about the toxicity of the chemicals used at the plant then the price of this failure to disclose critical information as ultimately paid in thousands of lives. What happened in Bhopal is not unique.

There are many more cases around the world that demonstrate the urgency of providing critical information about the company's operation in order to protect the environment and the likes and human rights of local communities and workers if we look at the latest case of Visakhapatnam where styrene gas was released from one of the times of LG polymers which is a transactional corporation.

Again, we get to revisit what had happened in the Bhopal gas leak tragedy. There were so many people who lost consciousness who had to be hospitalized and there were as many as 12 people who lost their lives all because this plant had been set up in the middle of an area which is quite populous there were people living in and around the plant and who were unaware of what the harmful impacts of the release of this gas could lead to.

There were people who literally dropping them on the roads. Now, all this again points towards the importance of information on environment or different activities that can adversely affect the environment. The general obligation to exchange information is found in one form or the other in almost every international environmental agreement. Now, how do we define information exchange?

Information exchange can be defined as a general obligation of a 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. Now information exchange may be distinguished from specific obligations to provide regular or periodic information on specified matter to a specified body or to provide detailed information on the occurrence of a particular event or set of events such as an accident or an emergency or proposed activity.

So, this is not something which is routinely done. Information exchange usually happens on an ad hoc basis where you keep other state parties informed. Now information exchange of a general nature is endorsed by principle 20 of the Stockholm Declaration and by principle 9 of the Rio Declaration which supports exchange of scientific and technical information or knowledge as a means of strengthening indigenous capacity building for sustainable development by improving scientific understanding.

Now, under the different environmental treaties the obligation of exchange of information can be a requirement between states or it can be requirement between states and international organizations and between international organizations and nongovernmental actors. Now, what are the different areas regarding which information is shared or exchange? Now, information exchange can be required in respect of general and undefined matters or in relation to some very specific matters.

For instance, research and technical matters or helping to align and coordinate national policies, research results plans for science programs on relevant national records or national legislation or status of implementation of the national legislations then it could be on different aspects of pest, plant diseases and different measures adopted to control pest or it could be with relation to the conservation of species of wild flora and fauna.

Conservation and sustainable use of biological diversity. So, there are a wide range of areas on which information may be exchanged under these different international environmental agreements. Now, in recent years several conventions have established more detailed rules on the type of information that should be exchanged. In 1982 UNCLOS that the United Nation Convention on the Law of Seas, required exchange of scientific information and other data relevant to the conservation of fish stock on marine scientific research and on marine pollution. Article 8 of the 1979 LRTAP Convention or the Long-Range Transboundary Air Pollution convention requires exchange of available information by a setting up of an

executive body and it also requires a state parties to bilaterally share information on emission data at such period of times that are agreed upon by the parties.

And the information shared should be with regard to a certain air pollutants. The major changes in the national policies, the general industrial development then the different control technologies for air pollution or reducing air pollution that the different states adopt then the projective cost of emission control meteorological and physicochemical data relating to the processes and affect and the different national sub regional and regional policies.

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• Art. 4 of the 1985 Vienna Convention - exchange of 'scientific, technical, socio-economic, commercial and legal information', and information on alternative technologies.

• The 1987 Montreal Protocol - information exchange on best technologies possible alternatives to controlled substances and products and costs and benefits of relevant control strategies.

• The UN Environment Programme (UNEP) released new global guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters in June 2010

• **Prior Informed Consent requirements** – further strengthens the need for environmental information for the implementation of environmental standards

Now, Article 4 of the 1985 Vienna Convention on the Law of The Treaties also requires exchange of scientific technical, socioeconomic, commercial and legal information and it has been elaborated under an annex to the Convention that information on alternative technologies must also be shared then the 1987 Montreal Protocol which is basically a protocol which talks about the protection of the ozone layer and the phasing out of ozone depleting substances it also calls for information exchange between the different state parties on the best technologies which are available and the best possible alternatives available to control substances and products and cost and benefits of the relevant term control strategies that the different state parties adopt. Now, right to environmental information was strongly advanced as a global right by the United Nations Environment Programme.

And the UNEP basically released new global guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters in June 2010 and this was followed by the different world leaders



agreeing to the Earth Summit of 2012 in December and this may actually be termed as the new global treaty on access to environmental information.

There is another very interesting concept under environmental international law which talks about prior informed consent. Now, what is prior informed consent? It is basically a principle that any international shipment of chemical that is banned or severely restricted in order to protect human health or the environment should not proceed without agreement and where such agreement exist or contrary to the decision of the designated national authority in the importing country.

Now, why was this important? Now one of the first cases or one of the first conventions to incorporate the prior informed consent requirements was the Basel Convention of 1989 and the reason why this was important or the incorporation of this principle is important was that it was seen the different developed countries were basically dumping their hazardous and chemical waste into the developing nations or the emerging economies or the lower developed nations.

And they were doing this either out of ignorance I mean the developing countries did not know that this was happening and it was happening primarily without their consent and information. So, now stringent provisions have been incorporated under the different international environmental agreements that deal with hazardous and chemical waste. The Basel Convention was one of the first.

Then we also have the Rotterdam Convention which talks about prior informed consent requirements then the 1991 Bamako Convention in the 1993 EC Regulation. So, now most of the international conventions which have come into place require prior informed consent requirement before any kind of transboundary or international shipment of chemical and hazardous waste or chemicals that are banned takes place between the importing and the exporting country.

The prior informed consent procedure requires the formal obtaining and disseminating of decisions of importing countries on whether or not they wish to receive further shipment of chemical which have been banned or severely restricted and this has been used in the United

Nation Environment Programme as well as the food and agriculture organization of the United Nations.

So, basically no kind of shipment can actually enter a nation or enter a country without the country prior informed consent and every convention requires the state parties to designate a national authority which shall be dealing with that particular hazardous waste or hazardous chemical which is being imported. Now, in the country like that is in India we have the ministry of environmental forest which is the designated national authority.

And without the MoEF decision or without the government decision no importing or no kind of waste or hazardous products or chemicals can be imported into the country under the prior informed consent procedure. So, the body of international rules on improving the availability of environmental information is now exhaustively developed and information is now rightly central to the implementation of environmental standards which have been set by the treaties and other international agreements. So, this has been adequately and largely adopted in international environmental law and it is about time that we adopt the same in our national legislations as well.

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**INDIAN ECOLOGICAL PERSPECTIVE ON THE  
RIGHT TO KNOW**



- Right to know important for public participation in environmental decision-making to be effective.
- No right to information under the prevailing environmental legislations
- Section 5 of Official Secrets Act and Section 123 of the Indian Evidence Act used to deny information
- Right to information has been read into the fundamental rights to free speech and expression
- *L. K. Koolwal v. State of Rajasthan* AIR 1988 Raj. 2. - first observation of any court regarding right to information in environment cases
- *Bombay Environmental Action Group v. Poona Cantonment Board* - right of a citizen's group to inspect documents of Government agency
- *M.C. Mehta v. Union of India*, WRIT PETITION (CIVIL) NO. 860 OF 1991- Petitioner argued that people needed to be better educated about the environment.



Now, let us look at the Indian ecological perspective of the right to know. Let us see what the Indian law has to say on this whether it even recognizes people's right to information on environmental matters. Now, public participation in environmental decision making can be

meaningful and effective only if people have the right to know and if they can exercise this right.

This is imperative because in environmental matters, government decisions to say decide on the site of dams and large projects can displace thousands of people and deprive them of their lifestyle and livelihood and since long, like since time, I would not say immemorial, but since long there has been a conflict between the developmental efforts made by a state and the conservation of nature and environment.

And if the conflict between the two is to be reconciled it is important to ensure that the facts, basis and the different reasons on which the government basis its decision and that affect the health, life, liberty and livelihood of people are actually known to those whose rights and interest are going to be affected. Now, this becomes all the more important because in a developing society large segments of the population are illiterate or unaware of their legal rights.

And the massive developmental projects lead to socio-economic transformation, result in depletion of vast resources including wild flora and fauna which are linked with the question of life, liberty and livelihood of the people. Now, whenever these developmental projects are taking place in say forest or in areas where lot of agriculture is being done it directly impacts people's life and livelihood their means of livelihood because they are completely dependent on the natural surroundings of the flora and fauna for their life.

So, in these areas so questions about development can decided only in the context of it socioeconomic impacts particularly those that concern local people and therefore the right to know becomes extremely important from this perspective. Now, we have already discussed the EIA notification or the environment impact assessment notification which were issued under the environment protection act.

Thankfully the notification does speak of public hearing and public participation. So that can actually be stated as one of the very few provisions under the Indian environmental law which advocates the right to information or environmental matters. Unfortunately, under the prevailing special environmental enactments the concern citizens or activist have no specific right to information.

We cannot say that they can claim it as a right even when the government authorities undertake investigation on a complaint which may be filed by a concern citizen or activist the said activist or citizen does not have the right to the investigation reports. Now, there is more disabling legislation in this regard. Now, government authorities have used section 5 of the Official Secrets Act to declare documents and even areas as secret.

And therefore, these documents continue to remain inaccessible to the general people or the public. For instance, the submergence zones of the Narmada dam were initially put under the secret clause and later due to public outright they were made available to the citizens. In addition to this government also claims immunity from producing documents in court under section 123 of the Indian Evidence Act.

So, there is actually a lot of information which does not come out in the public domain. Now, if we look at the specific environmental legislation like the Air Act and the Water Act I have already discussed that a little earlier, but the Air act and the Water act they were amended to allow private citizens access to information on polluting industries if they were complaining about them.

Now, section 16 of the Air Act provides for the functions of the central board and amongst the different function the board must also collect and disseminate information in respect of matters relating to air pollution, but the section fails to specify to whom this information is to be provided and what is the nature of the information that is to be disseminated. So, although these acts have been amended and provisions have been made for citizen access to information relating to the environment.

There has also been a proviso or a condition incorporated within these legislations that allows withholding of information by the officials if they think that the interest of the public would not be served by disclosing this information. So, again a lot of discretionary power has been given to the officials to decide whether or not some kind of information relating to the environment should be diverged.

Now, in India, the right to information has been read into the fundamental right of free speech and expression and we have had a lot of discussions through this course which discuss the

different cases that have actually helped in including the right to free speech or right to information within the folds of the right of free speech and expression under article 19 (1) a. Now, if we look at some of the cases it was as early as in 1975, in the case of state of Uttar Pradesh versus Raj Narain, that the Supreme Court derive the right to information from the freedom of speech and the court said that the accountability of the government could be safeguarded with information as a check against corruption. Again, later in the case of S.P Gupta versus Union of India which was decided in 1982 just popularly known as the judges case Justice Bhagwati recognized the right to know to be implicit in the right to free speech and expression.

So, it has always been through Article 19 (1) A that the right to information has been advocated or people have been given the right to information. Now, the first observation of any court regarding right to information in the domain of environment can be found in the case L.K Koolwal versus State of Rajasthan. This was decided in 1988 where an observation was made about the right to information and in this case it was primarily an observation which was made in the ratio decidendi of the case. Now, what is ratio decidendi? It is the rule of law on which a decision is based. In this case a public interest litigation was filed requesting the court to issue the writ of mandamus. Now what is mandamus? Mandamus is a judicial writ that is issued as a command against an inferior court of public authority to perform a statutory or public duty.

Now, the writ of mandamus was actually requested now the PIL has requested for the issue of the writ of mandamus against Jaipur city municipal corporation so that they provide better sanitation facilities and the court opined that the citizen has the right to know about the activities of the state. The privilege of secrecy does not survive to a great extent and the court observed that under article 19 (1) a or the right to freedom of speech is based on the foundation on the right to know.

But this right is limited particularly in the matter of sanitation and every citizen has a right to know how the state is functioning in such matters because maintenance of health preservation of sanitation and the environment falls within Article 21 of the constitution which entitles or which gives every person the right to life and personal liberty.

As it adversely affects the life of citizen and it amounts to slow poisoning if it is not checked. So, if any kind of sanitation work is not being properly carried out by the municipal corporation then the people actually have the right to know how the state is functioning, what are the steps that the state is taking to ensure that proper maintenance of the public spaces or the public areas are maintained.

Because this has a direct bearing on the right to life on the right to health or if people of these public authorities do not fulfill their functions they actually cannot take the help of secrecy and they cannot deny information because this directly amounts to slow poisoning and it can actually adversely affect people right to life. So, in this case in addition to Article 19 (1) a the right to know was also slightly read into Article 21 of the constitution.

Now, if we look at another case that is Bombay environmental action group in this case the court upheld the right of citizens groups to inspect documents of the government agency that is the Pune containment board which was habitually surprising information regarding a legal structure and the court categorically held that it was not any Tom, Dick and Harry that was asking for information.

But a group of people who were acting in public interest that required information and thus they have every right to have access to such information. However, it is important to know that the right to information in both these cases was read into the fundamental right to free speech and expression and both these decisions pertain to the times which were prior to the court's observation that the right to clean air and water in some environment is also a part of Article 21 that guarantees the right to life and personal liberty.

Now, we know that even in the L.K Koolwal case that we just discussed, it did make a mention of Article 21, but it was more like an observation of the court. It was not on the basis of Article 21 that the decision was given. So, probably it would be good to advocate the argument that the right to clean air, water and environment also include the right to information that is absolutely necessary to exercise this right.

And probably it is about time that these rights are also read into Article 21 of the Indian constitution. In another case of M. C Mehta versus Union of India M. C. Mehta had filed an application in public interest asking the Supreme Court to issue directions to cinema hall that

they show slight with information on the environment, issue direction for the spread of information relating to the environment on All India Radio.

And issue directions that the study of the environment becomes a compulsory subject in schools and colleges and the petitioner had made this application on the ground that Article 51 (a) g of the constitution which talks about the fundamental duties of the different citizen requires every citizen to protect and improve the natural environment including forest, lakes, rivers, wild life and to have compassion for living creatures.

So, to fulfill these obligations to the environment the petitioner had argued that people needed to be better educated about the environment. Now this case was filed way back in 1991 when environmental studies or environmental education or environmental law was not much in demand. So it was much later that slowly, slowly these subjects were incorporated within the school and college curriculum.


So, M.C. Mehta had actually advocated that people should be better informed and educated about the environment and he had suggested where his measures which can be incorporated. Now if we look at the comparative jurisdiction and if we look at UK information that relates to environment is very widely interpreted under the UK freedom of information act and it also includes the state of flora and fauna.

This therefore is rather a unique extension of right to information because it makes it easier to get information relating to human conditions in the aftermath of a disaster. So, the UK freedom of information act of 2000 actually gives people the right to information relation to the environment. So, environmental information in UK is also usually recorded in registers by the respective agencies and departments.

And when we look at India, we do have the different acts that talk about collection of information and storage of information by the different authorities, the central pollution control board, the state pollution control board or the pollution control committees, but there is a need to further strengthen this information in the Indian law and it is also important that the need to disseminate this information so that it ultimately reaches the masses, is advocated or is worked upon so that is where the need for implementation of the right comes in, we are aware that the Right to Information Act of 2005 has created a regime where public can


actually file RTI application and seek information from the different public authorities. Now let us look at how this Act has added to the existing constitutional right to access environmental and ecological information and I will be discussing a few cases which were decided by the central information commission where information pertaining to the environment rather different aspects of the environment were denied to the applicants.

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### RIGHT TO INFORMATION ACT 2005 AND THE ENVIRONMENT

- *Shri Piyush Mohapatra v. MoEF* CIC/WB/C/2006/00063 & CIC/WB/C/2006/00064 CIC - Information relating to research, testing and studies of a number of GM crops was held to be in public interest
- *Ajit Singh v. Delhi Pollution Control Committee* Appeal No.CIC/WB/A/2006/00599 Mega constructions also falls within the definition of Sec. 4(1)(c) which reads as follows; 'publish all relevant facts while formulating important policies or announcing the decisions which affect the public'
- *Ms. Misha Singh v. MoEF* CIC/WB/C/2006/00102 CIC held that all documents are held by the Government in 'public trust' and intraceability is not an adequate excuse.



And how do they go about securing the information and what was the decision of the CIC in this regard is something that we will be discussing. Now, the first case was filed by Shri Piyush Mohapatra and it was filed against the ministry of environment and forest and in this case the central information commission had held that information related to research, testing and studies of a number of GM crops was held to be in public interest.

Now, GM crops are basically genetically modified crops. The commission had held that the right of Piyush Mohapatra who wanted information about GM crops and their studies in relation to allergy and toxicity was something that had to be upheld. So, the CIC basically upheld that Mr. Mohapatra is right to obtain information about toxicity and allergy that could result from the different GM crops.

The CIC rejected the contention of the Department of Bio Technology and ordered that toxicity, allergenicity data that determine the safety of genetically engineered rice, mustard, okra and brinjal must be made public under the Right to Information Act. Further, the



commission also held that the Ministry of Environment and Forest and Department Of Biotechnology are both public authorities.

And information should be made available within section 4 (1) of the Right to Information Act or rather information must be disseminated under section 4 (1) of the RTI Act. What does section 4 (1) say? Section 4 of the Act states that every public authority must endeavour to provide as much information suo moto that is on its own to the public at regular intervals through various means which could be through the internet or any other way in which information could be made available to the people.

So, that the public have minimum resort to the use of this Act to obtain information. So, basically section 4 says that efforts must be made by the different public authorities to disseminate information on their own so that people do not have to actually file RTI applications to obtain information under the act or from the different public authorities. In another case where Mister Ajit Singh had filed an RTI application against the Delhi pollution control committee.

The CIC had held that EIA that is the environment impact assessment for all mega constructions also fall within section 4 (1) (C) which reads as follows that is publish all relevant facts while formulating important policies or announcing the decisions which affect the public. So, it was important that information is disseminated because that information specifically or any information with relation to mega construction falls within the definition of section 4 (1) C of the Act.

Thus, access to EIA is now made easier and it is also made mandatory on the ministry of environment and forest to make routine disclosures of the same. Now, at this point I think it is important to mention that the ministry maintains an online portal called Parivesh which is like a one stop answer to all kinds of clearances that the ministry gives and starting from forest clearances or any other kind of clearances.

It also talks about the EIA clearances that is environment clearances which are filed under the EIA notification all information pertaining to these EIA applications which are filed what is the status of the application, what is the kind of application that has been filed by the different

project proponents, at what stage is the application all of this is published on that website. So basically, now it is actually been made mandatory on the ministry of environment.

And forest to make routine disclosures and this website I will just like to add actually helps in the dissemination of information to the public and it is available in the public domain so the public can go ahead and search this website for any information related to the environment and the different clearances that the ministry gives for different projects. Now, in another case which was filed by Ms. Misha Singh.

And this case was also filed by her against the ministry of environmental forest basically she had filed an RTI application and she did not receive the information that she had sought so then it went ahead and was placed before the CIC or the Central Information Commission. In this case Ms. Misha Singh was seeking information regarding the environmental clearance and other parameters of the Maheshwar Hydroelectric project in Madhya Pradesh.

In reference to the 1994 clearance given to the Narmada Valley Development Authority and its follow up. So, this is the information that she had sought, but unfortunately, she was informed that the information sought by her cannot be located by the ministry and it was reported that the whole almirah and the files which concerning the project were untraceable. So, the central information commission held that all these documents are held by the government in public trust.

So, they are actually accountable to the public and they cannot just state intractability of these documents and claim an excuse and the CIC also directed the ministry to lodge the ministry of environment, forest and climate change to lodge a FIR and to initiate criminal action against those persons who are responsible for the theft or the loss.

So, we see that the RTI Act has actually come to the rescue of different RTI applicants when information relating to the environment has been sought. And if information has been denied then the CIC has actually given decisions which were in favour of the disclosure of information.

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- *Shalini Bhutani v. MoEF, CIC/WB/C/2008/00333/AD-NBA* was directed to update its information under Sec. 4(2) of the RTI Act “to provide updated information to the public at regular intervals of time which includes putting up on the website details of projects awaiting approval
- *Manju Menon v. MoEF, CIC/AD/A/09/00544* - applicant sought information regarding the proposed amendment which was being brought to the EIA notification. Public Authority was urged to put up different drafts on the internet, as they evolve, so that the stakeholders are continuously aware of the concerns being deliberated upon and incorporated.



Let us look at two more cases where the RTI Act was used to secure information relating to the environment. The first case of Shalini Bhutani versus the Ministry of Environment and Forest relates to the Biological Diversity Act. Now, to understand this case it is important to give some context as to what the biological diversity act deals with. Now, the biological diversity act was drafted to fulfill India’s commitment to the Convention of biological diversity signed in 1992 to which India is a party.

Now, it was also meant to be a response to check the alarming increase in bio piracy and to restrict bio-based trade. Also, the act intended to look at conservation of bio diversity and traditional knowledge and this would be done not only through sector specific laws on forest wild life, water and pollution because those laws are already existing. So, the intent was to have a standalone legislation which looks at the conservation of biological diversity or biological resources.

And traditional knowledge which is associated with such biological resources existing in the country. Now, one of the very important aspects or the most important aspect of the implementation of the biological diversity act which was passed in the year 2002 has been a series of approvals which are granted by the national biodiversity authority which is based in Chennai.

Now, the National Biodiversity Authority is constituted under the Act it has been constituted under the act and any person who seeks to use biological resource or traditional knowledge from India has to seek prior approval or intimate the national biodiversity authority or the

state biodiversity authority concern. Now, until April 2008 only a listing of approvals granted or available on the website of the organization.

There were no approval letters or the copies of the agreements that could be accessed by citizens to verify what the particular biological material or related traditional knowledge was being accessed for. So, since the framework of the law is such that it does not allow citizens to adequately participate in the decision-making process such disclosure become all the more important.

Now, when the national biodiversity authority allows a particular person to access biological resources they enter into a contract or in agreement and the agreement is such that they have to share benefits from the use of the biological resources so that biodiversity is conserved. So, this is the ultimate aim of the legislation, but on the information relating to the approval letters, copies of the agreements that the NBA was entering into with the different applicants were not readily available and the citizen could not verify the information.

So, what happened in this particular case Shalini Bhutani had filed an application or an RTI application with the ministry of environmental forest which was forwarded to the national biodiversity authority in Chennai. Initially, the public information officer in the national biodiversity authority and the member secretary supplied information relating to 56 approval letters and agreements that were finalized.

Now, it was quite ironic that the NBA website at that point listed that it had granted clearance to over 90 applications and the actual figures were even higher, but this came to be known only later. So because information was missing the applicant filed a complaint before the central information commission pointing to the incompleteness of the information provided and the central information commission directed the national biodiversity authority to supply information remaining free of cost as the response to the RTI application was beyond the 30 days' timeframe which is provided under the Act and this seen as a case of deemed refusal. So, the national biodiversity authority was also directed to update its information on its website under section 4 (2) of the Right to Information Act which requires to provide updated information to the public at regular intervals of time.

And this includes putting up on the website details of projects awaiting approval. So, section 4 (2) of the RTI Act was invoked and NBA was directed to update information of the different approvals that it has granted on its official website. Now, in another case which was filed by Manju Menon and it was again against the ministry of environment forest. Ms. Menon had sought information regarding the proposed amendments which were thought of being brought to the EIA notification that is the environment impact assessment notification.

The public information officer of the concerned department in the MoEF replied that the amendment was not yet introduced and hence it was in the evolving process thus it could not be disclosed under the RTI Act. So, an appeal was filed and the applicant got the same order stating that the information regarding the amendments cannot be disclosed to the applicant as it was an evolving process.

The information commissioner did not direct, but instead stated that the CIC urges the ministry to consider making the whole notification process more participatory in nature. Holding more consultations at central and state levels with all the state holders even before the draft notification is finalized in the intermenstrual consultation. So, it was not actually direction it was more like a suggestion and an urge was made before the ministry.

Now, a practical regime of right to information for citizens to secure access to information is possible only when the public authority makes the information available through various means. This is what was one of the observations of the CIC, the CIC order also added that public authority is urged to put out different drafts on the internet as they evolve so that the stakeholders are continuously aware of the concerns being deliberated upon an incorporated. And finally, it also asked the ministry of environment and forest to provide all the concerned information which was sought by miss Menon.

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## CONCLUSION

- The Right to Information Act 2005 in India aims to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest in order to promote openness, transparency and accountability in administration.
- The Act leaves too much room for administrative discretion.



Now, if we had to conclude this discussion, we can look at what the aim of the Right to Information Act is. It aims to provide for freedom to every citizen to secure access to information under the control of public authorities and which was the consistent with public interest in order to promote openness transparency and accountability in the administration of the government.

But it leaves a lot of room for administrative direction defined its purpose. Now, from all the different cases that we have looked at under the RTI act we have seen that section 4 of the act has been invoked and the public authorities have been asked to divulge information suo moto and they have been asked that try and ensure that the public do not have to keep filing information of the filing RTI applications to seek information.

This is something that the public authority should do on its own motion, but we also know that there are certain exemptions under section 8 of the Right to Information Act which allows a public authority to deny information under those 10 grounds and there also the public authority has the right to use its discretion to divulge information if it is of the opinion that public interest outweighs the interest of keeping the information confidential.

So, we see that the Act does give a lot of room for administrative discretion and that in a way may defeat the purpose of the Right to Information Act in advancing the interest of the environment. Now India is a democratic country and information is nothing, but the oxygen for democracy. If people do not know what is happening in the society and if the actions of

those who rule them are hidden that they cannot take part rather meaningful part in the affairs of the society.

But information is not just important for the people it is also essential part of good governance. Now, how much ever one may provide for the right to information if we have to bear in mind the socioeconomic realities of our country we are well aware that not every person in the society is literate or knows what information is available and what information is accessible or through which channels these information may be accessed.

So, in light of this problem it is important that there is a need to compile the list of routinely used environmental information and the places or sources from which the same can be obtained and most importantly it should also be an understandable form especially for those people whose lives would be directly impacted by any decision pertaining to the environment.

Now, we know that the EIA notification provides for such consultation public consultation even otherwise the ministries time and again release different versions of bills or which are about to be enacted into law for public consultation or consultation of the interested parties. So, if these procedures are undertaken more and more there would be more transparency in the working of the government. There would be more access to environmental information which would act to the benefit of the public at large and the country.