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RIGHT TO INFORMATION ACT AND SUSTAINABLE DEVELOPMENT

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Abstract:

This paper attempts to explore how the “Right to Information Act, 2005” is impacting the idea of achieving sustainable development in India.

The Right to Information Act, 2005 falling under the fundamental right to Freedom of Speech and Expression i.e. article 19(1)(a) of the Indian Constitution is an important aspect of right to free speech and expression including the right to receive and collect information. A fully informed citizen can efficiently render the fundamental duties as laid in the article 51A of the Indian Constitution. Citizens’ access to information ensures the transparency and accountability of the governance and the two always go hand in hand. The Right to Information Act along with being the necessity of the people is also a precondition for good governance. Access to Information makes the democracy vibrant and encourages citizens’ active participation in the governance. It encourages people to make meaningful choices, and influence policies and their implementation, and thus affect the overall development of the society. The RTI has a long international history and is prevailing in Sweden for past 200 years. In India, RTI was introduced in 2005 and since then has been used as a strong weapon against corruption and for transparency.

Sustainable Development is the development that meets the present needs efficiently without compromising the scope of development for future generations. The widespread health hazards and environmental degradation through the projects undertaken in the name of economic progress have emphasized the need for economic development in a sustainable manner. RTI has emerged as a “VAJRA” for the public spirited people and NGOs fighting the environmental crisis to achieve sustainable development. The Act has been efficiently used to expose hundreds of cases of illegal mining, over heighted dams, encroachments of protected wildlife areas, illegal permissions to hazardous projects, etc. Several such cases have been studied to explore and document positive impact of RTI on sustainable development as well as bring out related issues such as persecution of the whistle blowers.

Key Words: Sustainable Development, Right to Information Act, environment, hazard, social, economic, public.

Introduction:

Right from the onset of human evolution, '**Development**' has played a significant role in survival and progress of human society. The process of evolution helped Homo-sapiens to adapt to the changing surroundings and 'Development' served as an accessory to overcome various hindrances that posed any kind of threat to human survival and thus made human survival smooth and easier. Development is not only seen as an integral part of human behavior but also as a very important aspect of Mother Nature and her vital functioning. The indiscriminate development at the cost of well-being of our environment is yet the other side of the same coin. Today, the hustle and bustle of rapid growth and development at the cost of sustainability of resources has created an alarming situation causing environmental degradation. Environmental degradation occurs when as the result of the application of asset exhausting and polluting technology, earth's natural resources are depleted and environment is compromised in the form of extinction of species, pollution in air, water and soil, and rapid growth in population.

The term '**sustainability**' has emerged as a major topic of discussion amongst various groups of environment activists, nature lovers and other people concerned with the sustenance of the resources and life on earth. The Term sustainability came into the scenario along with the introduction of the concept of optimum utilization of natural resources and has played a major role in the struggle to protect the nature and its resources ever since.

The term sustainability and the importance of development for mankind made way for the emergence of a different form of development which was coined as '**SUSTAINABLE DEVELOPMENT**'. The term refers to meeting the current development needs without compromising the ability and scope of development for the future generations. This can also be stated as utilizing the natural exhaustible resources in a way so as to fulfill current demands efficiently and be available for the generations to come, for example highly exhaustible fossil fuels like coal and petroleum are high in demand but their resources are very limited and hence it is the need of the hour to use these resources judiciously so that they can be made available to the future generations and hence various alternatives are continuously being searched for these resources.

The utility of this concept is undoubtedly not hidden from the world but the bitter truth is that for a complex human civilization like the one in India, it is necessary to have a proper legal framework for implementation of any kind of major development concept including the concept of sustainable development.

The unabated exploitation of natural resources in the name of development and the absence of a separate legal entity for effective sustainable development led the activists to utilize a very popular

and useful weapon given to the people by the Indian Constitution that is '**The Right to Information Act, 2005' (RTI)** - an Act of the Parliament of India "*to provide for setting out the practical regime of right to information for citizens*" which replaces the erstwhile Freedom of information Act, 2002. The Act applies to all States and Union Territories of India except the state of Jammu & Kashmir. Under the provisions of the Act, any citizen may request information from a "Public Authority" (a body of Government or "Instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively make available certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. Till then, information disclosure in India was restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes. It codifies a fundamental right of citizens.

This study deals with the outstanding use of the RTI act for enforcing sustainable development practices and protection of natural resources. It aims at exploring ways in which various NGOs, activists and other people have used this Act to ensure environment protection and catalyze the process of sustainable development. The study includes a few well-known, land-mark cases where RTI Act has been effectively used to unearth malpractices in licensing and clearances of industrial or mining projects involving rampant exploitation of natural resources.

A STUDY OF LANDMARK CASES

Under the Environment Impact Notification of 1994, issued by the Government of India any major project involving exploitation and use of natural resources can only be undertaken after obtaining environmental clearance from the Ministry of Environment and Forests (MOEF). Applications for environmental clearance must include an Environmental Impact Assessment Report (EIA Report). The purpose of this report is to predict the adverse impact that the proposed project may have on the environment. Mining projects also require prior environment clearance before commencement and the clearance is given after evaluation by a specially constituted Expert Appraisal Committee (EAC).

The Government of India (central government) has the power to grant licenses for mineral prospecting to public and private sector companies under the Mines and Mineral (Development and Regulation) Act, 1957 (MMDR Act). Besides, in case of use of forest land for non-forest purposes, such as mining, the state and central governments are required to follow certain clearance procedures under the Forest Conservation Act, 1980.

In consideration of the above statutory requirements, given below are a few cases illustrating effective use of RTI Act .

1. Mining Ban in Rajasthan's Alwar District

The National Green Tribunal (NGT) ordered a ban on any kind of mining activity in Alwar district of Rajasthan on February 2, 2015. Before the ban, many residents living near Sariska National Park had told the court that 85 mine leases were operating near the national park without any environmental clearance. Earlier in May 2014, the central zone of NGT had banned mining in the national park and asked Rajasthan government to conduct a survey.

The court order is a huge setback for the Rajasthan government which had announced a policy to increase mining area in the state by three fold. According to the petition filed by Alwar resident Khayali Ram, most of these leases do not belong to stone and marble manufacturers who have conducted any environmental impact assessment nor have consent from the environment ministry.

A bench headed by NGT chairperson Justice Swatanter Kumar issued notice to the Union Ministry of Environment, Forests and Climate Change, Rajasthan government, Rajasthan State Pollution Control Board (RSPCB) and others, seeking their response by **March 2, 2015**. "No person would be permitted to carry out mining activity without the requisite environmental clearance, consent from the Pollution Control Board and permission from the mining authorities," the order said.

Khayali's petition has also alleged that illegal stone and marble mining is being carried out in Rajgarh tehsil in Rajasthan's Alwar district in violation of the provisions of the EIA Notification, 2006. It further added that the mines in Rajgarh tehsil are carrying out their operations, including blasting without appropriate statutory clearances required to operate such mines and destroying the Aravalli hills. The petitioner stated that these mines are located about 100 metres from the sanctuary's boundary wall and a few are operating adjacent to the boundary wall. Sariska has been the hotspot for tiger translocation program entailing re-introduction of tigers in these forests since 2008. As a proof, Ram provided the tribunal with two replies he received under RTI Act. The responses reveal that most of these mines are operating without environmental clearance and the RSPCB's consent to operate (CTO) except in 2 cases out of 85 mines. The State Environment Impact Assessment Authority (SEIAA) in its RTI reply stated that no environmental clearance has been given to any of the 85 quarries. As per the EIA notification 2006, all mines of less than 5 ha are required to obtain a clearance from SEIAA.

On the other hand, the Rajasthan government has proposed that only the area within a radius of 100 metres should be the eco-sensitive zone (ESZ) for the Sariska sanctuary. NGT on Monday also issued notices to all the 85 "illegal" quarries mentioned in Khayali Ram's application.

This is not the first time that NGT issued a ban on mining activities in Sariska. Earlier in May 2014, NGT's Central Zone Bench in Bhopal had banned all mining activities in 84 stone and marble quarries

located inside and within one kilometre radius of the Sariska Tiger Reserve and adjoining JamuaRamgarh Sanctuary in Rajasthan. The bench had also directed the Rajasthan government to take steps to ensure that “no mining activity is carried out in 61 plus 23 mining leases and the same shall remain discontinued till further orders”. The two-member Bench of Justice Dalip Singh and P S Rao also allowed the mining department to carry out a survey to verify the location of the quarries. The state government is yet to provide the details of the survey as it was established during the recent hearing related to Khyali Ram case.

Further, in 2005, a task force was appointed by the state government to check illegal quarrying. Before that, environmental activist Rajendra Singh of Tarun Bharat Sangh, an NGO based in Alwar district, had filed a public interest litigation in the Supreme Court in 1991. The apex court then directed the state government to stop issuing mining licenses. However, when stone quarry owners approached the Supreme Court again, the court ruled that mining can take place one kilometre from the park. Despite court’s orders, the mine owners did not bother to take permission and consent from the state government.

Untreated waste causing irreparable damage

Rajasthan is a leading producer of marble and various kinds of stones. According to Indian Mineral Yearbook published by government-owned Indian Bureau of Mines (IBM), Rajasthan produces 85 percent of the total marble produced in India, most of which is exported to countries like Italy and United Arab Emirates. Alwar-Sariska belt according to IBM, has about 20 million tonnes in reserves. Incidentally, stone and marble mining has immense impact on the ecology of an area. While mining in these areas have blocked off channels of water that flows in the region and reduced the habitat supported by Aravalli ranges to wasteland, marble slurry produced during cleaning and washing of marble in these mines have immense impact on the ecology.

According to a research published in Journal of Environmental Research and Development in June 2013, Rajasthan generates five to six million tonnes of slurry. This can neither be treated nor disintegrated. According to the Indian Bureau of Mines’ yearbook, slurry reduces soil’s porosity, water absorption and percolation levels. It also affects groundwater recharge. During monsoons, it flows into rivers, drains and other water bodies, affecting water quality, reducing its storage capacity and damaging aquatic life. “After the slurry dries, the finer fractions become airborne and pollute the air,” states the yearbook.

On the other hand, Rajasthan government is planning to increase reserve area for mining activities by three times after it announced a draft mining policy in December 2014. At present the state government has given mining lease of 1,846 square km, which is 0.54 per cent of the total geographical area of the state. Now the government is going to increase it to 1.5 per cent in the new mining policy.

The draft of the new mining policy released by the mining department also states that mining lease for sand stone would be issued on agriculture land as well. In the new policy, small business would be able to apply for the mining lease. At present, mining lease is available for minimum four hectares. The government, however, has decided to issue mining lease for small area of one hectare.

Observation and Inference:

In the above case the petitioner has used the Right to Information Act to seek materialistic information as is apparent from the replies received from i) State Environment Impact Assessment Authority (SEIAA) and ii) Rajasthan State Pollution Control Board (RSPCB) in favour of his writ filed with the National Green Tribunal against illegal stone and marble mining that was being heard in Rajgarh tehsil in Rajasthan's Alwar district. Petitioner Mr. Khayali Ram efficiently used the tool of RTI to disclose the ignorance of the norms to be followed while giving mining permits and thus prevented indiscriminate mining activity that could have led to a widespread misuse of natural resources and thus helped in sustaining the resources.

2. National Mineral Development Corporation (NMDC) vs GOI

In 2002, the petitioner National Mineral Development Corporation (NMDC), a public sector enterprise under the Central Government, applied for permission to undertake mineral exploration in an area in the Bailadila forest reserve in the largely tribal district of Bastar in Chhattisgarh—a mineral and forest rich state.

In November 2006, the State Government of Chhattisgarh recommended to the central government that a prospecting license in the same area be given to Tata Iron and Steel Company (TISL), who had proposed to set up an iron and steel manufacturing plant in the state. In February 2007, the central government conveyed its approval to the state government, provided the state government ensured that TISL complied with the applicable rules and regulations and obtained environmental clearance under Section 2 of the Forest Conservation Act. Subsequently the state government granted a prospecting license to TISL for two years, but waived the conditionality of setting up the iron and steel plant on the advice of the central government. NMDC challenged this decision through a writ petition before the Delhi High Court on the grounds that: (a) the central government had not given the mandatory environmental clearance through its Ministry of Environment and Forests under Section 2 of the Forest Conservation Act, and (b) NMDC ought to have been given preference under the MMDRA because it is a public sector company.

Use of RTI

In its petition NMDC claimed that it had originally filed a revision petition before the Mines Tribunal against the grant of license by the state government to TISL. It was during the revision proceedings that

NMDC became aware of the impugned order. NMDC alleged that the impugned order was kept secret, but they were able to access the order through the RTI Act. Using this information, NMDC was able to show that the central government's approval letter was treated as an order for grant of license, even though the mandatory environmental clearance was not obtained by the company.

Decision

The Court held that the central government had failed to comply with Section 2 of the Forest Conservation Act before issuing its approval for the grant of license to TISL by the state government. Therefore the central government's approvals, and all the proceedings under the MMDR Act leading to the order of grant of the prospecting license, were quashed as contrary to law and outside the Union Government's jurisdiction.

3. Utkarsh Mandal vs UOI

Panduranga Timblo Industries (PT Industries), a private sector company, sought environmental clearance to re-start mining operations in Goa. The EAC evaluated and accepted the proposal for environmental clearance, and the Government of India granted clearance to PT Industries. The petitioner Utkarsh Mandal appealed the environment clearance to the National Environmental Appellate Authority (NEAA), but the appeal was dismissed. Subsequently, the petitioner approached the Delhi High Court, challenging the grant of environmental clearance and the dismissal of their appeal by the NEAA on the following grounds:

The public hearing held in the villages affected by the mining operations prior to the grant of environmental clearances was a farce as many people did not get an adequate opportunity to raise their objections;

The environmental clearance was granted by the Goa State Pollution Control Board without due application of mind;

The entire procedure was affected by a lack of fairness because the Chairperson of the EAC was himself on the board of four other mining companies, so the Chairperson of the EAC had a conflict of interests.

Use of RTI

In order to support their contention about conflict of interests the petitioners sought and obtained documents from the Ministry of Environment and Forests under the Right to Information Act, 2005 (RTI Act) that clearly showed that the Chairperson of the EAC was simultaneously serving on the board of four mining companies. When these documents were placed before the Court it found "an obvious and direct conflict of interest." (Para. 44). The reply also revealed that the EAC had cleared about 410 mining proposals in just six months but had made only four site visits to evaluate the environmental impact of the mining leases. The Court found the large number of approvals in such a short period of time to be "unsatisfactory" and an "unseemly rush to grant environmental clearances". (Para. 45). The

small number of site visits suggested to the Court that these may not have been conducted in the current case. The Court ordered the EAC to undertake site visits in order to evaluate the past operations of a mine before granting clearance to reopen it.

Decision

The Court set aside the grant of environmental clearance by the Ministry of Environment and Forests, and remanded the matter to a freshly constituted EAC. The Court directed the EAC to evaluate the matter under further directions specified in the judgement.

4. Balachandra vs Union of India

Facts

JSW Energy Ltd a private sector company proposed to construct a 1200-MW coal-fired thermal power station at Jaigarh, Maharashtra. This area is flush with mango orchards. JSW Energy applied to the MOEF for environmental clearance, and they referred the matter to a committee of experts. JSW Energy told the committee that a university would undertake a study of the environmental impact, within six months. The committee decided that the proposal may be considered further only after the study on the impact of the project on alphonso mango plantations was completed. Three months later, the committee reconsidered the matter. Even after noticing that an interim report from the university stated that it “is necessary to undertake a detailed study for a period of 4 years to evaluate impact”, the project was still conditionally approved.

Petitioner B.B. Nalwade, who owned a mango orchard in the area, challenged the conditional approval on multiple grounds, including erroneously relying on the inconclusive university report.

Use of RTI

B.B. Nalwade filed before the Court information he obtained under the Right to Information Act, 2005 (RTI Act). Part of this information was correspondence between JSW Energy and the university. JSW Energy had requested the university to give its expert opinion on the impact of the proposed power station on mango plantations near the project site. The University declined the request. They stated that they had neither generated the necessary data, nor had the expertise to undertake such studies, and those studies required collaboration with government or semi-government institutes. They would only provide limited assistance by observing mangoes and vegetation. JSW Energy subsequently requested that the university conduct a detailed study, with JSW bearing the expenses and arranging for collaboration with government or semi-government institutes.

Science and Technology Park, Pune was brought in to collaborate with the university in a joint study of the impact of the proposed power plant on the environment, particularly the mango plantations. B.B. Nalwade sought information under the RTI Act months after the committee granted approval. The response revealed that the two organizations met and there was a list of equipment required for the study, but the impact survey had not started, no samples were collected, and no equipment was received. In India, the doctrine of sustainable development strikes a balance between development and protecting the environment. This doctrine has resulted in the development of several principles, one of which is the precautionary principle.

This principle makes it mandatory for the government to anticipate, prevent, and attack causes of environmental degradation. (Para. 24). This requires that if it is not possible to make a decision with “some confidence, then it makes sense to err on the side of caution and prevent activities that may cause serious or irreversible harm.” (Para. 26). Regulatory action is justified where environmental risks are “uncertain but not negligible, with the burden of proof lying on those who are attempting to change the status quo.” (Para. 26). The information obtained under the RTI Act implied a lack of confidence, so under the precautionary principle, the committee should have erred on the side of caution.

Decision

The Court directed the committee to re-examine the approval after considering the reports of the university on the basis of data actually collected and analyzed by them, and keeping in mind the principles of sustainable development. The Court also directed that till this approval is granted, if at all, the power plant cannot be made operational. JSW Energy was allowed, however, to undertake tests and operational trials while awaiting the committee’s decision.

With the detailed study of these cases it is evident that the Right to Information Act has sufficiently proved itself as a powerful weapon in the hands of environment activists, whistleblowers and that of the common man against the indiscriminate use of resources. This act has the potential to suffice the urgent need of a strong legal framework to support the gradual requirement of sustainable development to a large extent. Thus in the nearby future a rapid increase in the use of this act can be observed for the motive of protecting resources from indiscriminate exploitation and supporting sustainable development.

Conclusion and Suggestions

After traversing through a realm of disasters brought in by the indiscriminate development practices and exploitation of (exhaustible) resources and having witnessed a lot many efforts made in the direction of sustainability of resources, it is worth concluding that in this fight against the exploitation

of resources to establish sustainable development; the Right to Information act has formed the backbone of all the efforts made in this direction. The RTI act has enabled several activists to seek information from various organs of the government and from other such bodies including the organizations responsible to keep a check on the utilization and exploitation of resources. The information, in turn had been utilized to expose any kind of anomalies or malpractices being undertaken by any of these organizations resulting in cancellation or modification of such resource intensive, exploitative projects. Various kind of ill practices prevail in these offices responsible to serve as a watchdog for the interest of the environment which has gradually led to a situation of acute distress amongst the activists. It is because of the RTI Act that now it is easier to catch the wrongdoers because of transparency of information which was a tedious task earlier.

One important suggestion that can be made keeping in mind the current scenario is encouraging the active role of whistleblowers to unveil the wrongs prevailing in various organizations. Whistleblowers, as we know are the new additions to the activists' group working for the betterment of the society. They themselves being a part of the organization have a better knowledge regarding the flaws in the system and can help better in rectifying these flaws and can even help by disclosing the wrongdoers publically.

Whistleblowers do play a major role in strengthening the use of RTI Act for the purpose of facilitating sustainable development, albeit at times at a risk to their life. During last few years a large number of whistleblowers and RTI activists have been threatened, attacked and a few murdered to prevent them from exposing corruption. In order to make them function effectively, an efficient legal setup to protect them is very much required. A Whistleblowers Protection Act received presidential nod in May 2014. But the government has still not drafted or notified the rules to implement the Act.

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