In the present era of rapid development in science and technology and consequent commercial and industrial growth, the environment is repeatedly violated with scant regard to ecological balance. In the mounting violations of the environment what is at stake is the well-being of the people. Regulatory processes of the State for environmental protection have to reach new dimensions in this context.

Many a sermon on public awareness on the extent of pollution and the need for a clean environment is being made. The press, radio, television and other media highlight the evils of environmental pollution and try to create an environmental conscience among the public. Once people become environmentally conscious and mass movement gather momentum, law cannot lag behind. Clear and effective provisions providing for public participation in environmental decision making will necessarily have to be incorporated in legislation.

**Forms of Public Participation**

Public participation in environmental decision making process can take a variety of forms. The public can form pressure groups exerting influence on government for making proper decision. These groups can conduct public interest litigation with a view to preserving environmental quality. Members of the public can act as members of advisory councils and agencies

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constituted for the protection of the environment. They can even act as enforcement personnel. Last but not the least, members of the public can become spokesmen of environmental interests in inquiries held prior to making a decision impacting on the environment.

**Benefits of Public Participation**

In order to exercise democratic rights in a meaningful manner, citizens should have access to information about the proposed action of government and its agencies. Apart from this aspect, public participation has advantages of its own.¹

In contra-distinction to the heterogeneous character of the diffuse interests of the general public, industrial and commercial undertakings have a concentrated stake in many environmental decisions. These forces of industry and commerce, on which there is too much government reliance for various reasons, have vast resources at their disposal. More often than not they are able to present their case in a persuasive manner and to press for its acceptance. The compulsory need to hear the members of the public before a decision is taken will go a long way in checking and alleviating their influence. It thus bridges the gap created by the unequal positions between the members of the public and the mighty industrial leviathans. Moreover, active public participation will help the industry and the public know each other's view and improve their mutual relations.

Consultation with the public streamlines the work of, and energises, environmental decision making agencies. In other words, it helps to improve the administrative process by enabling the agency to consider all aspects of environmental questions and to make an objective decision. Public participation facilitates presentation of alternative views otherwise not presented and allows the agency to go deep and thorough in their analysis,

with a close look into the costs and benefits, of the environmental protection measures proposed. Instead of bringing delay and procrastination into the decision making process, public participation definitely eases the pitch for quick, and at the same time proper, decisions. This is because the agency easily gets at the real issues after hearing diverse views and opinions.

Public participation renders reasonable and effective opportunity to all the interests, affected or likely to be affected, to present their case. It enhances public confidence in decision making processes and ensures public acceptance of the decision. The process makes it possible for an optimum contribution by the public to the decision making and leads to high quality decisions for a clean human environment. Consultation with the public helps bringing to light the inadequacies in legislative and regulatory guidelines and paves the way for suggesting reforms to the decision making process itself.

FOREIGN EXPERIENCE

Countries like the United States, Britain and the U.S.S.R. give great significance to the concept of public participation in the area of environmental protection. The form and methodology of participation may vary; but these countries have accepted the principle that the public should be involved in the diverse processes having environmental implication.

(i) The U. S. Strategy

One of the most exhilarating exercises in active public involvement can be found in the environmental decision making process in the United States. The National Environmental Policy Act 1969, known as NEPA, provides that before they take up 'major federal actions significantly affecting the environment' all Federal Agencies should prepare an environmental impact statement. The EIS, as it is popularly called, contains, in addition to 'the environmental impact of the proposed action', other details such as 'any adverse environmental effects which cannot
be avoided should the proposals be implemented, alternatives to the proposed action, the relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. The words 'federal actions' include any project 'involving a federal lease, permit, license, certificate, or other entitlement for use' and thus the impact process applies even to private action needing these requirements.

EIS is an exercise in information communication. The statement is prepared after consultation with experts, State agencies, other specialists and the general public. This provides the public with an opportunity to acquaint themselves with the environmental consequences of the proposed action. Publication of the EIS affords the public an opportunity to comprehend the environmental impact of the proposed project. Further, they can verify the genuineness of the decision making process and assess the rationale behind the decision. Within a couple of years after the enactment of NEPA, the United States had converted the environmental impact assessment into the most powerful weapon in the hands of the public in their war in defending the environment. The Presidential Order in 1970 exhorted the agencies to develop impact procedures in such a manner as to ensure timely public information, elicit views of interested parties and provide for public hearing. Next year the guidelines issued by the Council on Environmental Quality fanned the flame. It laid

3. 1971 Council on Environmental Quality guidelines. S. 5(a)(ii) noted that major federal action included any project and continuing activities "involving a federal lease, permit, license, certificate or other entitlement for use." Thus any private action impacting on environment and requiring a federal lease, permit, etc., should be preceded by an EIS. For the text of the guidelines, see, infra, n. 7 at p. 12.
6. Executive Order 1514 (March 5, 1970) 35 F.R. 4747. For the text see E.L.R. (Statutes and Regulations), 45003. The order was issued in furtherance of the purpose and policy of NEPA.
down the specified requirement that the draft statement be made available to the public for a minimum period of ninety days and the final statement for thirty days before the agency acts. Encouraged by these moves some States have gone ahead in incorporating the impact process in their laws. The process, when applied to a broad range of activities, facilitates popular participation on large scale, bringing substantial benefits on individual projects and agency decision making.

The marked expansion of citizen's right to participate in administrative process in the United States may be attributable to two pre-existing general laws - the Administrative Procedure Act 1946 which recognises the role of public participation both in adjudicatory and rule-making processes and the Freedom of Information Act 1966 which lays down that all the relevant data must be made available to the public. Recent enlightened opinion is that public hearing is a must for all environmental decisions and that environmental questions have to be investigated not in a 'star chamber' style but in the daylight of public scrutiny and deliberations. Whether it relates to standard fixing in air quality or water quality, highway location or

8. For instance, the State of California has passed a law—Environmental Quality Act 1970—patterned on NEPA. In a notable decision, Friends of Mammoth v. Board of Supervisors of Mono County, [2 E.L.R. 20673 (1972)] the California Supreme Court held that under California's Environmental Quality Act a prior impact study is necessary before a private project is approved. This was a case in which a private developer who proposed to build a recreational village with living units and shopping facilities is held not entitled to receive a conditional permit until the environmental report is complete.
11. It is said that Federal Water Quality Administration (FWQA) has information officers "providing public with full information on efforts (f. n. contd.)
design, general land use planning or to the question whether a particular drug could cause cancer to laboratory animals a public inquiry is necessary.

(ii) The British Model.

The Control of Pollution Act 1974, a comprehensive legislation in Britain, emphasizes the need for public participation in pollution control measures. The Act is designed to control waste disposal, pollution of water, noise and pollution of the atmosphere. Under the provisions of the Act, the Secretary of State can hold a local inquiry with a view to preventing, or dealing with, pollution or noise at any place. It is true that whether or not an inquiry is to be held is a question of governmental discretion. But when the inquiry is held the public get an opportunity to participate actively in the process. The law provides also for consultation with members of the public when waste disposal plans are prepared.

The Control of Pollution Act has introduced significant rights of public participation in the provisions relating to control of water pollution. The consent administration for the discharge of pollutant to a stream or to the sea is conditioned by appropriate procedural safeguards. Notice of consent application is to clean up the Nation's Waterways even if such disclosures may sometimes be controversial. Status Report by Federal Water Quality Administration, "Water Quality and the Environment" (1970), Edward H. Robin and Mortimer D. Schwartz (Eds.), The Pollution Crisis (1972), Vol. II, p. 93.

14. Environmental Protection Agency (EPA) held secret science courts in which lawyers of drug manufacturing companies appeared. It is said that such clandestine hearings without public participation will make the EPA lose all its credibility. Ross Sander, "EPA's Secret Science Courts", Environment, Jan-Feb. 1982, pp. 4, 5.
15. Control of Pollution Act 1974, S. 96.
16. Id., S. 2(3)(a)(iv) and (b)(i) and (ii).
17. Id., S. 36.
to be published not only in the London Gazette but also in a local newspaper. In deciding whether or not to grant consent, the water authority has to consider written representations made, by any person, within six weeks of the publication of the notice. This enables voluntary organisations for environmental protection and even individuals with environmental conscience, to object the consent application and thus to involve themselves actively in the environmental decision making process. The conditions under which the consent is granted are recorded in a register which is open to the public. It is the duty of the water authority to afford the members of the public reasonable facilities for obtaining copies of entries in the register.

Public inquiry is a common phenomenon in other environmental protection legislation in Britain. The laws on public health, housing and town planning are examples. Schemes or plans proposed, either by the Minister himself or by a local authority, are subjected to public scrutiny in an inquiry. Inspectors hear the objections and make a report; the Minister decides. In most cases the inspector's report is published giving further opportunity to the public to have a look at the soundness of the scheme or plan.

The environmental impact process of the U.S. type has demonstrated broad international appeal and many countries

20. For a discussion on inquiries, see Wade, Administrative Law (1982), Ch. 24.
21. Recently, a suggestion is made to substitute the existing formal inquiries by inspector with informal hearings headed by suitably independent chairman who can “take an active role by elucidating matters which the public were having difficulty and bringing his own interpretation of the facts as a contribution to the discussion”. Martin Jewel. “Is There an Alternative to the Public Inquiry”, [1979] J.P.L. 216 at p. 231.
23. Canada, Columbia, Japan, New Zealand, the Soviet Union, Australia,
have evinced keen interest in having an analogous technique. Britain is yet to incorporate in its law environmental impact processes of the U.S. type signifying active public participation. There is a strong plea for such an incorporation. It is true that the Government Departments or industry may make, on their own, an impact assessment of a new project. Carried out secretly this exercise does not get the benefit of public scrutiny and comment. Secrecy in these matters is not in the public interest. The Royal Commission on Environmental Pollution was advocating for fullest possible disclosure and for formation of a machinery through which the local people could express their views and help evolving a sound decision.

(iii) The Soviet Style

Unlike their U.S. counterparts, citizen organisations in the U.S.S.R. do not involve themselves in litigation against governmental projects. But acting within the system they strive for securing more effective environmental protection measures. Nicholas C. Yost, a member of the U.S. delegation to study Soviet environmental protection processes, enumerated the roles of citizen group in the U.S.S.R. as follows:

"The activities of the Soviet environmental groups include comments on draft legislation, inspections to assist environmental law enforcement, propaganda, beautification, a role


in facility siting, and promoting the establishment of parks and the preservation of wild-life."\textsuperscript{27}

Nature protection societies help the Government in enforcing environmental laws by making surprise inspection of polluting factories, taking samples of air and water and getting them analysed in Government laboratories.\textsuperscript{28} They do have the same legal immunities and legal protection as the Government inspectors have. Approval by the nature protection society in the locality is a condition precedent for facility siting. Government turns down projects not approved by nature protection societies. This is a revolutionary technique of public participation in environmental decision making.\textsuperscript{29} Obviously it is a step ahead even of the attractive U.S. scheme of impact assessment process.

\textbf{Indian Law}

Does Indian Law recognise the significance of public participation? Does it provide for public participation in the various administrative processes having an impact on the environment?

The Water (Prevention and Control of Pollution) Act 1974\textsuperscript{30} and Air (Prevention and Control of Pollution) Act 1981\textsuperscript{31} are the most notable laws designed to protect the environment. Both these laws are framed exclusively to protect the environment more or less on identical terms. The provisions of the Water (Prevention and Control of Pollution) Act 1974


\textsuperscript{28}. \textit{Ibid.}

\textsuperscript{29}. There are interesting examples where the Government did not accept projects disapproved by nature protection societies. A local society refused to approve a suburban brewery under consideration. The Ministry of Food and Industry in Moscow opted to stand on the side of the society rather than to agree to the project. The citizen group in Kazakhstan objected to the continuance of a fish factory on a lake that affected birdlife. The Government readily ordered to close down the factory, \textit{id.} at 50054.

\textsuperscript{30}. Central Act No. 6 of 1974. For the text, see A.I.R. 1974 (Acts) 58.

reveal the typical Indian approach to the concept of public participation.

(i) Public Kept in the Dark

Members of the general public are the victims of pollution. Their interests have to be protected. It is with this view that pollution control processes are to be designed. Surprisingly, Water (Prevention and Control of Pollution) law does not seem to lay emphasis on the principle of public participation. Previous consent of the State Board is necessary for bringing into use any new or altered outlet for the discharge of sewage or trade effluent or for making any new discharge of sewage or trade effluent. Unlike the British law\textsuperscript{32} which lays down publication of the consent application, here in India there is no such procedure prescribed by the law. This means that the scheme does not envisage public participation. The people do not know who applies for consent. They do not know what kind of pollutant is discharged to their neighbourhood. They do not have a right to ask for an inquiry. In considering the application for consent the State Board may make an enquiry. The concerned provision reads:

"The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.\textsuperscript{33}"

The wording makes one thing clear. The Board has complete discretion in the matter. It decides whether or not there be an inquiry. It decides what the scope and nature of the inquiry shall be. True that the Board is compelled to follow the procedure laid down in the Rules which usually do not refer to any kind of public participation. The Kerala Rule\textsuperscript{34} is an illustration. The only procedure laid down therein is that an officer of the Board with or without assistants will be deputed

\textsuperscript{32} Supra, n. 17.
\textsuperscript{33} Water (Prevention and Control of Pollution) Act 1974, S. 25(3).
\textsuperscript{34} Kerala Water (Prevention and Control of Pollution) Rules, 1976, Rule 30.
to visit the premises of the applicant. He verifies the particulars and information given by the applicant. On doing so no consultation need be made with members of the general public. What the officer can do is to ask the applicant to produce any such additional information as he may consider necessary for the investigation of the application. The whole provision is blissfully lacking in any mechanism wherein a member of the public or anybody other than the applicant is given an opportunity to participate in the investigation.

The people are kept in the dark throughout the process although the damage done to them may be of intense degree. The industry may not, necessarily, disclose everything relevant to the officers of the State Board making the investigation. The inspecting personnel may not always be in a position to act in accordance with the interest of the public and in an objective manner. A provision for public scrutiny would have rationalised the process bringing relevant factors to the consideration of the inspecting personnel and the Board. Such built-in safeguards are wanting in the Indian Law.

(ii) EIS: Desideratum

The concept of environmental impact study still remains alien to the Indian law. The Water Act does not envisage such a study before the Board decides to grant or not to grant consent. The Board has no statutory obligation to examine the environmental impact either of a proposed or of an existing industrial activity causing pollution. India is at present in a stage of taking off to newer heights of industrialisation and technological progress. Environmental impact study plays a significant role in striking a proper balance between industrial growth on the one hand and the existence of a pollution free human life on the other. As seen early in the United States environmental impact process, public participation plays a momentous role. It affords the general public an opportunity to present their views and to comment on the environmental consequences otherwise not pointed out to the decision making agency.

35. Supra, nn. 4-9.
(iii) **Access to Data: Imperative**

The State Board can impose binding conditions on the nature and composition, temperature, volume and rate of discharge of the effluent when it grants consent.\(^3\)\(^6\) The people are not involved in the inquiry prior to the granting of consent or imposing of conditions. They are not given an opportunity to have any say on the conditions imposed while granting consent. Even after the decision is taken and conditions are imposed the members of the general public are not permitted to know the nature of the conditions.

The Board maintains a register containing the particulars of the conditions imposed. Access to the register of conditions is restricted. The register can be inspected only by 'a person interested in, or, affected by the outlet or effluent in the land or premises' or by another person authorised by such person.\(^3\)\(^7\) This restriction is unwarranted. Who will decide whether or not a particular person desirous of inspecting the register is 'interested'? Conditions are imposed with a view to reducing ill-effects of discharge of effluents. There is no harm if the register is made open to the public. On the contrary access to the register of conditions will enable the people to compare the conditions imposed by the Board on identical cases and to impose an effective check on any discrimination. The evil of pollution which the law seeks to remedy is very grave and of much public concern. The members of the general public are all interested in doing away with this evil. It is only proper and expedient to confer on the public the right to scrutinize the conditions imposed. It helps to bring to the attention of the Board the insufficiency or unreasonableness of any conditions. Regulatory process in a democracy will be effective only when they are conditioned by meaningful standards of public participation and by unrestricted access of the public to data.

(iv) **Declaration of Control Zones: Public Involvement**

The power of the State Government to restrict the application of the Act to certain areas and to declare water pollution

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37. Id., S. 25(6).
prevention and control areas is a significant one.\textsuperscript{38} By implication this includes the power to exclude any area from the application of the Act. No provision is made to consult the people before a control zone is declared. True that the State Board is consulted or the declaration made on the recommendation of the Board. For altering any such area notification in the official gazette is necessary. Perhaps this signifies a limited public participation. It gives the public an opportunity to examine and bring to the notice of the Government whether any area which should have been included is left out.

(v) \textit{Prosecution by a Member of the Public}

Control of pollution being a matter of interest not only to the Board but also to the public in general a member of the public should have the right to see that the provisions of the Act are implemented properly. Unfortunately, the Water Act does not confer this right. A member of the public cannot lodge a complaint before the Court unless the Board permits him to do so. No Court shall take cognizance of any offence under the Act except on a complaint made by, or with the previous sanction of, the State Board.\textsuperscript{39} There being no conflict of interest between the Board and the public, the position must be that members of the public should be given the right to complain under the Act even without the sanction of the Board. The right of a member of the public to initiate prosecution should be recognised under the Act.

(vi) \textit{Appeal by a Member of the Public}

The Act does not confer on a member of the public the right of appeal against an order of the Board. Only a person aggrieved by an order of the State Board can file an appeal within 30 days from the date on which the order is communicated to him.\textsuperscript{40} This provision in the Act means that a person who has submitted an application for consent and against whom the order

\textsuperscript{38} Id., S. 19.
\textsuperscript{39} Id., S. 49.
\textsuperscript{40} Id., S. 28.
is made alone can appeal against the order. The polluter or the potential polluter has thus the right of appeal. But the general public are denied the right. If the Board gives consent without any conditions in a case where the discharges made in pursuance of such consent are likely to pollute water, the Act leaves the public with no remedy.

CONCLUSION

A comparative analysis of the Indian law with other laws reveals one disappointing fact. In a potential area where the members of the general public could have been actively involved on a large scale, the Indian law totally fails to keep abreast of the modern trends in other countries. As was done in the United States, and in other countries that followed suit, India should adopt environmental impact processes, carried out in the open, in which the people get a fair and effective opportunity of contributing significantly to a sound and objective decision making. The need for open public inquiry is to be emphasized in this context. Openness and fairness being the watch words of modern welfare administration, people should have ready access to the deliberations of the environmental protection agencies. This will help the authorities to make rational decisions. The register of conditions under the pollution control laws should be kept open to the public without any restrictions. Members of the public should have the right to lodge prosecution in a court of law without the sanction of the pollution control agency. A provision granting the public a right of appeal to a court or a higher authority against the decision of an agency will enthuse proper administration of the law designed to achieve environmental justice. In the daylight of public scrutiny and participation, the imperfections which dampen the pollution control activities will evaporate, fairness condition the mechanics of environmental decision making and the human environment be rendered worth living.

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