# RIGHT TO INFORMATION AS AN 'ENVIRONMENTAL' RIGHT: TRENDS, ISSUES AND CHALLENGES IN INDIA

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**ABSTRACT**

*Principle 10 of the Rio Declaration by recognizing the concept of 'procedural environmental rights' has changed the way countries look at environmental rights in general. The three procedural rights, namely, right of access to information, right of public participation in environmental decision-making process and right of access to justice identified under the declaration are supposed to contribute towards greater realization of substantive environmental rights. These rights have made their way to municipal law by means of statutes, policies, governmental notifications, executive orders, etc. In the Indian context, the right to information has been adopted into the municipal domain by means of a statute and has contributed immensely to increase access to information. This paper assesses the Indian framework of right to information and its contribution towards greater realization of substantive environmental rights in India. It also highlights the key issues that impede the guarantee of a wholesome right of access to environmental information by an individual in India. While the situation seems assuring, we are yet to go a long way to achieve the desired objectives under the Rio Declaration.*

## I. INTRODUCTION

The environmental rights framework in India has been crystallized into a Fundamental Right guaranteed under the Constitution. A progressive interpretation of Article 21 of the Indian Constitution by an activist judiciary has led to formation of a substantive 'right to environment'. This right to environment has been manifested through various nomenclatures like right to air free from pollution, right to clean drinking water etc.[1] While this substantive right is an end that one seeks to achieve, the means used

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[1] See Subhash Kumar v. State of Bihar, 1991 SCR (1) 5; Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

to achieve this end, is often identified as a procedural environmental right (**"PER"**).

Under body of international environmental law, explicit recognition has been given to the PERs under Principle 10 of the United Nations Convention on Environment and Development (**"Rio Declaration"**).[2] Three procedural rights, namely, right of access to information, right of public participation in environmental decision-making process and right of access to justice have been identified. Principle 10 reads as:

> Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.[3]

The objective of Principle 10 was to empower civil society with civil, political and procedural rights to influence policy making and decision making that are environmentally benign and sustainable. It was believed to usher in an era of 'environmental democracy'. Numerous attempts have been made at national and regional levels to strengthen the mandate of Principle 10 of the Rio Declaration and as a guide for policy makers and governments. For instance, the Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (**"Bali Guidelines"**) have been adopted by the United Nations Environmental Programme in 2010 as a guide for national authorities to assess their legislations giving effect to PERs.[4] Further, various regional instruments have been adopted to

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[2] Report of the United Nations Conference on Environment and Development, August 12, 1992, U.N. General Assembly, Official Record, U.N. Document A/CONF.151/26 (Vol. I), available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf, last seen on 25/01/2021.

[3] Ibid.

[4] *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matter*, United Nations Environmental Programme, Sess. XI/5, part A, (26 November, 2010) available at https://wedocs.unep.org/handle/20.500.11822/11182, last seen on 04/02/2021.

further the implementation of the 'three cornerstones' of Principle 10.[5] Principle 10 has therefore set the floor for a growing body of domestic and international jurisprudence.

Though PERs find their source to a single international legal instrument i.e., the Rio Declaration, owing to different legal systems and legal cultures across jurisdictions, the rights have been imbibed into the municipal systems in varying ways and degrees, with a comparatively low degree of recognition in developing countries. This may be attributed to factors like lack of informed citizenry to participate in decision making, presence of weak institutions, lack of easy access to Courts etc.

The objective of this paper is not to highlight the importance of the PERs but to evaluate the efficacy of the rights in the Indian context. The paper seeks to highlight the issues in the effective realization of the PER of right of information with use of an analysis of existing legal framework, specific interpretations by the judiciary and practical problems faced by individuals.

## II. ELABORATING PROCEDURAL ENVIRONMENTAL RIGHTS

### 1. Origin and Significance

The first attempt to codify the PERs was done through Principle 10 of Rio Declaration. Principle 10 is the only empowering instrument at the international level that highlights the role of non-state actors in the road towards sustainability. Though the principle demarcates three prominent rights, it actually includes in its ambit a host of other civil and political rights like the right of assembly, right of dissent, right to sue the Government etc.[6] The 'soft law' nature of Principle 10 was given the form of specific legal obligations by a regional agreement called UNECE Convention on Access to Information, Public Participation in Decision

[5] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention"), 1998 in the Europe; Lima Vision for a Regional Instrument on Access Rights Relating to Environment, 2013; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ("Escazú Agreement") (to be entered into force in 2021).

[6] S. Stec, *Developing Standards for Procedural Environmental Rights through Practice – The Changing Character of Rio Principle 10,* 4 in *Procedural Environmental Rights: Principle X in Theory and Practice* (J. Jendrośka and M. Bar, 2017).

Making and Access to Justice in Environmental Matters (**"Aarhus Convention"**). The Aarhus Convention has furthered the objective of Principle 10 by providing for a model provision for guaranteeing PERs at the national level.[7]

Irrespective of the level of enforceability, PERs play an important role in empowering citizens, making them feel involved, and giving democratic sanctity to environmental governance in a country.[8] They serve not only as a guarantee of the right to environment and a mode of increasing participative democracy in environmental protection but also as an effective instrument of monitoring compliance and enforcing environmental law.[9] Realizing this importance of PERs, the rights have been given due acknowledgment in the legal framework at national, supranational and international level. Some of these legal recognitions might exist in fragmented, but overlapping laws.

### 2. Right to Information as a PER

The PER of right to information indicates a right to access or obtain information document, reports or meetings, that has impacted or is likely to impact environmental governance in the country.[10] The gamut of information that can come under this right can range from policy decision, circulars, orders of the environmental regulators of the country to information on emissions, reports of expert committees, detailed report on environment impact assessment, etc. The Aarhus Convention has provided for the definition of some key terms such as 'public authorities', 'environmental information' and 'public concerned'. For instance, the Aarhus Convention provides for an inclusive definition of 'environmental information' as any information regarding state of elements of the environment, administrative measures, policies or legislations or plans that

[7] *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,* UNECE, available at https://unece.org/DAM/env/pp/documents/cep43e.pdf last seen on 04/02/2021.
[8] J.C. Gellers & C. Jeffords, *Procedural Environmental Rights and Environmental Justice: Assessing the Impact of Environmental Constitutionalism*, Human Rights Working Paper Series, Economic Rights Working Paper no. 25, University of Connecticut (2015).
[9] J. Jendrośka, *Introduction,* xvii in *Procedural Environmental Rights: Principle X in Theory and Practice* (J. Jendrośka and M. Bar, 2017).
[10] Supra 7, Art. 2(3), 5(3) & 5(5).

are likely to affect elements of the environment or conditions affecting human health, life and safety.[11]

## III. RIGHT TO INFORMATION AS A PER IN INDIAN CONTEXT

### 1. Legal Provisions

*1.1 Constitutional Guarantees*

The right to information (**"RTI"**) jurisprudence in India has developed under the gamut of a fundamental right of freedom of speech and expression. The Supreme Court has opined that the right to know about the functioning of Government is a way to express themselves and hence an open Government that discloses information is important for meaningful exercise of the right under Article 19(1)(a)[12] and Article 21.[13] This right to know has been given varying connotations, depending on the context. From good governance point of view, the right has been recognized as a part of Indian Administrative Law.[14] For example, the right to know the reasons behind a decision taken by a quasi-judicial body or the right to know the reasons for arrest of an individual. To that extent, the substantive right to clean environment under Article 21 of the Constitution and the right to information as a part of Article 19(1)(a) might seem disparate. This was true of the situation pre-2005, when there were no instances of the 'right to know' being invoked in relation to environmental issues.

*1.2 Statutory Guarantee – Right Based Guarantee*

Subsequently, the right to know received statutory recognition under the Right to Information Act (**"RTI Act"**) in 2005. It is beyond the scope of this paper to get into the reasons behind the statutory recognitions. But it can be stated with conviction that the statutory recognition sharpened the

[11] Supra 7, Art. 2.
[12] State of Uttar Pradesh v. Raj Narain, AIR 1975 SC 865; S.P. Gupta v. President of India, AIR 1982 SC 149.
[13] Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Private Ltd., (1988) 4 SCC 592; Research Foundation for Science Technology and Natural Resources Policy v. Union of India (UOI), (2005) 13 SCC 186.
[14] F. Ahmed & S. Jhaveri, *Reclaiming Indian Administrative Law,* 59, 70 in *Regulation in India: Design, Capacity and Performance* (D. Kapur and M. Khosla, 2019).

weapon of right to know. As the RTI Act in India allows all citizens to seek information under the control of public authorities as a matter of right, in the manner prescribed under the Act,[15] the RTI framework has been used thoroughly by environmental activists and researchers to seek information from various environmental public authorities like the Ministry of Environment, Forests and Climate Change (**"MoEF"**), Pollution Control Boards, Environment and Forest Department of various States, National Green Tribunal (**"NGT"**) etc. some of which have been discussed in Part IV of this paper.

*1.3 Statutory Guarantee – Duty-Based Guarantee*

Not just the RTI Act, but the right to know has been etched in the various environmental statutes in the country in various forms, with varying semantics. When we talk of the environmental context, it is pertinent to look at the PER not only from the rights perspective, but also from a duty perspective. Implying, it should be understood not just as a right to obtain information, but together with a corresponding duty to disclose information, whenever required. This duty to disclose information can vest in a public authority, like the Pollution Control Boards or an industry or an individual engaging in polluting activities. This duty to disclose information might appear in form of a mandatory requirement under various environmental statutes and rules, framed thereunder.

The two prominent environmental protection laws; the Water (Prevention and Control of Pollution) Act, 1974 (**"Water Act"**) and the Air (Prevention and Control of Pollution) Act, 1981 (**"Air Act"**) work on 'command and control mechanism' whereby they prescribe some standards for emission and all industries which are potentially pollution causing are required to obtain consent from the regulators under the Acts i.e., the State Pollution Control Board (**"SPCB"**). In light of the command-and-control mechanism, there are two-fold requirements for disclosure of information; first, the regulated body should disclose all details about its potential pollution causing activities and second, the regulator should disclose details regarding grant/refusal of consent, conditions attached, etc. Consequently,

[15] Ss. 3 & 4, The Right to Information Act, 2005.

the industry has to, in the form of an annual statement, disclose steps taken to comply with the consent and conditions as imposed by the regulator.[16] For instance, pursuant to this requirement, Sterlite Copper Industries has uploaded a document titled *"Compliance of Conditions imposed in the Environmental Clearance issued by MoEF dated 09.08.2007"* on its official website for the general public.[17] Further, it has also uploaded its Environmental Audit Statement for the year 2016-17 wherein it has highlighted the pollution abatement measures taken by them and their impact on the natural resources.[18]

Further, the Air Act and Water Act place the SPCB under an obligation to furnish copies of relevant reports on various industries and activities, upon request to private individuals who intend to file a complaint in the Court for alleged violations of the Act.[19] However, the duty to furnish copies of relevant report is discretionary and the SPCB can exercise its discretion to not furnish the information, if it feels that the non-disclosure is in 'public interest'.[20] This unguided discretion bestowed upon the SPCB shadows the scope for effective use of the provision.

In the context of Environmental Clearance (**"EC"**) and Environmental Impact Assessment (**"EIA"**), the duty to disclose has been subsumed in the process itself. Some of these requirements can be found in the EIA Notification, 2006 and Draft Notification, 2020 while some others can be seen to be imposed by various administrative instructions or orders. As per these, the industry that applies for the EC, typically called the project proponent is supposed to make the following information available on a public domain:

i. Detailed information about the proposed project,
ii. Terms of Reference framed by the project proponent,

[16] Rule 14, The Environment (Protection) Rules, 1986 (Form V).
[17] *Six Monthly MoEF EC conditions Compliance*, Sterlite Copper (Vedanta), available at https://www.sterlitecopper.com/copper_smelter/six-monthly-moef-ec-conditions-compliance/ last seen on 20/02/2021.
[18] *Environmental Statement Annual Return*, Sterlite Copper (Vedanta), available at https://www.sterlitecopper.com/copper_smelter/environmental-statement-annual-return/ last seen on 20/02/2021.
[19] S. 49(2), The Water (Prevention and Control of Pollution) Act, 1974; S. 43(2), The Air (Prevention and Control of Pollution) Act, 1981.
[20] Ibid.

iii. Draft EIA Report,
iv. Notification of the date, time and agenda of the public hearing to be conducted.

The idea of public hearings also emanates from the PER of right to consultation and public participation in environmental decision making. Even the right to public participation is intrinsically linked to the right to know/information, to render the participation more meaningful.

### 2. Rationale/Justification Behind Disclosure

The information disclosure requirement etched in various environmental laws serves a dual purpose. *Firstly,* the rationale behind such a disclosure requirement is to make information about various compliances and defaults/violations publicly accessible. This would give a standing to concerned individuals who wish to drag the defaulting body to the Courts of law, and hence, exercise citizenship rights to participate in governance.[21] Since two of the procedural bottlenecks in environmental litigation before Indian Courts is standing and evidentiary thresholds, the information disclosed by the regulator empowers individuals and makes for a stronger case in the Indian Court. The examples discussed in Part IV of this paper will bear testimony to this proposition. A two-way flow of information between the regulators and the local community will also ensure that the local communities act as watchdogs and provide instant information on non-compliance by industries in their vicinity.[22]

*Secondly,* one important procedural aspect of a litigation before Courts is the 'limitation period' for filing a suit. The right to information in the form of disclosure is of utter significance in this respect. Usually, the limitation period starts running from the day the information giving rise to the cause of action was notified to the public. For instance, grant of an EC needs to be notified and published in the stipulated manner. Any individual who is

[21] R. Chakrabarti & K. Sanyal, *Public Policy in India*, 145 (Oxford University Press, 2017).
[22] *Filling the Blanks: A Discussion Paper on Strengthening Environmental Governance*, Centre for Science and Environment (2014), available at http://cdn.cseindia.org/userfiles/Filling%20The%20Blanks%20Report.pdf last seen on 21/02/2021; G.S. Tiwari, *Conservation of Biodiversity and Techniques of People's Activism*, 43(2) Journal of Indian Law Institute 191, 216 (2001).

aggrieved with the decision of the grant of EC, can file an appeal before the NGT within thirty days.[23] The period of thirty days starts running from the date on which the EC order was notified and published as per stipulations. The Tribunal has clarified that communication about the clearance should mean 'communicating both the factum and content of the clearance, and in a way that it is easily accessible by a common man".[24] To be able to ascertain the limitation period correctly, it is important to note the interpretation of 'communication' as has been held by the Tribunal.[25]

## IV. ENFORCEABILITY OF RIGHT TO INFORMATION AS A PER, SOME SUCCESS STORIES AND ISSUES

### 1. Enforceability of Right to Information as a PER

Enforceability of PERs is a matter of heavy scholarly debate. As long as the PER is enshrined in form of a rights-based guarantee, like under the RTI Act, it remains enforceable. But when the PER is manifested through a duty-based guarantee as discussed above, the question escalates to whether the duty to disclose information is justiciable. Implying, say, the SPCB which is mandated by an environmental statute to disclose some statistics, fails to do so, can this failure be questioned in the Courts of law and action can be taken against the concerned body. Now, there is no linear judicial response to a question of this sort, and it can be answered only by taking a look at a few examples of disclosure and non-disclosure.

### 2. Some Examples and Success Stories

While in a theoretical plane, PER of right to information assumes a lot of significance, its importance in a practical scenario can be asserted only when the information obtained through use of the PER is instrumental in environmental decision making and does not just qualify as a discrete piece of information.

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[23] S. 16(h), The National Green Tribunal Act, 2010.
[24] Save Mon Region Federation v. Union of India, Appeal No. 39 of 2012 (NGT, 14/03/2013).
[25] S. Ghosh, *Case Note: Access to Information as ruled by Indian Environmental Tribunal: Save Mon Region v. Union of India*, 22(2) Review of European Community and International Environmental Law 202 (2013).

*2.1 Role of the Judiciary*

In the Indian context, information obtained through RTI has not only been relied upon and used by the judiciary but also has impacted the decision-making process of the Courts. For instance, the Delhi High Court ("**Delhi HC"**) placed reliance on some information obtained through a RTI as an evidence for concluding a lack of credibility of the Expert Appraisal Committee (EAC) and subsequently set aside the EC granted to a project proponent based on recommendation of the EAC.[26] The RTI application was regarding the constitution of the EAC, and the information disclosed brought to light some discrepancies in it. In certain cases, the Courts have upheld a pro-disclosure stand taken by the Central Information Commission ("**CIC"**), an appellate body under the RTI Act and emphasized upon information being made publicly available.[27]

*2.2 Role of the National Green Tribunal*

With the advent of the National Green Tribunal (**"NGT"**), a new level of disclosure has ushered. The NGT constantly keeps nudging the regulatory bodies about the action taken with regard to various environmental issues. The report submitted by the bodies in compliance with the NGT's order is then made accessible to public on the website of the NGT. A practice of this sort was unnoticed, before the advent of NGT.

For example, the NGT issued a direction on 3rd August 2018 to the Central Pollution Control Board (**"CPCB"**) to upload on its website an action plan and a 'steps taken report' for implementation of the Hon'ble Supreme Court's order in *Paryavaran Suraksha Samiti and Anr.* v. *Union of India*[28].[29] The decision relates to monitoring of Common Effluent Treatment Plants (**"CETPs"**) and framing of environmental compensation regime in case of defaulting CETPs. This implies that the CPCB now has a duty to

[26] Utkarsh Mandal v. Union of India, (2009) SCC Online Del 3836.
[27] Union of India v. G. Krishnan, (2012) SCC Online Del 2869.
[28] WP(C) No. 375 of 2012 (Supreme Court, 22/02/2017).
[29] *Step Taken Report by CPCB dated 13.02.2020 in OA No. 593 of 2017*, NGT, available at https://greentribunal.gov.in/sites/default/files/news_updates/REPORT%20BY%20CPCB%20DT.%2013.02.2020%20IN%20OA%20NO.%20593%20of%202017.pdf, last seen on 07/02/2021.

disclose the steps taken by them to ensure proper monitoring of the CETPs.

In another instance, the NGT in its order dated 01.08.2019, directed the CPCB to devise a scale of compensation to be recovered under Noise Pollution (Regulation and Control) Rules, 2000 (**"Noise Rules"**) on the basis of polluters pay principle to enforce Rule 4(2) of the said Rules.[30] In response to this, the CPCB devised a scale of compensation to be paid by defaulters for various instances of violation of Noise Rules, and submitted the same to the NGT in October, 2019 and then in June, 2020, which was subsequently made accessible to public on the NGT website.[31] This was in the context of failure of the statutory authorities in Delhi in controlling noise pollution as per statutory mandates. This way NGT has been instrumental in strengthening the PER of right to information and right to know in India.

*2.3 Role of the CIC*

Not only the NGT and the judiciary, but even the CIC, an appellate body under the RTI Act has high level of reverence for the PER of right to information. Time and again the CIC has pressed in for enhanced level of disclosure of various environmental decisions on public domain, like the website of the MoEF or PCBs. Through this the CIC has ensured that Public Information Officers (**"PIOs"**) or other public authorities do not evade their responsibility of disclosure under various exemptions provided in the RTI framework.[32] It has also ensured that information is freely available to public, and a concerned citizen does not have to file an RTI each time he or she is looking for an environmentally sensitive information.

There are instances where the pro-disclosure stand of the CIC has been supported by the judiciary. A glaring example of this is the opinion of the

[30] Hardeep Singh v. SDMC, OA 519 of 2016 (NGT 01/08/2019 & 15/11/2019); Akhand Bharat Morcha v. Union of India, OA 496/2018 (NGT, 01/08/2019).
[31] *Report prepared by CPCB on 'Scale of Compensation to be Recovered for Violation of Noise Pollution Rules, 2000'*, National Green Tribunal, available at https://greentribunal.gov.in/sites/default/files/news_updates/CPCB%20Report%20in%20O.A.%20No.%20519%20of%202016%20With%20O.A.%20No.%20496%20of%202018.pdf, last seen on 07/02/2021.
[32] S. 8, The Right to Information Act, 2005.

Delhi HC in the *Union of India* v. *G. Krishnan*[33] (**"G Krishnan Case"**) where the Court while upholding the order of the CIC, opined that a policy even in its draft form should be made available to the public/stakeholders and their recommendations should be considered for finalizing the policy. This case was a writ challenging the CIC's order in a case where the RTI applicant sought for the report submitted by the Western Ghats Ecology Expert Panel (WGEEP) to the MoEF and the Ministry refused to provide access to the Report on the ground that the Report is still in the draft stage and disclosure at this stage would adversely affect the strategic or economic interest of the State, an exemption that is allowed under Section 8(1)(a) of the RTI Act. Upon appeal, the CIC had allowed disclosure of the Report,[34] which was later confirmed by the Delhi HC. This indicates a pro-disclosure stand taken by the Delhi HC and the CIC, with dual emphasis on both the PERs of right to information and right to public participation.

In extension to the CIC's order in the *G. Krishnan case*[35] discussed above, CIC has in another case held that a policy or report even in its draft form should be made available to the public/stakeholders because attempts to conceal policies or reports on grounds that they are still in draft stage creates suspicion about its compliance.[36] This order of the CIC was in response to an RTI application seeking disclosure of an Expert Committee's Report on the Coastal Regulation Zone Notification, 2011, since the notification was amended many times resulting in dilution of its mandate. The applicant wanted to ensure that the dilution of the regulations was in lines with the Committee's Report. However, the MoEF refused disclosure on grounds that the Report is preliminary and has not been accepted so far, but on appeal the CIC took a stand to the contrary and emphasized that in view of the fragile ecology of the coastal regions, disclosure is necessary for public interest.[37]

[33] Union of India v. G. Krishnan, (2012) SCC Online Del 2869.
[34] G. Krishnan v. Ministry of Environment and Forest, CIC/SG/A/2012/000374/18316 (CIC, 09.04.2012).
[35] Ibid.
[36] Kavitha Kuruganti v. Ministry of Environment and Forest, CIC/SA/A/2015/901798, (CIC, 01.04.2016).
[37] Ibid.

There are again numerous instances where the information disclosed by means of an RTI is a subject matter for potential litigation or legal challenge before the NGT or Courts of law. For instance, an RTI application by Down to Earth sought information about the status of construction of three highways across Ranthambore and Mukundhara Tiger Reserves under the Bharatmala Highway Project. The application was annexed by a report of the Wildlife Institute of India (WII) to the Government highlighting that the construction of the highways will severely affect and fragment the wildlife habitat in the two reserves. The information divulged by the MoEF revealed that the Central Government has approved the diversion of forest land in the two reserves for construction of highways, in disregard of the concerns raised by the WII.[38] Now, this gives a concerned citizen locus standi and a cause of action for suing the MoEF for failure to perform its duty.

## 3. Issues

While it is true that in the Indian context, Principle 10 has been applied in practice to develop a body of standards for ways in which individuals can carry out their duty to protect the environment, it is not free from challenges. Though the PER of right to know and right to information has statutory recognition in India in multiple statutes, the effectiveness remains a question. Despite garnering enough support from the NGT, the judiciary and the CIC, realization of PER of right to information still has been difficult in many instances. This is owing to layers of hurdles, both procedural and substantive, that fetters the effective realization of the right to information.

*Firstly,* information is not made available because of administrative glitches, like information not being recorded or maintained properly by the public authority in lines with the legislative requirements, say under Section 25(6) of the Water Act, or the authority evading the application by providing

[38] I. Kukreti, *RTI reveals MoEF&CC cleared 3 highway proposals disregarding WII's views*, Down to Earth, available at https://www.downtoearth.org.in/news/wildlife-biodiversity/rti-reveals-moef-cc-cleared-3-highway-proposals-disregarding-wii-s-views-75250, last seen on 02/02/2021.

incorrect or misleading information.[39] Further, because of the fact that the 'environmentally sensitive information' is at times, scientifically complex and technical in nature, the information provided by the public authority is not comprehendible by the public.[40]

Also, since the information is mostly recorded and maintained in English but the 'affected population' are mostly people who understand vernacular languages, the information is translated into a regional language and then presented and some information loses meaning in the process of translation. For instance, as reported by Ritwick Dutta, leading environmental lawyer in India, in a certain EIA Report that was disclosed to the public, 'cyanide', a toxic chemical was translated to '*jhaag wala paani*' (foamy water) in the Hindi version of the EIA Report.[41] This is coupled with a serious lack of commitment and administrative laches resulting in inordinate delay in replying to the RTI application, disregarding the timeline of 30 days as mentioned in the RTI Act[42].[43]

*Secondly,* because of the general practice of delay in responding to RTI applications or delay in the appeal process which has often been reported by applicants and activists,[44] the information finally available to the applicant loses its significance. The issue of delay is of greater significance since environmental harm is irreversible in nature and it is important that environmentally sensitive information be available expeditiously so that concerned citizenry can take necessary action before the irreversible harm to the ecology is caused. Hence, timely disclosure becomes a very important factor for environmentally sensitive information.

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[39] S. Ghosh, *Procedural Environmental Rights in Indian Law,* 55, 70 in *Indian Environmental Law: Key Concepts and Principles* (S. Ghosh, 2019).
[40] Ibid.
[41] *Proceedings of South Asian Conference on Environmental Justice*, Asian Development Bank, available at https://www.adb.org/sites/default/files/publication/30433/south-asia-conference-environmental-justice.pdf, last seen on 21.02.2021
[42] S. 7(1), The Right to Information Act, 2005.
[43] S. Ghosh, *Regulatory Domains: The Environment* 203, 224 in *Regulation in India: Design, Capacity and Performance* (D. Kapur & M. Khosla, 2019).
[44] G. V. Bhatnagar, *Delay in Replies to Appeals and Complaints Killing RTI Movement, Warn Activists*, The Wire (10/07 2020) available at https://thewire.in/rights/rti-movement-appeal-notice-activists, last seen on 02/02/2021; *SPIOs Liable for Delay in Responding to RTI Queries,* The Hindu (29/05/2019), available at https://www.thehindu.com/news/national/kerala/spios-liable-for-delay-in-giving-rti-info/article27288105.ece, last seen on 02/02/2021.

***Thirdly,*** PIOs tend to abuse the exemptions given to them under the RTI framework.[45] The RTI Act grants exemption from disclosure on grounds like if disclosure pertains to commercial confidence or prejudicially affects the economic interest of the state.[46] In the *G. Krishnan case* discussed above, one can see how the exemption from disclosure available under Section 8(1)(a) of the RTI Act was abused by the Ministry to justify non-disclosure of information sought, but the CIC with its order pointed out the abuse and ordered disclosure.[47] Likewise, Government authorities have classified certain environmental information and documents pertaining to some areas like the submergence zone of the Narmada Dam as 'secret' and made it inaccessible to the public under the Official Secrets Act.[48]

***Fourthly,*** the dispersed structure of environmental regulation, administrative agency and decision making makes gun jumping possible. The PIOs of the MoEF, the SPCBs and the CPCB keep evading their responsibility to disclose in name of one another and on grounds that they do not possess the relevant information sought in the application. For instance, in the year 2016, a bunch of RTIs were filed by 3 environmental researchers in 22 Indian states seeking information about the constitution, composition, tenure, rules of procedure etc. of Appellate Authorities under the Water and Air Act.[49] The RTIs were filed with the State Department of Environment, but in 17 states the application was transferred by the State Government to the concerned SPCB; and on the ground that the information was not available with them, some of these applications were sent back to the State Departments by the SPCB.[50] This example highlights the issue of gun jumping and the lack of clarity with regard to who should maintain and record the relevant information. The administrative

[45] I.P. Massey, *Administrative Law* 574- 575 (9th ed., 2016).
[46] S. 8(1), The Right to Information Act, 2005.
[47] Supra 34.
[48] S. Bhat, *Right to Environmental Information* 322, 331 in *Right to Information and Good Governance* (S. Bhat, 2016).
[49] S. Lele, N. Heble and S. Ghosh, *Appellate Authorities under Pollution Control Laws in India: Powers, Problems and Potential*, 14(1) Law, Environment and Development Journal 47, 52 (2018).
[50] Ibid.

discretion granted to the authorities also defies the entire purpose of the right to information mechanism.[51]

***Lastly,*** in some cases, the compliance with various disclosure requirements, though present, is very unsystematic, outdated rendering the information disclosure an empty formality. For instance, a look at the website of the Uttar Pradesh Pollution Control Board indicates that compliance with the MoEF order mandating publication of status of grant of the No Objection Certificate to various industries, has been achieved, but is incomplete. One finds details of the status and the industries only till October, 2017 and no information thereafter.[52] A survey by Price Waterhouse Coopers in the year 2012 on the issues in implementation of the RTI Act in India reveals that more than 75% of the citizens are dissatisfied with the level of information provided to them, on ground of the information being 'incomplete' or 'irrelevant'.[53] While this study reflects the grim situation of RTI in general, it also sheds light on the quality of disclosure of environmental information.

## V. CONCLUSION

One of the biggest roadblocks for realization of PERs in any country is lack of political will. In even 'evolved' jurisdictions like the USA, lack of political will has stopped citizens from their right to participate in environmental protection and seek justice.[54] A status check on the implementation of Principle 10 of the Rio Declaration, which embodies the PERs, reveals that there still remains a gap between the aspirations behind the principle and its effective realization by State actors.[55] Further, owing to different legal systems and legal cultures across jurisdictions, the

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[51] S. Bhat, *Right to Environmental Information* 322, 335 in *Right to Information and Good Governance* (S. Bhat, 2016).

[52] *Status of No Objection Certificate Applications at Lucknow (HO),* Uttar Pradesh Pollution Control Board, available at http://uppcb.com/noc.htm, last seen on 15/02/2021.

[53] *Key Issues and Constraints in Implementing the RTI Act*, 44, available at https://rti.gov.in/rticorner/studybypwc/key_issues.pdf, last seen on 20/02/2021.

[54] Center for Biological Diversity v. Chuck Hagel, No. C-03–4350 EMC (2015, District Court of North California).

[55] *Review of Implementation of Rio Principles: Detailed Review of Implementation of the Rio Principles*, Study by Stakeholder Forum for Sustainable Future, 68, available at https://sustainabledevelopment.un.org/content/documents/1127rioprinciples.pdf, last seen on 15/02/2021.

rights have been imbibed into the municipal systems in varying ways and degrees, with a comparatively low degree of recognition in developing countries. The constitutional protection given to environmental rights is often untapped to advance procedural environmental rights worldwide.[56]

This has been particularly true with respect to India. It was believed that with adoption of Principle 10 of the Rio Declaration into domestic legal system, an era of 'environmental democracy' will usher in. While India has witnessed its share of environmental democracy, it might not be truly attributed to the PERs as guaranteed under Principle 10.

As India grapples with escalating environmental crises, it is imperative to recognize that environmental justice cannot be delivered by only guaranteeing a set of rights but by empowering citizens with information and a forum to participate, discuss and seek redressal of their grievances. Thus, India needs to strengthen the institutional protection to right to environmental information.

The Indian Government's obligations under Principle 10 of the Rio Declaration need to be made justiciable. The Indian Government should be made answerable for not giving full and effective implementation to Principle 10. A similar practice can be seen under the Aarhus Convention framework where a member State which is not fully complying with the Convention in terms of guaranteeing PERs can be dragged to the Aarhus Compliance Committee and made answerable. In the year 2010, a UK based NGO, Client Earth dragged the UK Government to the Aarhus Compliance Committee for its failure to guarantee right of access to justice by imposing prohibitive costs on litigants.[57] The Compliance Committee while upholding the rights of the litigants, ruled that the imposition of prohibitive costs is actually impeding the realization of PERs under this Convention and ultimately under Principle 10.[58] This was made possible since the UK is one of the 47 parties to the Aarhus Convention, which is

[56] J.R. May, *Constitutional Directions in Procedural Environmental Rights*, 28 Journal of Environmental Law and Litigation 27, 28 (2013).
[57] *ClientEarth wins landmark case against the UK for failing citizens on access to justice*, Client Earth, available at http://www.clientearth.org/clientearth-wins-landmark-case-againstthe-uk-for-failing-citizens-on-access-to-justice, last seen on 15/02/2021.
[58] Ibid.

primarily a regional Agreement of the Economic Commission of Europe. India, thus, needs to be a part of a similar regional institution and co-operation, and enter into partnership with other States who can mutually impose upon themselves a binding obligation to implement and guarantee PERs. The SAARC countries for instance, need to form a co-operation in lines with regional agreements like the Escazú Agreement or the Lima Vision.[59]

Further, the general trend in Indian administrative reforms is to create newer institutions or statutory regulators instead of reforming the existing administrative structures and mechanisms.[60] However, when it comes to the enforcement of PERs in India, we need to deviate from the trend and emphasize on reforming the existing environmental administrative infrastructure to smoothen the right to environmental information framework in India. There thus needs to be streamlining of the information recording and maintenance mechanism by regulatory agencies like PCBs etc., and this mechanism needs to be monitored consistently by an independent regulator. For instance, in each state the SPCB should record and maintain all relevant 'environmental information' and the process should be monitored by the NGT or all relevant 'environmental information' should be made available to the public on the website of the NGT. This is precisely envisaged in Guideline 4 of the Bali Guidelines which states that States should ensure that their competent public authorities regularly collect and update environmental information.[61]

Absence of a strong punitive and deterrence mechanism makes non-compliance a practice, rather than an exception. So, we need to either incentivize the process of information disclosure or severely disincentivize the process of non-disclosure in economic terms. Also, anyone who fails to perform his statutory duty of disclosure under various environmental laws needs to be imposed a criminal liability for his inaction.

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[59] Supra 5.
[60] K. Krishnan & A. Burman, *Statutory Regulatory Authorities: Evolution and Impact*, 339, 355 in *Regulation in India: Design, Capacity and Performance* (D. Kapur & M. Khosla, 2019).
[61] Supra 4.

In addition to this, the Government should actively engage in capacity building of public authorities as well as private citizens to facilitate access to environmental information, as envisaged in Guideline 7 of Bali Guidelines.[62] This is because one prominent reason for the weak level of enforcement of PERs in general is that those who are affected by various acts of pollution are ignorant of any mechanism and its mandate to get their PERs enforced. Thus, a capacity building exercise will equip the 'affected population' with skills and knowledge to seek environmental information from the Government and act on them. The Client Earth case should be used as a model for the civil society in countries including India.

It is noteworthy that India was the first country in the world to mandate environmental statement audit by incorporating it into its legislative framework in 1992[63].[64] In a discussion paper by the MoEF released in 2009, the Ministry urged for higher degree of self-regulation, self-assessment and self-disclosure by industries need to be incorporated into the Environmental Protection Act.[65] While these developments in India are somewhat assuring, a step needs to be taken towards a more proactive and voluntary information disclosure policy since the greater environmental information is already put in public domain, the lesser is the burden for the Government to entertain specific applications and requests. This way we can achieve decentralisation of environmental governance which entails not just sharing of powers with lower levels of Government but also sharing of information and decisions to the public in general.

[62] Ibid.
[63] Supra 16.
[64] Supra 22.
[65] Ministry of Environment & Forest, Government of India, *Towards Effective Environmental Governance: Proposal for a National Environment Protection Authority*, available at https://hindi.indiawaterportal.org/sites/default/files/library/NEPADiscussionPaper.pdf, last seen on 21/02/2021.