

The Concept of Environmental Justice

Shipra Dhankar

B.A.LLB, Jindal Global Law School
O.P. Jindal Global University

INTRODUCTION

In the last two decades, the debate over the unequal distribution of environmental risks, burdens and harmful after effects, specifically those caused due to pollution by industries, has given birth to the need for environmental justice. But despite this need, what exactly environmental justice essentially comprises of and what it should focus on remains ambiguous, which is partly because of the existence of different concepts of “environment” and “justice” that subsequently result in various variations of the concept as a whole. Thus, the paper will start by looking into the meaning of environmental justice and will then also delve into the principles that the concept is based on, which help in understanding the concept in a more detailed manner.

DEFINING OF ‘ENVIRONMENTAL JUSTICE’

‘Environmental Justice’ is a word made up of two term, which are, ‘environment’ and ‘justice’ and thus, many academicians and environmental activists believe that the meaning of these two terms have an important bearing on not only the definition of the term ‘environmental justice’ but also its scope and contents. But the difficulty with this lies in the fact that the concept of justice is a dynamic one and varies from person to person or place to place or from time to time, which is why we have more than one theory of justice like the natural law theory, the socialist theories, the libertarian theory and so on. The definition of ‘environment’ can have two dimensions, namely: the narrow perspective as per which environment should be construed in accordance to its technical meaning which refers to the natural and man-made environment, and the broader perspective as per which the term should be interpreted as including factors of social, political and economic nature. Thus, it is obvious that different categories of people have their own meaning attached to ‘environmental justice’. For example; in the United States, the term has two definitions, one given by the Environmental Protection Agency (EPA) which initially used the term ‘environmental equity’ rather than ‘environmental justice’ and stressed on the distribution of pollution harm and risk- measurable and quantifiable risk instead of giving proper weight “qualitative factors” but has now changed this analytical approach and has moved closer to the approach of activists to whom environment justice is a much more holistic concept that include the right to a safe, healthy, productive and sustainable environment for all.¹ After, adopting the activists’ approach, the EPA’s definition of environmental justice stands as: fair treatment of people of all races, income, and cultures with respect to the development, implementation and enforcement of environmental laws, regulations, and policies, and their meaningful involvement in the decision-making processes of the government² where “fair treatment means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies and meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected”³ In other words, “environmental justice refers to the conditions in which such a right can be freely exercised, whereby individual and group identities, needs, and dignities are preserved, fulfilled, and respected in a way that provides for self actualization and personal and community empowerment.”⁴

¹ Concept of Environmental Justice, Dr. S.K. Gupta

² U.S. Commission on Civil Rights, “Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice,” October 2003, pg. 13. <http://www.usccr.gov/pubs/envjust/ej0104.pdf>

³ Anita Milman, “Environmental Justice? An Analysis of air and power plants in California”, at pg. 1, available at: <http://rael.berkeley.edu/sites/default/files/very-old-site/Environmental%20Justice%20Masters%20Project.pdf>

⁴ Yang Tseming, “Melding Civil Rights And Environmentalism : Finding Environmental Justice’s Place in Environmental Regulation”, 26 *Harvard Environmental Law Review*, (2002) 1 at 04-08.

Further, in the article 'Environmental Justice in an Era of Devolved Collaboration' written by Professor Sheila Foster has attempted to address the controversy regarding the precise meaning of environmental justice and says that though the concept is neither uniformly nor accurately defined, "it can be widely understood to be concerned, at the least, with distributional and procedural equity in environmental and natural resource decisions". She even quotes the broader definition provided by Robert D. Bullard who is a scholar and an environmental justice activist and believes that:

*Call for environment justice involves multifaceted claims, ultimately synthesizing aspirations for distributional and procedural equality, political accountability, and social justice into an untidy theoretical framework.*⁵

As far as India is concerned, the concept was briefly discussed in the case **Jaipal Singh and Others v State of M.P. and others**⁶ and stated that:

Environmental justice is the fair treatment and meaningful involvement of all people, regardless of race, colour, national origin or income, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Generally, justice is done when people get what they deserve or what is due to them. Air, water, biodiversity, forests and the aesthetic of the landscape are basic resources, necessary for the survival of both human species and the entire biosphere of which human beings are a part. The rules of access to environmental services, and benefits of the natural environment, should guarantee the public nature of goods as well as the equity of their distribution. The traditional individualistic nature of rights in the West has prompted the private appropriation of public goods to satisfy private interests, often to the detriment of the public or collective good. This is a total violation of justice and equity.

Indian courts have also stressed on the ecocentric approach that must be followed when environmental justice is sought to be achieved. In the case **T.N. GodavarmanThirumulpad v UOI**⁷, the court explained this approach in the following manner:

Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature centred where humans are part of nature and non-human has intrinsic value. In other words, human interest do not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature include both human and non-humans. National Wildlife Action Plan 2002-2012 and centrally sponsored scheme (Integrated Development of Wildlife Habitats) is centred on the principle of ecocentrism.

Thus, looking at the above examples fairly comprehensive definitions of environmental justice provided by different people, it is extremely easy to find different versions of its meaning though in essence of the concept remains the same which is to adopt an ecocentric approach, formulate health policies and regulations, develop risk reduction strategies for multiple, cumulative and synergistic risks, ensure public health, enhance public participation in the environmental decision making, promote community empowerment, build infrastructure for achieving environmental justice and sustainable communities, ensure interagency cooperation and coordination, develop innovative public/private partnerships and collaboratives, enhance community-based sustainable economic development and develop geographically-oriented community-wide programming.⁸

PRINCIPLES OF ENVIRONMENTAL JUSTICE

The movement for environmental justice has gained huge popularity over the last few decades but this ever increasing interest in the concept although has helped in addressing the main concerns, has also augmented the disagreement among people due to disparate opinions regarding the main goals of the movement since it is formed by loose coalitions of groups fighting for greater grassroots democracy, broader social justice goals, collective power and

⁵ Bullard, Robert D., "Environmental Justice for All" in Robert D. Bullard (ed.), *Unequal Protection :Environmental Justice and Communities of Color*, 1994, 3, at 10-11, quoted in Foster, Sheila, *op. cit.*, note 9 at p. 461

⁶ 2007(3)MPLJ 97

⁷ AIR 2012 SC 1254

⁸ Robert D. Bullard, Glenn S. Johnson and Beverly H. Wright, *Confronting Environmental Injustice: It's The Right Thing To Do*, 1 J. Race, Gender and Class 63, 65 (1997)

Race, Gender & Class, Vol. 5, No. 1, Environmentalism and Race, Gender, Class Issues (1997), pp. 63-79

reallocation of resources.⁹ Each of these groups seeks to achieve a specific goal and thus it is important that the movement as a whole agrees on a set of crucial issues so that its potency can be maintained. Hence, the need for understanding the principles of environmental justice.

Following are the principles on which environmental justice is broadly based on:

1. DISTRIBUTIVE JUSTICE:

“Justice as Distribution” is one of the most basic ideas that form the foundation of justice. Distributive justice as a concept means that kind of justice that focuses on providing for a set of rules that ensure equal and fair distribution of social goods and opportunities. But in the context of environmentalism, it means to achieve equity in terms of the allocation of environmental risks and harms.¹⁰ In other words, it is the “equal distribution of burdens resulting from environmentally threatening activities or of the environmental benefits of government and private sector programs” (Rechtschaffen and Gauna 2002).¹¹

Many countries have witnessed unequal distribution of costs of environmental hazards mainly due to socioeconomic factors such as poverty, ethnicity and race. Further, the concept of distributive justice has also been applied to find out how much access a particular community has and how much control it actually exercises over natural resources. For instance, many tribal communities and indigenous people have struggled to assert their land rights in order to ensure continuous access to resources which form the basis for their livelihoods.

As idealistic as this principle sounds, it is extremely difficult to actually achieve distributive justice especially while trying to achieve participatory decision making since “the bundle of individual rights, such as health and property rights, as well as limitation of time and financial resources, come into play as key factors in decision-making processes”.¹² A good example of how this principle is applied by the courts can be seen in the case **Ratlam Municipal Council v ShriVardhichand and Others**¹³ where the local residents of Ratlam were agonized by the public nuisance caused due to lack of public drains, deposition of human excrement on roads by people living in slum areas and discharge of fould-smelling effluents from a nearby alcohol plant. When the case reached the Supreme Court, the judge observed that distributive injustice existed due to public nuisance and thereby enabled distributive justice by passing an order for abatement of public nuisance, removal of open drains and human waste amounting to environmental burdens and mandating construction of proper drainage system and facilitating sanitation.

2. PROCEDURAL JUSTICE:

The theory of procedural justice mainly refers to the fair manner in which procedures are conducted which entails equal respect and concern for individual and group voices while taking decisions regarding distribution of social goods and opportunities. The concept is deeply associated with understanding justice in terms of historical and cultural contexts of a location, including both recognition and ability to participate as equals and some of the relevant theorists argue that injustice is not solely based on inequitable distribution; rather, injustices are often based on a lack of recognition which is why it is important that individuals or communities are “politically” recognized, taking into account their own histories, identities and cultures.¹⁴ With the help of political recognition, it becomes easy for the groups to find ways in which they can empower themselves and acquire the right to take part in the policy making process.

Procedural justice also seeks opportunities for individuals to exercise their environmental rights as citizens, based on recognition for one’s self, for one’s own community, and for the movement as a whole (Schlosberg 2003) and thus, environmental justice, in terms of procedural justice, demands that people have the right to participate as equals in all environmental decision making processes that may affect their lives, children, homes and jobs, enabling them to demand ways to access relevant information and to be given opportunities to express their concerns in relation to environmental burdens and benefits.¹⁵

Application of this principle can be seen in the case of **Mumbai KamgarSabha v Abdulbhai**¹⁶ and also **Fertilizer**

⁹ Anita Milman, Environmental Justice? An Analysis of Air Pollution and Power Plants in California, available at: <http://rael.berkeley.edu/sites/default/files/very-old-site/Environmental%20Justice%20Masters%20Project.pdf>

¹⁰ Amerasinghe, Manjula, Leanne Farrell, SheeShee Jin, Nah-yoon Shin, and Kristen Stelljes. 2008. *Enabling Environmental Justice: Assessment of Participatory Tools*. Cambridge, MA: Massachusetts Institute of Technology.

¹¹ *Supra* note9, at 4

¹² *Supra* note 10, at 17

¹³ AIR 1980 SC 1622

¹⁴ *Supra* note 10, at 18

¹⁵ *Id*

¹⁶ AIR 1976 SC 1455

Corporation KamgarUnoin v UOI¹⁷ where Justice Krishna Iyer liberalized the concept of locus standi and held that all the citizens that are concerned about public good and the organizations that are aim to work for conservation of public resources should have the right to approach the courts to demand redressal against abuse of power by authorities in order to ensure social justice. This relaxation in the rule of locus standi is a good illustration of application of procedural justice. It is important to note that until the early 1970s, litigation could be initiated only by the aggrieved parties.

Further, in the Ratlam case¹⁸, Justice Krishna Iyer, for the first time, laid the foundation of the concept of public interest litigation stating that people must have access to courts in order to enforce their public duties. This again is an example of procedural justice being implemented, making sure that the whole process is fair.

3. CORRECTIVE JUSTICE:

This concept is alternatively known as retributive and restorative justice and is based on the idea that justice is not merely ensuring fairness in a new policy or current practice but is also reflective of the notion that the damage suffered by individuals and communities as a whole must be attended to. Hence, compensation must be paid by the institution that is responsible for the damages and losses suffered by those affected due to the environmental hazard led to by such institution. Corrective justice not only provides for recompense for the current risks but also for the costs and hazards that took place in the past.

Polluter pays principle, which is on of the tools of corrective justice, was explained in **Indian Council for Enviro-legal Action v UOI**¹⁹ as “the principle which demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The ‘polluter pays’ principle was promoted by the Organization for Economic Co-operation and Development [OECD] during the 1970s when there was great public interest in environmental issues.”

4. SOCIAL JUSTICE:

The social justice framework calls for a more just ordering of society such that members of every class have enough resources and enough power to live as befits human beings with the premise that the problems and risks an individual faces do not occur in isolation, rather the “same underlying racial, economic and political factors that are responsible for environmental threats to the community also likely play a significant role in why the area may suffer from other problems” (Rechtschaffen and Gauna 2002).²⁰ Hence, the concept of social justice provides for a holistic analysis that covers all the factors that contribute to the existing hazards and unequal distributions.

The above discussed principles are what the environmental justice movement is broadly based on. And a good example of specific principles would be the 17 principles adopted by the delegates of the First National People of Colour Environmental Justice Summit in 1991. These principles were developed to serve as a “guide for organizing, networking, and relating to government and nongovernmental organizations.”²¹ These principles are²²:

1. Environmental Justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
2. Environmental Justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
3. Environmental Justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
4. Environmental Justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.
5. Environmental Justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.

¹⁷ AIR 1981 SC 344

¹⁸ *Supra* 13

¹⁹ 1996 SCC (3) 212

²⁰ *Supra* 9, at 9

²¹ See Environmental Justice at Wikipedia- http://en.wikipedia.org/wiki/Environmental_justice pp.2-3

²² The Principles of Environmental Justice, available at: <http://www.ejnet.org/ej/principles.pdf>

6. Environmental Justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
7. Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.
8. Environmental Justice affirms the right of all workers to a safe and healthy work environment without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
9. Environmental Justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.
10. Environmental Justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide.
11. Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts and covenants affirming sovereignty and self-determination.
12. Environmental Justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources.
13. Environmental Justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.
14. Environmental Justice opposes the destructive operations of multi-national corporations.
15. Environmental Justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.
16. Environmental Justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.
17. Environmental Justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to ensure the health of the natural world for present and future generations.

CONCLUSION

After looking closely at the expansive definition and the principles that the concept is broadly based on, it is quite clear that the aim is achieve not only sustainable development but also social justice which is often neglected in the whole movement. Despite the not so successful environmental laws, the literature on environmental justice recognizes and admits the efficacy of environmental litigation as a tool in claiming legal redress, especially when there is insufficient coverage of civil rights. By ensuring provision of substantive and procedural rules and regulations, the concept does to some extent achieve the ambitions set to resolve environmental injustices. But irrespective of these benefits, there have been various criticisms of the movement which have also been countered successively.

As put by Dr, S.K Gupta in his paper "Concept of Environmental Justice": the environmental justice movement is seen by some as an attempt to shift the focus of the environmental movement away from these issues toward more anthropocentric concerns such as racism, classism, and sexism since these forms of oppression lead to unequal burdens of environmental pollution being felt by people of color, women and low-income people. However, it should be noted that the Principles of Environmental Justice adopted at the First National People of Color Environmental Leadership Summit in 1991 suggest that environmental justice is not solely concerned with anthropocentric issues since several principles stress the ecological interconnectedness of all species, including human.

It has also ben argued that "the environmental justice literature portrays the technical nature of environmental laws as alienating to the communities enlisting their aid. Further, in some cases, communication between relevant agencies and minority communities may be stymied by the agencies' confusion as to who represents a particular group which is also why the procedure for soliciting and responding to the public's concerns may fail to correspond with the authority and communication structures of a minority community."²³ Irrespective of the merits and demerits, it is hard to ignore the fact that the movement raises innumerable questions regarding the nature, essence, and role of movements relating to environmental and civil rights and the laws governing the same so that easy identification and addressing of legal, social and political questions inherent in distributing societal burdens can be made.²⁴

²³ Robert Williams, *Large Binocular Telescopes, Red Squirrel Pinatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World*, 96 W. VA. L. REV 1157-63 (1994)

²⁴*Id*