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PROCEDURAL ENVIRONMENTAL RIGHTS AS CRUCIAL TOOLS FOR ENVIRONMENTAL JUSTICE: An Indian Perspective

Chanchal Kumar Singh & Ms. Renuka**

[Abstract: The concept of Environmental Justice embraces the principle that all people and communities are entitled to equal protection of environmental laws as well as an equal share in environmental goods and bad. Traditionally, considered a part of social justice, this concept emerged as an independent principle and movement in the 1980s and early 1990s as a result of Environmental Justice movements initiated by Asian, African, and Native American communities. Environmental Justice entails two sets of environmental rights: Substantive and Procedural environmental rights. Substantive environmental rights include a clean environment, healthy ecosystem biodiversity, etc. Procedural Environmental Rights often refer to the rights related to the procedures and processes involved in environmental decision-making, public participation, and access to information. These rights aim to ensure that individuals and communities have the opportunity to be involved in environmental matters that may affect them. Hence, are equally important. The author of this article has analyzed the Procedural dimensions of environmental justice with special reference to India. The article is divided into five parts. Part one provides a conceptual understanding of the topic. Part two contains a discussion on the global history of environmental justice followed by part three which discusses the Indian perspective on environmental justice. In the fourth part an analysis has been made of the role of Procedural environmental rights in achieving environmental justice in India followed by a conclusion in part fifth of this Article.]

Keywords: *Procedural Environmental Rights, Environmental Justice, Access to Environmental Justice, Access to Environmental Information, Public Participation.*

I

Introduction

Debates on environmental issues have become a significant part of academic discourses and global politics for the last few decades. Since the beginning of industrialisation, anthropogenic activities have caused pollution, global warming, climate change, etc. These

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issues began to acquire significance in international politics by the 1980s and became one of the critical global issues by the late 1990s. Moreover, natural resources are being exploited at an unprecedented level to meet the demands of growing economies. All this led to the passing of various laws at national and international levels. Most of the time, environmental regulations are goal-oriented and appear neutral. However, like environmental issues, the effect of laws passed to deal with such issues may reveal disproportionate burdening or restricting effects for specific groups or categories.

The poor and marginalised often bear the brunt of pollution and resource degradation, whether a toxic dump, a lack of arable land, or global climate change – simply because they are more vulnerable and lack alternatives. Such concerns are raised in local and global contexts, including structural issues, such as gender, class, ethnicity and on a global scale – North–South relations.¹ According to World Bank, ninety-three per cent of waste is dumped in low-income countries and only two per cent in high-income countries. Three regions openly dump more than half of their waste—the Middle East, North Africa, Sub-Saharan Africa, and South Asia². Study after study confirms that the poor bear the burden not only of hazardous wastes but of excess carbon dioxide and ozone and increased cases of asthma and lead poisoning. "Being poor in America," explained Greenpeace in a December 1991 report, "means breathing foul air, working filthy jobs, and living next to toxic waste landfills and incinerators."³

At the same time, environmental laws passed often lack a participatory approach and democratic decision-making. Since, an inaccurate policies and improper implementation of laws concerning with environmental issues and problems do not only harm the efforts to achieve a sustainable development, but also neglect justice and equity to the communities (especially those live close to the nature or whose survival depends on natural resources), often resulting into the conflicts between the affected people and state authorities. At the

¹ Jonas Ebbeson, *Introduction: dimensions of justice in environmental law* IN ENVIRONMENTAL LAW AND JUSTICE IN CONTEXT, 2 (Jonas Ebbeson and Phoebe Okowa, 2009).

² WORLD BANK, What a waste 2.0, A Global Snapshot of Solid Waste Management to 2050, *available at* <https://datatopics.worldbank.org/what-a-waste/trends-in-solid-waste-management.html#:~:text=Lower%2Dincome%20countries%20generally%20rely,Saharan%20Africa%2C%20and%20South%20Asia>. (last visited Nov. 1, 2023).

³ Patrick Novotny, *Where We Live, Work and Play: The Environmental Justice Movement and the Struggle for a New Environmentalism*, 2, First published in 2000 Praeger Publishers, 95 APSA 722 (2000).

local, many local communities claim that they bear the environmental risks most while the least harm do to nature. At the same time, issues like closed decision-making structure, inaccessibility to natural resources, autocratic natural resource management model and denial of social justice, among other are significant to environmental justice debates. Environmental Justice came into vogue to solve environmental conflicts based on the pattern of injustice and inequality.

II

What is Environmental Justice

Traditionally, conceptualisations of environmental justice focus on the “accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs related to the impacts of ecological change on the poor and vulnerable in society”. Towards the 1990s, the environmental justice movement expanded its focus on social inequalities, such as disparities between ecological conditions experienced by the richest and poorest sectors of society. Environment Protection Agency, USA defines environmental justice as: “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. This goal will be achieved when everyone enjoys:

- a. The same degree of protection from environmental and health hazards and
- b. Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.”

Accordingly, environmental justice is often understood to seek the equitable treatment and involvement of people of all races, cultures, nations, and socioeconomic backgrounds in the development, implementation, and enforcement of environmental programs, laws and policies.⁴It attempts to equalise the burdens of pollution, noxious development, and resource depletion. Environmental justice requires a moreequal distribution of environmental goods

⁴ UNDP, Environmental Justice Securing our right to a clean, healthy and sustainable environment, 2022, available at: <file:///C:/Users/hp/OneDrive/Desktop/Environmental-Justice-Technical-Report.pdf> (last visited Feb. 12,2022).

and bads and greater public participation in evaluating and apportioning these goods and bads.⁵

III

How can we achieve environmental justice? Are procedural environmental rights important to achieve Environmental justice?

Environmental justice embraces the principle that all people and communities are entitled to equal protection of environmental laws and regulations.⁶ United Nations developed a three-pronged approach to achieve environmental justice.⁷



Fig 1⁸

⁵ Kristin Shrader-Frechette, ENVIRONMENTAL JUSTICE CREATING EQUALITY, RECLAIMING DEMOCRACY, 6, (2002).

⁶ Robert D. Bullard, *Environmental Justice: It's More Than Waste Facility Siting*, 77 SSQ 493(1996) 3.

⁷ UNDP, Environmental Justice Securing our right to a clean, healthy and sustainable environment, 2022, available at: <file:///C:/Users/hp/OneDrive/Desktop/Environmental-Justice-Technical-Report.pdf> (Last visited: Oct 17 2023).

⁸ Based on United Nations Development Programme guidance on Environmental Justice, available at: <file:///C:/Users/hp/OneDrive/Desktop/Environmental-Justice-Technical-Report.pdf> (Last visited: Oct 17, 2023)

The first approach needs to develop effective substantive regulations conferring environmental laws. However, the second and third step requires working on more robust procedural mechanisms. Hence, Environmental Justice entails two sets of environmental rights: Substantive and Procedural environmental rights. Substantive environmental rights include a clean environment, healthy ecosystem biodiversity, etc. Procedural rights are access to justice, information and public participation in environmental matters.⁹ The procedural rights are closely related to the Procedural dimension of environmental Justice.¹⁰The procedural dimension stresses the need for democratic decision-making processes and the amalgamation of global justice concerns with environmental justice. Without procedural environmental rights, substantive rights are bound to fail. Let's take an example: The government of a state 'X' established a leather factory near a village named 'A'. The villagers there were primarily poor and illiterate. The factory was established near a river, the 'only water source' for the villagers. It was established without conducting any public hearing. After a few months of the establishment, villagers started getting health issues due to pollutants released by the factory in the river nearby in violation of laws relating to water pollution. Villagers were not aware of the reason for their illness, nor were they aware of any water pollution law. Now, in the present case, although state 'x' has given the substantive environmental right to clean water to the citizens, in the case of villagers of "A", these rights are not justiciable due to the following reasons:

- a) Villagers were not consulted before establishing the factory. (No public hearing was conducted).
- b) They were unaware of the chemicals being discharged into the river by the factory, and they were ignorant of the effect of those chemicals on their health. (No access to environmental information).
- c) Due to legal illiteracy, they were unaware of the right to clean water. (No Environmental awareness).

⁹ UNDP, Environmental Justice Securing our right to a clean, healthy and sustainable environment, 2022, <file:///C:/Users/hp/OneDrive/Desktop/Environmental-Justice-Technical-Report.pdf> (last visited Mar.5, 2022).

¹⁰ EJ has three dimensions: Distributive, Procedural and recognition. The distributive dimension focuses on how environmental harms and benefits are allocated among individuals and groups. Procedural dimensions focus on how environmental decisions are made and by whom. The recognition dimension focuses on respect for difference and avoidance of domination.

d) They didn't know whom to approach for the issue. (No access to justice).

Hence, the procedure of environmental rights is an essential tool to achieve Environmental justice. Without these, the concept of Environmental justice seems to be an 'Empty Rhetoric'. The Supreme court noted this concern in the case of *Municipal Corporation of Greater Mumbai v. Ankita Sinha & others*.¹¹ The court observes: "When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social."

In the past few decades, poor and working-class communities, particularly African-American, Native American, Latino, and Asian-Pacific, have formed the environmental justice movement. This movement configures a new understanding of the environment, connecting it with many other concerns. Environmental justice movements (EJMs) have pressured governmental institutions to change how they design and implement environmental laws and policies.¹² They shift the importance from the substantive aspect to the procedural element of environmental laws.

IV

Environmental Justice – A Global History

Many social justice movements in history had environmental tinges. Especially in the colonial world, many movements were initiated by the natives against the exploitation of natural resources by the colonisers and their policy of 'Ecological imperialism'¹³. For example, the Mau-Mau revolt in Kenya (1953) was a movement against Britishers for their land-grabbing policies. Similarly, the Pondoland revolt of South Africa in 1960 was connected to the anger of the people with the government's conservation-driven

¹¹ 2019 S.C.C. OnLine S.C. 2094

¹² Hanne Svarstad, Anja Sletten et.al., "Three types of environmental justice: From concepts to empirical studies of social impacts of policy instruments for the conservation of biodiversity, available at: <https://www.nina.no/archive/nina/pppbasepdf/Polycymix%20Report/Svarstad%20Three%20POLICY MIX%20Report%201%20202011.pdf> (last visited Oct. 1, 2023).

¹³ American environmental historian Alfred Crosby introduced the term 'ecological imperialism' to refer to the successful European colonisation of temperate regions such as North America, South America, New Zealand and Australia.

rehabilitation programme, the denial of access to reserved forests and conflict over a chief dismissed for failing to co-operate in locust eradication.¹⁴ In India, native tribes revolted against the oppressive policies of the Britishers, especially their forest policies.¹⁵ However, these movements have an overpowering social basis rather than environmental. Many more movements of this nature happened in post-colonial times. But it was in the 1970s that 'Environmental Justice' as a movement originated in its modern version.

The concept of environmental justice grew out of community action in the 1970s and early 1980s, particularly by African-American, Native American, Latino, and Asian-Pacific communities, as a continuation of the civil rights movement. The environmental justice movement, like other social movements, emerged as a response to unjust and unfair practices and policies of governments and industries. Some of these practices were differential exposure of some populations to harmful chemicals, discriminatory land use practices, exclusion of some people from decision-making, etc.¹⁶

In the global history of environmental justice, 1982 holds a significant position. Although attempts to achieve environmental justice started much earlier, it was this year that the term 'Environmental Justice' came into vogue. In 1982, Dr. Benjamin Chavis, then director of the United Church of Christ's Commission for Racial Justice (CRJ) coined the term in response to an incident in Warren County, North Carolina. In the early 1980s, the environmental justice movement gained momentum when civil rights and political leaders joined residents of Afton, North Carolina, a predominantly rural, poor, and African-American community in Warren County, to protest the proposed siting of a landfill in their neighbourhood. The landfill was to contain polychlorinated biphenyl- (PCB) contaminated soil that had been illegally dumped along rural highways in central and eastern North Carolina in 1978.¹⁷ The locals felt that the location for the landfill was selected based on a high percentage of the

¹⁴ *Environmental Movements in Sub-Saharan Africa A Political Ecology of Power and Conflict* (Report of United Nation Research Institute for Social Development), U.N Civil Society and Social Movements Programme Paper Number 15(2005) available at : <https://www.files.ethz.ch/isn/91580/15.pdf>

¹⁵ Ramchandra Guha, *Forestry In British And Post-British India : A Historical Analysis*, 18EPW, 1884 (1983).

¹⁶ *Supra* note 5.

¹⁷ Vann R. Newkirk II, *Fighting Environmental Racism in North Carolina*, THE NEW YORKER (Jan 16, 2016, available at: <https://www.newyorker.com/news/news-desk/fighting-environmental-racism-in-north-carolina> (last visited 16 Oct., 2023).

population of African- Americans. In response, massive protests and demonstrations ensued, arresting more than 500 protesters.¹⁸

The protest, although ultimately unsuccessful, served as an impetus for further studies to measure the relation between race and hazardous waste filling decisions. US General Accounting office initiated an investigation on the matter and submitted a report in 1983, with findings: three hazardous waste landfills in US Environmental Protection Agency (EPA) Region IV were located in communities whose residents were largely poor and African American. In all four communities surveyed by the Government Accountability Office (GAO), at least twenty-sixper cent of the residents had incomes below the poverty level. These events acted as an eye-opener, and in 1987, a report was published by the United Church of Christ's Commission for Racial Justice titled '**Toxic Wastes and Race**' in the United States. The report made it clear that minority and low-income communities were afflicted with a disproportionate amount of the nation's pollution. Three out of every five African Americans and Hispanic Americans and approximately half of all Asian/Pacific Islanders and American Indians reportedly lived in communities with uncontrolled toxic waste¹⁹. According to the report, three out of five of the largest commercial landfills in the nation were located in predominantly African-American or Hispanic communities. These three landfills accounted for fortyper cent of the total estimated commercial landfill capacity in the nation.²⁰

The dispute is also commonly associated with the 'Love Canal' tragedy. Love Canal was an area near Niagra Falls developed initially to connect Lake Ontario with the Niagra River. The project started in 1894 but was abandoned due to financial crises. Between 1942 and 1952, The canal became a dumping site for chemical products. There was no monitoring of chemical waste despite the growing communities nearby. As a result, toxic water started seeping into nearby homes. The residents were primarily poor and underprivileged. Of the chemicals which comprise the brew seeping through the ground and into homes at Love

¹⁸ OFFICE OF LEGACY MANAGEMENT, *Environmental Justice History*, available at: <https://www.energy.gov/lm/environmental-justice-history> (Last visited: Oct., 10, 2023).

¹⁹ *Toxic Waste and Race* ,(Commission for Racial Justice) (1987) available at: <https://www.ucc.org/wp-content/uploads/2020/12/ToxicWastesRace.pdf> (last visited Oct.27, 2023).

²⁰ Julia C. Rinne and Carol E. Dinkins, *Environmental Justice: Merging Environmental Law and Ethics* 25 ABA 3 (2011).

Canal, one of the most prevalent was benzene -- a known human carcinogen and one detected in high concentrations.²¹ The people nearby start getting severe illnesses. Eventually area was declared as an 'emergency site'. These appalling incidents demonstrated a connection between poor or low-income neighbourhoods and the poisoned environment where they were located.²²

While Environmental justice was, in the beginning, prominently related to the inequitable distribution of waste and pollution, the term has come to address a broad number of substantive problems, struggles, and aspirations. In 1991, the First National People of Colour Environmental Leadership Summit held in Washington, DC, issued the "Principles of Environmental Justice" document. The document highlighted seventeen principles that illustrate the broad scope of Environmental Justice.²³ The discourse surrounding environmental justice has evolved in many jurisdictions to take into account concerns about justice, equity, and standing, as well as the rights of underprivileged populations in developing nations and meaningful participation in the process of making decisions that support ecological conservation and environmental governance. People in poor countries confront more significant environmental hazards than those in industrialised nations, as demonstrated by the Bhopal gas tragedy, for example. Another example is the industrialised world's disposal of electronic garbage, or "e-waste," in poor nations.

Again, in February 1994, President Clinton issued a historical order requiring all federal agencies to develop strategies to prevent disproportionate, adverse health or environmental effects on minority or low-income populations through federal programs, policies, and activities.²⁴ The idea of environmental justice has gained traction not only in the US but also

²¹ US ENVIRONMENT PROTECTION AGENCY, *THE Love Canal Tragedy*, (1979) available at: <https://www.epa.gov/archive/epa/aboutepa/love-canal-tragedy.html> (last visited Oct.25, 2023).

²² Mary Menton, Carlos Larrea *et al.*, *Environmental Justice and the SDGs: from Synergies to Gaps and Contradictions*, 15 *1624 Sustain. Sci.* (2020).

²³ Includes affirmation of the sacredness of Mother Earth and the right to be free from ecological destruction; affirmation of peoples' right to self-determination; demands for rights of participation and enforcement of principles of informed consent; as well as rejection of military occupation, repression and exploitation of lands, peoples, and cultures, and other life forms. The principles explicitly refer in their Preamble to the need to begin to build a "national and international" grassroots movement for Environmental Justice. They include considerations on environmental injustices facing the current generation but also to future generations and other species or non-humans.

²⁴ A E. Milner and John Turner, *Environmental Justice*, 13 ABA 479 (1999).

in South Africa, the United Kingdom and others. The subsequent landmark development was the “Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters” which was held at Aarhus, Denmark on 25th June 1998 and is popularly known as **Aarhus Convention**.²⁵ Aarhus Convention and its Protocol on Pollutant Release and Transfer Registers (PRTRs) are the only legally binding international instruments on environmental democracy that put into practice Principle 10²⁶ of the Rio Declaration on Environment and Development. The Aarhus Convention and its Protocol empower people with the right to access information easily to participate effectively in decision-making in environmental matters and to seek justice if their rights are violated. The international conventions on international environmental law have also contributed to the development of administration of environmental justice.²⁷

The concept of environmental justice got new directions when, on July 2022, the United Nations declared the ‘right to a clean, healthy and sustainable environment’ as a human right. In the preamble of the declaration, it also mentions that: “...Recognizing that, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women and girls and those segments of the population that are already in vulnerable situations, including indigenous peoples, children, older persons and persons with disabilities...”²⁸ The declaration not only declares the substantive right to the environment but also the procedural counterpart to achieve environmental justice.

²⁵ *Id.*

²⁶ Principle 10: Environmental issues are best handled with the 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.

²⁷ *The Aarhus Convention : An Implementation Guide*, Report by United Nations Economic Commission For Europe) (2014) available at: http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf (last visited Sep. 23, 2022).

²⁸ *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*, (Resolution of General Assembly in its seventy-fourth session), (2022)

Environmental Justice in India: A Colonial and Post-Colonial Analysis

Although environmental movements and revolts have been part of Indian history, ecological justice is a relatively new term for Indians. The reason is the socialistic character of Indian environmentalism. Indian Environmentalism has, for the most part, been about social justice.²⁹ The history of environmental justice goes back to early grassroots resistance to British rule, such as the Bengal peasant revolt of 1859-63 against indigo plantations and the Bastar revolution, which carried ecological undertones.³⁰ It was only after the Bhopal gas tragedy³¹ that Environmentalism in its modern form got extensive recognition in India. The incident gave the necessary impetus to the Environmental justice movements not only in India but worldwide.

The Environmental justice movements in India (post-independence) developed in three phases. 1970s, 1980, and 1990s onwards. The 1970s can be termed the beginning phase of environmentalism in post-independent modern India. The decade started with the historical Stockholm conference in 1972³² in which Indian Prime Minister Mrs. Indira Gandhi gave a controversial speech launching an attack against Western environmentalism. The conference and her speech set the stage for the codification of environmental laws in India. In 1974, India got its first law on Water Pollution,³³ followed by the Air Act³⁴ and Environment Protection Act³⁵. Next year the conference another important event happened. A group of peasants in Mandal, a rural village in the Himalayas, prevented a party of loggers from destroying a stand of trees in March 1973 by hugging the trees. Similar protests throughout the 1970s were triggered by this incident and were known as the "Chipko" movement. This movement raised basic questions about ecology, equity and social justice and promoted

²⁹ S. Ravi Rajan, *A History of Environmental Justice in India*, 7 Environ. Justice 117(2014).

³⁰ Brototi Roy and Joan Martinez, *Ecological Distribution Conflicts in India Environmental Justice Movements in India: An analysis of the multiple manifestations of violence* 2 EES 78 (2019).

³¹ On December 3 1984, more than 40 tons of methyl isocyanate gas leaked from a pesticide plant in Bhopal, India, immediately killing at least 3,800 people and causing significant morbidity and premature death for many thousands more. The company involved in what became the worst industrial accident in history immediately tried to dissociate itself from legal responsibility.

³² United Nations Conference on Human Environment, 1972.

³³ The Water (Prevention and Control) Act, 1974.

³⁴ The Air (Prevention and Control of Pollution) Act, 1981.

³⁵ The Environment Protection Act, 1986.

lively debate and action throughout the country.³⁶ It brought the concept of 'community participation' in environmental decision-making to the forefront, the most important aspect of environmental justice. In the same decade, the Silent Valley movement happened in Kerala, an anti-dam movement aiming to save the Tropical forest named 'Silent Valley'.

The next phase of environmental justice began in the 1980s with the most unfortunate Bhopal gas tragedy. It was an eye-opener for the world. Just after midnight on 2 December 1984, a storage tank at the Union Carbide chemical plant in Bhopal began leaking a gas called methyl isocyanate (MIC). Half a million people were exposed, and the gas killed at least 25,000 people. More than 150,000 people still suffer from severe health disorders caused by the accident and the subsequent contamination – respiratory diseases, kidney and liver disorders, cancers and gynaecological issues.³⁷ The Bhopal incident drew world attention to topics such as the impact of toxic contamination on individuals and the capability of state machinery to deal with such incidents. In response to the disaster, a vibrant transnational campaign for justice emerged in 1984 and continues today.³⁸ Also, this incident, along with the Oleum gas incident³⁹ in 1985, contributed to the development of environmental jurisprudence in India. Both these incidents, along with the international commitment at the Convention on Hazardous Wastes 1989, brought the central government out of hibernation, and it became so active that in one year, it came out with three⁴⁰ different sets of rules on hazardous substances and waste.⁴¹ Also in the oleum leakage case⁴², the Supreme Court of India propounded the principle of Absolute liability while rejecting the principle of strict liability. The Court held:

³⁶ Ramchandra Guha, *Prehistory of Indian Environmentalism: Intellectual Traditions* 27, EPW 58 (1992).

³⁷ Judah Passow and Tim Edwards, *The long, dark shadow of Bhopal: still waiting for justice, four decades on*, The Guardian (Jun. 14, 2023), available at: <https://www.theguardian.com/global-development/2023/jun/14/bhopal-toxic-gas-leak-chemical-environmental-disaster-waiting-for-justice-union-carbide-dow> (last visited Oct. 13, 2023).

³⁸ Renu Pariyadath and Reena Shadaan, *Solidarity after Bhopal: Building a Transnational Environmental Justice Movement*, 7 Environ Justice 146 (2014).

³⁹ On December 4th, 1985, a significant oleum gas leak from one of Shriram's facilities occurred. Both the workers and members of the general public outside were physically impacted by the leaking. In addition, one attorney working in the Tis Hazari Court passed away from oleum gas inhalation.

⁴⁰ The Hazardous Wastes (Management and Handling) Rules, 1989, The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, The Rules for the Manufacture, Use, Export and Storage of Hazardous Micro-organism, 1989.

⁴¹ C.M. Jariwala, *Hazardous Substance And Waste Law: Lessons For India* 52 JILI 414 (2010)

⁴² *M.C Mehta v. Union of India*, 1987 S.C.R. (1) 819.

“That where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in the escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher.”

In the 1980s, another Environmental issue garnered the attention of the problems that is the issue of Development-induced displacement.⁴³ The uproar on the Sardar Sarovar dam created an anti-dam wave in India and forced the World Bank to refuse loans for the project. The most famous movement in the environmental history of India is the movement against the Narmada River Valley Project.

Trends in and after the 1990s changed, and world scientists and technical experts entered into the debates on environmental justice. Climate justice came into vogue as a subset of Environmental justice. The most significant contributor to the trend was the Rio Conference⁴⁴. Three conventions were signed due to the conference: the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and the Convention to Combat Desertification. Three non-binding instruments were signed: Rio Declaration⁴⁵, Forest Principles⁴⁶ and Agenda 21. All these documents contained provisions related to different aspects of environmental justice. For example, Article 10 of the Rio Declaration says that, “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

⁴³ *Supra* note 28.

⁴⁴ United Nation Conference on Environment and development, 1992.

⁴⁵ Rio Declaration on Environment and Development (1992).

⁴⁶ Forest Principles : Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (1992).

available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

As India was a party to the conference and a signatory to all the conventions, It enacted laws to fulfil its obligations. ⁴⁷However, India didn't sign the Aarhus Convention, the most important convention on procedural environmental justice. In 2003, The Niyamgiri movement started, and it changed the course of environmental justice and brought public participation to the forefront of environmental decision-making. In 2006, the government released an Environmental impact assessment notification and made Public hearings compulsory before seeking project clearance, which gave an impetus to democratising environmental decision-making.

VI

Procedural Environmental Rights and Environmental Justice in India

To understand why environmental justice matters, one need only remember that the movement fighting environmental racism results from what happens when people fear that their lives and health are being disproportionately put at risk because of the colour of their skin or the sound of their accent.⁴⁸Recognising that, while individuals and communities around the world feel the human rights implications of environmental damage, the consequences are felt most acutely by women and girls and those segments of the population that are already in vulnerable situations, including indigenous peoples, children, older persons and persons with disabilities.⁴⁹ In the last five decades, India has got more than 200 legislations(Acts, rules, notifications, orders) on the environment apart from the revisions relating to environmental protection in the constitution. These laws provide substantive and procedural environmental rights to the citizens. The importance of procedural environmental rights is currently widely recognised. They serve not only as a guarantee of the right to environment and a tool to increase participatory democracy and active involvement of the public in environmental protection but also as an effective instrument of monitoring compliance with – and enforcement of – environmental law.

⁴⁷ The Biological Diversity Act,2002; National Action Plan for Climate Change,2007.

⁴⁸ David Naguib Pellow and J. Timmins Roberts, *Environmental Justice Article in Annual Review of Environment and Resources* 34 Annurev. Environ. 405 (2009).

⁴⁹ United Nations Declaration on Human Right to clean, healthy and sustainable environment.

The role of the Aarhus Convention for the development of procedural environmental rights is well acknowledged in the academic literature, It is described as “the first multinational environmental agreement that focuses exclusively on obligations of the nations to their citizens and nongovernmental organizations”, and the first binding international instrument attempting to comprehensively and exclusively address issues of citizens’ environmental rights. Furthermore, it is considered a “driving force for environmental democracy” in Europe and “at the forefront” of developing the legal framework in this respect worldwide. Hence, without procedural rights, substantive rights are bound to fail. This is equally applicable in the case of environmental justice. This part of the paper will analyse the Indian approach to Procedural environmental rights in the absence of being signatories to the Aarhus Convention.

Access to Justice

Access to justice is the first step to achieving environmental justice goals. It implies two things: access to the environmental courts and tribunals as well as timely and effective decisions. The United Nations Development Programme (UNDP) (2005) defines access to justice as: “The ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.” Access to environmental justice is the first step to achieving environmental justice goals by articulating in the language of equity the assurance of legal standing for all affected and interested parties, the right of appeal or review, specialised environmental courts, and other practical dispute resolution mechanisms. In this context, India’s commitment to secure ecological justice assumes significant practical importance.⁵⁰ Indian judiciary has played a stellar role in dispensing environmental justice to the people of India.

The most crucial tool that worked to advance access to environmental justice in India is ‘Public Interest Litigation’ along with Judicial activism and articles 32 and 226 of the constitution. The extended use of these mechanisms has facilitated poor, illiterate, non-

⁵⁰ G.N Gill, *Access to Environmental Justice in India: Innovation and Change* in PROCEDURAL ENVIRONMENTAL RIGHTS: PRINCIPLE X IN THEORY AND PRACTICE 180 (Jerzy Jenroska and Magdalena Bar, ed. 2018).

governmental organisations, social action groups and public-spirited persons to bring cases before the appellate judiciary and, thereby, get easy access to socioeconomic and environmental justice.⁵¹The liberal interpretation of Articles 21⁵² and 48A⁵³ and 51A(g) of the Constitution brought the concept of environmental justice within the 4 corners of constitutional environmentalism. In the year 2010 a new milestone was achieved and National green tribunal (NGT) was established to facilitate access to effective environmental justice. NGT is a statutory tribunal have adjudicating power in environmental matters mentioned in the schedule of the National green tribunal act. While declaring the Suo-moto power of NGT, Supreme in case of *Municipal Corporation of Greater Mumbai v. Ankita Sinha &ors*⁵⁴ observed that:

“The necessity of having a specialized body, with the expertise to handle multidimensional environmental issues allows for an all encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.”

Although PIL and its associated relaxed procedures have advantages for securing environmental justice, they are not without external criticism. The critics see the courts adopting responsibilities traditionally exercised by Parliament and the executive. The widespread jurisprudential question concerning the appropriateness of judicial law-making is no better illustrated than in India, where the Supreme Court, through PIL, has been accused of being a hyperactive lawmaking body.⁵⁵ Moreover, The courts are compelling, but they also rely on the other wings of government to enforce their orders, and this contradiction makes them more open to criticisms of ineffectualness. Also, in inter-state pollution cases, the state governments often flout the orders due to a lack of clarity on the source of pollution. The ‘stubble burning’ is the classic example of this.

⁵¹ D.S. Sengar, *PIL to ensure that institutions behave lawfully: Public Access To Environmental Justice In India* 45 ILI 63 (2003).

⁵² “Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

⁵³Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country

⁵⁴ 2019 S.C.C. OnLine S.C. 2094

⁵⁵ *Supra note* 49 at 191.

*Access to Environmental Information*⁵⁶

The substantive environmental rights can be exercised by the people only when they are informed and aware of the environmental issues affecting them, the substantive rights available to them. Without such a right, there cannot be any effective participation of the citizenry in environmental decision-making, and consequently, there cannot be any participatory democracy or environmental justice. Citizen's access to environmental information creates checks and balances by ensuring the sustainable and optimum utilisation of existing natural resources. There are broadly two ways of guaranteeing this right: (i) By providing direct right to environmental information⁵⁷ and (ii) through publication and dissemination of information⁵⁸ by the government using various channels like newspapers and electronic media, publishing government reports, maintaining government portals for information dissemination, etc.⁵⁹

The right to information is a constitutional⁶⁰ and statutory right in India. The right to Information act was enacted by the Indian government in the year 2005 to "provide for setting out the practical regime of the right to information for citizens to secure access to information under the control of public authorities, to promote transparency and accountability in the working of every public authority".⁶¹ The Right to information is a

⁵⁶ Article 3: "Environmental information" means any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative actions, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, since they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

⁵⁷Article 4 of Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

⁵⁸Article 5 of Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

⁵⁹ Trishla Dubey, *Right to Environmental Information in India* 58, EPW (2023).

⁶⁰ *State of U.P v. Raj Narain*, 1975 S.C.R. (3) 333; *PUCI v. Union of India*, (2003) 2 S.C.R. 1136.

⁶¹Preamble to The Right to Information Act, 2005

powerful tool to gather information on conservation issues such as illegal mining, hunting, encroachment, transfer of officers, etc.⁶²

Indian initiatives towards publication and dissemination of environmental information started years before the Aarhus convention. It was in 1982 that the Government of India, in December, 1982, established an Environmental Information System (ENVIS) as a plan programme. ENVIS is a comprehensive information system to provide environmental information to decision makers, policy planners, scientists and engineers, research workers, etc. all over the country. A large number of nodes, known as ENVIS Centres, have been established in the network to cover the broad subject areas of environment with a Focal Point in the Ministry of Environment & Forests.⁶³

Environmental education plays a significant role in creating awareness and an informed citizenry. It makes the youth conscious about their environment, adopting green social behaviour and thus responding to the environmental crises. Indian Supreme Court realised this in 1991, and in its judgement, *M.C. Mehta vs. Union of India*⁶⁴ ordered the Central and State Governments to ensure environmental education in all educational institutions, making it a compulsory subject for all levels of education, including schools, colleges, universities and technical institutions. It also ordered the governments to “enforce as a condition of the license of all cinema halls, touring Cinemas and video -parlour to exhibit. free of cost, at least two slides/message on the environment in each show they undertake. Further, in the year 2003, the Supreme Court of India once again, in one of its orders⁶⁵, made Environmental education a compulsory subject at all levels of education. Following the orders of the Supreme

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.”

⁶² Biswajit Mohanty, *Using RTI for Wildlife Conservation* (May 1, 2011) available at: <https://www.conservationindia.org/resources/using-rti-for-wildlife-conservation> (last visited Oct. 3, 2023).

⁶³ Ministry of environment, forest and climate change, ABOUT ENVIS http://envis.nic.in/ENVIS_html/about.html#:~:text=Realizing%20such%20need%20Ministry%20set,res earchers%2C%20academicians%2C%20policy%20planners%20and (Last visited: Oct. 15 2023)

⁶⁴ 1992 A.I.R. 382 1991.

⁶⁵ *M.C.Mehta v Union Of India &ors*, A.I.R. 2002 S.C. 3696.

Court, courses of “Environmental Sciences” were initiated by the colleges, institutions and universities across the country. Later, Environmental Education was streamlined into the curriculums as a separate subject at school and higher education levels. In this way, India is one of the few countries that have given legal backup to the importance of EE.⁶⁶

Even the latest National Education Policy (NEP) 2020 emphasises the importance of Environmental education and sensitivity among students. It recommended making Environmental education as an integral part of the curriculum and having courses on the traditional Indian knowledge system. The concerns, concepts and issues related to water and its conservation have already been infused into the school curriculum. As such, the curricular materials prepared by NCERT incorporate such concerns adequately across all subjects at all stages of school education. There are chapters in Science textbooks from classes VI–XII that relate to environmental concerns, concepts and issues. Social Science and Language textbooks also integrate concerns related to environment. NCERT has also prepared supplementary materials for students and teachers about environmental education.⁶⁷

Public Participation

Article 6 of the Aarhus Convention contains a provision for public participation in decisions on specific activities. It obliged the states to inform the public about all the proposed activities having an environmental impact and to indulge in environmental decision-making. It also binds each party to ensure that in the decision, due account is taken of the outcome of the public participation.⁶⁸ The rationale and importance of public participation in environmental decision-making were well explained by the Supreme Court⁶⁹ as:

“ The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area and beyond, who have a plausible stake in the project or activity. Public consultation is a

⁶⁶ Kanchan Puri, Arumugam Senthil et.al. *Environment Education in India: Challenges and Opportunities* 11 HPE 124 (2021)

⁶⁷ PIB Delhi, Ministry of Education, *Government promotes environment protection and nature education through curricula on conservation of forest, water and soil* (MAR 15 2023)

⁶⁸ Article 6(4) of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters”

⁶⁹ *Hanuman Laxman Aroskar v. Union of India*, 2019 S.C.C. OnLine S.C. 441.

process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental ecosystems which define their existence and sustain their livelihoods. Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognizes that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognizing that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion."

States have increasingly begun to recognise that, in the law of environment protection, the traditional structures of individual participation and judicial protection of individuals are inadequate, and the public, interested citizens and organisations ought to have the opportunity to participate in the administrative decision-making process. When it is the public who are expected to accept and comply with those measures, the public should have the chance to develop and articulate its opinion and to air it during the environmental decision-making process.⁷⁰ Moreover, the traditional knowledge of local communities need to be given due importance as it can play an important role in dealing with issues like climate change, global warming etc.⁷¹

Adequate progress has been made in the Indian environmental legislation to establish the importance of public participation in ecological conservation since the enactment of the earliest legislation, the Environmental Protection Act, (EPA) 1986. The provisions for mandatory Environmental impact assessment (EIA) and public involvement in EIA were incorporated through the subsequent amendments in the EPA made through specific notifications. The public hearing is a mandatory requirement for seeking environmental clearance for all the projects included in the list of projects requiring

⁷⁰ Dr. Madhuri Parikh, *Public Participation in Environmental Decision Making in India: A Critique*, 22 IOSR-JHSS 56 (2017).

⁷¹ Asha Rajvanshi, *Promoting Public Participation for Integrating Sustainability Issues In Environmental Decision-Making: The Indian Experience* 5 JEAPM 303 (2003) 3.

mandatory EIA under EIA notification. ⁷²Evaluating a proposed project through an EIA has four key steps: Screening, Scoping, Public consultation concerns of local affected persons and others who have environmental impacts of the project or activity and Appraisal.⁷³The normative advantages for representative democratic, participatory policies are well established in democracy. They appear to improve transparency, accountability and decision-making and prompt a broader range of democratic involvement of the common man. However, in many cases, due to corruption and muscle power involved in business projects, public hearing remains an empty formality. In most cases, the Clearance is sought by concealing the actual facts or mentioning the false ones.

VII

Conclusion

The concept of environmental justice has always had a close connection with social justice, especially with distributive justice. The resources provided by Mother Nature belong to all. Nobody should be denied environmental rights based on their socio-economic or racial status. Similarly, if natural resources are being polluted in the name of development, the burden of such exploitation must be distributed among all equitably. The whole concept of environmental justice focuses on the equitable distribution of environmental goods and bad. To achieve this, the procedural environmental rights are of utmost importance. Despite having the most number of environmental legislations in the world, the Indian masses are not able to achieve environmental justice. Extensive capitalism and exploitation of natural resources have garnered money for the rich in cities but toxic water and air for the poor. Tribals don't benefit from development built upon the resources extracted from their forests and mountains. The unsustainable development is destroying not only nature but also the culture and social fabric of their society. Although we boast of substantial and procedural environmental rights but, due to a lack of awareness, many times, people cannot exercise them. Moreover, the highly pro-development approach of the government often lacks environmental considerations. For example, the notification on EIA, 2006, was amended more than 10 times by the government.

⁷²*Id.*, at 299.

⁷³ Naveen Thayyil, *Public Participation in Environmental Clearances In India: Prospects For Democratic Decision-Making* Author 56 JILI 464 (2014) 4.

It is high time that we must focus on ensuring environmental justice for the deprived sections. India is a socialist democratic country with justice as a core value. The preamble of the Constitution talks about social, economic and political justice. The concept of 'environmental justice', although missed in the text, has always been implied in the term 'Social justice'. However, inserting the concept in the preamble will make it more valuable and substantial and will act as a guide for the socialist interpretation of the Constitution. The right to a clean, healthy and sustainable environment must be incorporated as a fundamental right. To enforce environmental rights, the National Green Tribunal was established. However, it is a statutory body. It must be given the constitutional status. Apart from that, the mechanism of environmental impact assessment must be strengthened, and public hearings must be done effectively and not as a mere formality. The tribals and the other marginalised sections of society must be made part of the consultation process while making development policies. Traditional knowledge must be preserved and encouraged as a tool to achieve environmental justice and sustainable development. Only inclusive development is just and sustainable.

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