

# ENVIRONMENTAL JUSTICE

## A Historical and Philosophical Approach

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**Abstract:** The thrusts of the article are threefold: first to examine the complexities presented by environmental inequity in the context of USA and Indian environmental justice movements; and second, to explore the potential that exists within the current system in India to move environmental regulation forward in a responsible manner that makes good on a promise of a more just and fair society and, ultimately, an ecologically sustainable environment in the background of environmental justice principles; and third, in the light of discussion, to suggest a triangular conception of the community of environmental justice, with present generation, future generation and non human natural world at each of the vertices of a triangle in the background of Aristotelian framework of 'fairness' and 'justice'.

**Keywords:** Environmental Racism, Environmental Justice, Corrective Justice, Fairness and Equity, Precautionary Principles, Polluter Pays Principle, Public Trust, National Green Tribunal Act, Sustainable Development, Inter-generational Equity, Community of Environmental Justice

### 1. Introduction

In the 1980s in the United States of America, communities of colour alarmed conventional environmental organizations, regulators and industry stakeholders with allegations of "environmental racism."<sup>1</sup> These charges reflected longstanding frustration on the part of such

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<sup>1</sup>Luke W. Cole and Sheila Foster, *From the Ground Up: Environmental and the Rise of the Environmental Justice Movement*, Bloomington: Indiana University Press, 2001, 14.

communities, and their view that people of colour are systematically subject to disproportionately greater environmental risk while white communities systematically receive better environmental protection.

Across USA, communities of colour began to challenge the siting of hazardous waste facilities, landfills, industrial activities and other risk-producing land practices within their community. These efforts at the grassroots level soon coalesced into a national campaign called the environmental justice movement. The roots of the movement lie in diverse political projects – the civil rights movement, the grass roots anti-toxics movement of the 1980s, organizing efforts of Native Americans and labour, and, to a lesser extent, the traditional environmental movement.<sup>2</sup>

Environmental Justice soon came to mean more than skewed distributional consequences of environmental burdens to communities of colour and lower income groups. Becoming multi-issue and multi-racial in scope, the movement began to address disparities borne by the poor as well as people of colour, acknowledging the substantial overlap between the two demographic categories.<sup>3</sup> Concerns about regulatory processes surfaced as well. Often, the communities most impacted by environmentally risky activities had been excluded from important decision-making process, sometimes intentionally so and sometimes because of a lack of resources, specialized knowledge, and other structural impediments. Initially, environmental justice activists used direct action such as demonstrations as the primary means to raise public awareness of the issue.<sup>4</sup>

Largely in response to this early activism, several investigations and studies were undertaken which lent support to charges of environmental injustice. Significantly, the studies found that race was a more statistically significant variable than income. At the same time, heavily impacted communities continued to organize and began

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<sup>2</sup>For example, a 1983 report by the US General Accounting Office found that in the Environmental Protection Agency's (EPA's) Region IV, three of four major offsite hazardous waste facilities were located in predominantly African American communities; in 1987, a national study by the United Church of Christ Commission for Racial Justice found a positive correlation between racial minorities and proximity to commercial hazardous waste facilities and uncontrolled waste sites.

<sup>3</sup>J. Bentham, *Introduction to the Principles of Morals and Legislation*, Oxford: Basil Blackwell, 1948, 45.

<sup>4</sup>M. Bookchin, *Toward an Ecological Society*, Montreal: Black Rose Books, 1980, 76.

undertaking legal efforts to redress the inequitable environmental burdens that were apparent across the country. The First National People of Colour Environmental Leadership Summit was held in Washington, D.C. during 24-27 October 1991, where the principles of environmental justice were adopted.

Integrating environmental justice into environmental regulation in a manner that meaningfully responds to both the distributional and process issues has proven to be exceptionally complex. Environmental regulators are concerned with the scope of authority to consider environmental justice under environmental statutes, to what extent they may have a legal duty to do so under the civil rights laws, as well as the uncertainty and complexity such an undertaking might add to their regulatory programs.<sup>5</sup>

In this paper, I begin with investigating environmental justice which is further complicated by the terms international, national, and local scope in the US background and then examine its effect on the strength of judicial initiatives to develop environmental justice in India. Next I set forth “Principles of Environmental Justice” – a 17-point paradigm.<sup>6</sup> I conclude with a working definition of ‘fairness’ and ‘justice’ concerning environmental justice. The nature of ‘justice’, ‘fairness’, or ‘equity’<sup>7</sup> is complex and relative to the type of issues at stake. Theories of environmental justice should henceforth entertain an in-principle triangular conception of the community of environmental justice, with the present human generation, future generation and non human natural world at each of the vertices of a triangle.

## 2. Shifting Perspectives and Uses of Terms

Efforts to understand environmental justice are complicated by the terms international, national, and local scope; by its broad definition of the environment – where one lives, works, plays, and goes to school; and by its broad range of concerns – such as public health, natural resource conservation, and worker safety in both urban and rural environs. At the international level it includes allegations that governments and multinational corporations are exploiting indigenous peoples and the impoverished conditions of developing

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<sup>5</sup>A. Dobson, ed., *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice*, Oxford: Oxford University Press, 1999, 35-40.

<sup>6</sup>Wikipedia, “Environmental Justice,” <[http://en.wikipedia.org/wiki/Environmental\\_justice](http://en.wikipedia.org/wiki/Environmental_justice)> accessed 7 May 2014.

<sup>7</sup>For the present purposes, I shall use these three terms interchangeably.

nations. Environmental justice remains broad and aspirational as not to state clearly the ends of environmental justice.<sup>8</sup>

The US Environmental Protection Agency (EPA) initially used the term ‘environmental equity’ defined as the equitable distribution of environmental risks across population groups, to refer to environmental justice. Because this term implies the redistribution of risk across racial and economic groups rather than risk reduction and avoidance, it is no longer used by EPA, though it is still used by some states in the US.

In some instances, the phrase ‘environmental racism,’ defined as “any policy, practice or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or colour,”<sup>9</sup> is used to explain the differential treatment of populations on environmental issues. Commentators disagree over the proper usage of this term, particularly over whether an action having an unequal distributive outcome across racial groups would in itself be a sufficient basis to label an action environmental racism or whether the action must be the result of intentional racial animus.<sup>10</sup> Today, many environmental justice advocates and scholars avoid the term ‘environmental racism’ though the phrase continues to be employed and is useful in identifying the institutional causes of some environmental injustices. This shift is attributable to a desire to focus on solutions rather than mere identification of problems, as well as a desire to encompass class concerns and not to be limited by issues of intentional conduct.

In 1994, President Clinton issued Executive Order and adopted the phrase ‘environmental justice’ to refer to “disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.”<sup>11</sup> The Executive Order’s

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<sup>8</sup>F. M. Lynn, “Citizen Involvement in Hazardous Waste Sites: Two North Carolina Access Stories,” *Environmental Impact Assessment and Review* 7 (1987), 365.

<sup>9</sup>Lynn, “Citizen Involvement in Hazardous Waste Sites,” 347-361.

<sup>10</sup>Riley E. Dunlap and Kent D. van Liere, “The New Environmental Paradigm: A Proposed Measuring Instrument and Preliminary Results,” *Journal of Environmental Education* 9 (1978), 10-19.

<sup>11</sup>In response to the earlier studies and to continuing pressure from communities of colour, former President Clinton in 1994 signed the Executive Order No. 12898 on Environmental Justice requiring all federal agencies to make justice part of their mission. Michael Reisch, *Routledge International Handbook of Social Justice*, New York: Abingdon Oxon Press, 2014, 320.

use of the term ‘environmental justice’ is significant in at least three respects. First, the Executive Order focuses not only on the disproportionate burdens addressed by the term environmental equity, but also on issues of enforcement of environmental laws and opportunities for public participation. Second, the Executive Order identifies not just minorities but also low-income populations as the groups who have been subject to, and entitled to relief from, unfair or unequal treatment. Finally, the Executive Order, and in particular the accompanying memorandum, refers to environmental justice as a goal or aspiration to be achieved, rather than as a problem or cause.<sup>12</sup>

In 1998, EPA’s Office of Environmental Justice set forth the Agency’s standard definition of environmental justice:

With respect to the development and enforcement of environmental laws, regulations, and policies, fair treatment implies that no population should be forced to shoulder a disproportionate share of exposure to the negative effects of pollution due to lack of political or economic strength.<sup>13</sup>

Going beyond the issues of disproportionate exposures and participation in the development and enforcement of laws and policies, EPA further elaborated that environmental justice<sup>14</sup> is based on the premise that i) it is a basic right of all Americans to live and work in safe, healthful, productive, and aesthetically and culturally pleasing surroundings; ii) it is not only an environmental issue but a public health issue; iii) it is forward-looking and goal-oriented; and iv) it is also inclusive since it is based on the concept of fundamental fairness, which includes the concept of economic prejudices as well as racial prejudice. Environmental justice refers to those cultural norms and values, rules, regulations, behaviours, policies, and decisions to support sustainable communities, where people can interact with confidence that their environment is safe, nurturing, and protective.<sup>15</sup>

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<sup>12</sup>Sheila Foster, “Environmental Justice in an Era of Devolved Collaboration,” *Harvard Environmental Law Review* 29 (2002), 459-498.

<sup>13</sup>The EPA also established the National Environmental Justice Advisory Committee (NEJAC), a diverse stakeholder group charged with making recommendations to the Agency concerning a broad range of environmental justice matters. Michael Reisch, *Routledge International Handbook of Social Justice*, New York: Abingdon Oxon Press, 2014, 348.

<sup>14</sup>Luke W. Cole, “Environmental Justice Litigation: Another Stone in David’s Sling,” *Fordham Urban Law Journal* 26 (1994), 523.

<sup>15</sup>Duncan French, *Global Justice and Sustainable Development*, Oxford: Oxford University Press, 2004, 15-43.

### 3. Developments in India Relating to Environmental Justice

It was mostly over the last three decades, with a significant level of polarization around the latter half of this period, the developments in India relating to environmental justice had happened. The developments in this area have seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the Supreme Court of India, and the High Courts of the States. Let us review the strength of judicial initiatives to develop environmental justice in India.<sup>16</sup>

#### 3.1. Judicial Initiative: Role of Public Interest Litigation

Failure on the part of the governmental agencies to effectively enforce environmental laws and noncompliance with statutory norms by polluters resulted in an accelerated degradation of the environment. Most of the rivers and water bodies were polluted, and large-scale deforestation was carried out with impunity. There was also a rapid increase in casualties due to respiratory disorders caused by widespread air pollution. Such large-scale environmental degradation and adverse effects on public health prompted environmentalists and residents of polluted areas, as well as non-governmental organizations, to approach the courts, particularly the higher judiciary, for suitable remedies.

##### 3.1.1. The Relaxation of the Rule of *Locus Standi*

There is near complete academic agreement that the concerted involvement of the higher judiciary in India with the environment began with the relaxation of the rule of *locus standi*,<sup>17</sup> and the departure from the 'proof of injury' approach.<sup>18</sup> The relaxation of the rule led to some important consequences, which were particularly pertinent to environmental matters. First, since it was possible that there could be

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<sup>16</sup>With few exceptions such as Environment Impact Assessment (1994), Coastal Regulation Zone Notification (1991), and the Joint Forest Management Programme, the wealth of Indian environmental management stems from legislative and judicial actions. However, the Ministry of Environment and Forests is the nodal agency for virtually all environmental management processes set up by the legislature.

<sup>17</sup>"Mumbai Kamgar Sabha v. Abdulbhai," *All India Report, Supreme Court*, 1976, 1455; "Fertilizer Corporation Kamgar Union v. Union of India," *All India Report, Supreme Court*, 1981, 344.

<sup>18</sup>"Bangalore Medical Trust v. B. S. Muddappa," *All India Report, Supreme Court Cases*, 1991, 4, 54.

several petitioners for the same set of facts dealing with an environmental hazard or disaster, the court was able to look at the matter from the point of view of an environmental problem to be solved, rather than a dispute between two parties. Second, the rule took care of the many interests that went unrepresented – for example, that of the common people who normally had no access to the higher judiciary.<sup>19</sup> Also, the process brought into sharp focus the conflict of interest between the environment and development, and set the stage for a number of decisions that would deal with issues relating to this area in a more specific manner.

The relaxation of *locus standi*, in effect, created a new form of legal action, variously termed as public interest litigation and social action litigation.<sup>20</sup> This form is usually more efficient in dealing with environmental cases, for the reason that they are concerned with the rights of the community rather than the individual.<sup>21</sup> It is characterized by a non-adversarial approach, the participation of *amicus curiae*, the appointment of expert and monitoring committees by the court, and the issue of detailed interim orders<sup>22</sup> in the form of continuous mandamus under Articles 32 and 226 by the Supreme Court of India and the High Courts of the States respectively.

### 3.1.2. Article 21 and the Protection of Human Rights

The judiciary, in their quest for innovating solutions to environmental matters within the framework of public interest litigation, looked into constitutional provisions to provide the court with the necessary jurisdiction to address specific issues. Furthermore, Article 142

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<sup>19</sup>However, the taking up of interests by so-called third parties who were interested but not injured in the earlier strict sense also had its share of controversy. Some critics have claimed that public interest litigation has been misused by parties who were secretly interested in issues allied to the environmental matter, which were sometimes commercial in nature, thereby using the exalted platform explicitly created for the solution of environmental matters alone.

<sup>20</sup>Upendra Baxi, “Taking Suffering Seriously: Social Action Litigation and the Supreme Court,” *International Commission of Jurists Review* 29 (1982), 37-49.

<sup>21</sup>G. S. Tiwari, “Conservation of Biodiversity and Techniques of People’s Activism,” *Journal of the Indian Law Institute* 43 (2001), 191. See also “Sheela Barse v. Union of India,” *All India Report, Supreme Court*, 1988, 2211.

<sup>22</sup>“T. N. Godavarman Thirumulpad v. Union of India,” *All India Report, Supreme Court*, 1997, 1228; “M. C. Mehta v. Union of India (Vehicular Pollution Case),” *All India Report, Supreme Court Cases*, 1998, 8, 648.

afforded the Supreme Court considerable power to mould its decisions in order that complete justice could be done. As the Supreme Court is the final authority as far as matters of constitutional interpretation are concerned, it assumes a sort of primal position in the Indian environmental legal system. For example, the fundamental right contained in Article 21<sup>23</sup> is often cited as the violated right, albeit in a variety of ways.

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, Bhagwati, J., speaking for the Supreme Court, stated:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.<sup>24</sup>

In *Subhash Kumar v. State of Bihar*, the Court observed that:

The right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution.<sup>25</sup>

The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence. There are numerous decisions wherein the right to a clean environment, drinking water, a pollution-free atmosphere, etc. have been given the status of inalienable human rights and, therefore, fundamental rights of Indian citizens.

In *M. K. Sharma v. Bharat Electric Employees Union*,<sup>26</sup> the Court directed the Bharat Electric Company to comply with safety rules strictly to prevent hardship to the employees ensuing from harmful X-ray radiation. The Court did so under the ambit of Article 21, justifying

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<sup>23</sup>Article 21: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

<sup>24</sup>"Francis Coralie Mullin v. The Administrator, Union Territory of Delhi," *All India Report, Supreme Court*, 1981, 746.

<sup>25</sup>"Subhash Kumar v. State of Bihar," *All India Report, Supreme Court*, 1991, 420.

<sup>26</sup>"M. K. Sharma v. Bharat Electric Employees Union," *All India Report, Supreme Court*, 1987, 1049.



the specific order on the reason that the radiation affected the life and liberty of the employees.<sup>27</sup> In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,<sup>28</sup> the Supreme Court based its five comprehensive interim orders on the judicial understanding that environmental rights were to be implied into the scope of Article 21.<sup>29</sup>

### 3.2. Development of Environmental Law Principles

The Court has successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the concerned statute. There have also been occasions when the judiciary has prioritized the environment over development, when the situation demanded an immediate and specific policy structure.<sup>30</sup>

#### 3.2.1. The Precautionary Principle

Beginning with *Vellore Citizens' Welfare Forum v. Union of India*,<sup>31</sup> the Supreme Court has explicitly recognized the precautionary principle as a principle of Indian environmental law. More recently, in *A. P. Pollution Control Board v. M. V. Nayudu*,<sup>32</sup> the Court discussed the development of the precautionary principle.<sup>33</sup> Furthermore, in the *Narmada* case, the Court explained that:

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<sup>27</sup>For a discussion of the widening scope of fundamental rights, see “Maneka Gandhi v. Union of India,” *All India Report, Supreme Court*, 1978, 597.

<sup>28</sup>“Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh,” *All India Report, Supreme Court*, 1985, 652.

<sup>29</sup>“T. Damodar Rao v. Municipal Corporation, Hyderabad,” *All India Report, Supreme Court*, 1987 AP 171; “L. K. Koolwal v. State of Rajasthan,” *All India Report, Supreme Court*, 1988 Raj 2.

<sup>30</sup>“M. C. Mehta v. Union of India,” *All India Report, Supreme Court Cases*, 1987, 4, 463. The Court held: “Life, public health and ecology has priority over unemployment and loss of revenue problem.”

<sup>31</sup>“Vellore Citizens' Welfare Forum v. Union of India,” *All India Report, Supreme Court*, 1996, 2715.

<sup>32</sup>“A. P. Pollution Control Board v. M. V. Nayudu,” *All India Report, Supreme Court*, 1999, 812.

<sup>33</sup>“S. Jagannath v. Union of India (Shrimp Culture case),” *All India Report, Supreme Court*, 1997, 811.

When there is a state of uncertainty due to the lack of data or material about the extent of damage or pollution likely to be caused, then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution.<sup>34</sup>

### 3.2.2. The 'Polluter Pays' Principle

The Supreme Court has come to sustain a position where it calculates environmental damages not on the basis of a claim put forward by either party, but through an examination of the situation by the Court, keeping in mind factors such as the deterrent nature of the award.<sup>35</sup> However, it held recently that the power under Article 32 to award damages, or even exemplary damages to compensate environmental harm, would not extend to the levy of a pollution fine.<sup>36</sup> The 'polluter pays' rule has also been recognized as a fundamental objective of government policy to prevent and control pollution.<sup>37</sup>

### 3.2.3. Sustainable Development and Inter-generational Equity

According to the report of the Brundtland Commission, the phrase 'sustainable development' means "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>38</sup> However, different levels of societies have their own concept of sustainable development and the object that is to be achieved by it. For instance, for rich countries, sustainable development may mean steady reductions in wasteful levels of consumption of energy and other natural resources through improvements in efficiency, and through changes in life style, while in poorer countries, sustainable development would mean the

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<sup>34</sup>"Narmada Bachao Andolan v. Union of India," *All India Report, Supreme Court*, 2000, 3751. P. Leelakrishnan, "Environmental Law," *Annual Survey of Indian Law*, Volume XXXVI, 2000, 252-257.

<sup>35</sup>The explanation for the principle of absolute liability in "M. C. Mehta v. Union of India (Oleum Gas case)," *All India Report, Supreme Court*, 1987, 965, and its subsequent application in "Indian Council for Enviro-Legal Action v. Union of India," *All India Report, Supreme Court Cases*, 1996, 3, 212.

<sup>36</sup>"M. C. Mehta v. Kamal Nath," *All India Report, Supreme Court*, 2000, 1997.

<sup>37</sup>Ministry of Environment and Forests, Government of India, "Policy Statement for Abatement of Pollution," para 3.3, February 26, 1992.

<sup>38</sup>Joan Martinez-Alier, *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation*, New Delhi: Oxford University Press, 2005, 45.

commitment of resources toward continued improvement in living standards.

Sustainable development demands that the richness of the earth’s biodiversity would be conserved for future generations by greatly slowing and, if possible, halting extinctions, habitat and ecosystem destruction, and also by not risking significant alternations of the global environment that might – by an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation – alter the opportunities available for future generations. In the decision of the Supreme Court in *Narmada Bachao Andolan v. Union of India*, the Court observed that “Sustainable development means what type or extent of development can take place, which can be sustained by nature/ecology with or without mitigation.”<sup>39</sup> In this context, development primarily meant material or economic progress. Being a developing country, economic progress is essential for India. At the same time, care has to be taken of the environment. Thus, the question that squarely arises is: How can sustainable development, with economic progress and without environmental regression, be ensured within the Indian legal framework? This can be achieved through the implementation of good legislation.

The courts have attempted to provide a balanced view of priorities while deciding environmental matters. As India is a developing country, certain ecological sacrifices are deemed necessary, while keeping in mind the nature of the environment in that area, and its criticality to the community. This is in order that future generations may benefit from policies and laws that further environmental as well as developmental goals. This ethical mix is termed sustainable development, and has also been recognized by the Supreme Court in the *Taj Trapezium* case.<sup>40</sup> In *State of Himachal Pradesh v. Ganesh Wood Products*,<sup>41</sup> the Supreme Court invalidated forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development.<sup>42</sup>

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<sup>39</sup>*All India Report, Supreme Court Cases*, 2000, 10, 664.

<sup>40</sup>“M. C. Mehta v. Union of India,” *All India Report, Supreme Court*, 1997, 734.

<sup>41</sup>“State of Himachal Pradesh v. Ganesh Wood Products,” *All India Report, Supreme Court*, 1996, 149.

<sup>42</sup>“Indian Council for Enviro-Legal Action v. Union of India (CRZ Notification case),” *All India Report, Supreme Court Cases*, 1996, 5, 281. The Court noted that the principle would be violated if there were a substantial adverse ecological effect caused by industry.

### 3.3. Judicial Attitude to Policy and Holistic Adjudication

The Supreme Court, in recent years, has been adopting a holistic approach towards environmental matters. This is usually done through detailed orders that are issued from time to time, while Committees appointed by the Court monitor the ground situation. The origin of this tendency may be seen in cases such as *Ratlam*<sup>43</sup> and *Olga Tellis*.<sup>44</sup> The courts were filling in the gaps left by the absence of a clear governmental policy. However, there have been occasions when the court has considered it appropriate to disregard the policy and proceed with a decision that better accommodates constitutional values.<sup>45</sup> At other times, the Court has stated that it is not in the public interest to require the Court to delve into those areas that are in the purview of the executive.<sup>46</sup>

#### 3.3.1. The Right to Livelihood

In certain cases, the judiciary has to choose between the preservation of environmental resources in a state, and the right of communities to extract value out of those resources. To facilitate this choice, the courts have evolved the right to livelihood<sup>47</sup> for communities affected by new state-run conservation initiatives. A clear position on this issue is not immediately forthcoming, as the decision depends heavily upon the factual matrix of each dispute.<sup>48</sup> The Court has also observed the environment-development debate, and stated that the most desirable position is a harmonious form of co-existence of these ends.

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<sup>43</sup>"Municipal Council, Ratlam v. Vardhichand," *All India Report, Supreme Court*, 1980, 1622.

<sup>44</sup>"*Olga Tellis v. Bombay Municipal Corporation*," *All India Report, Supreme Court*, 1986, 180.

<sup>45</sup>"*Sachidanand Pandey v. State of West Bengal (Calcutta Taj Hotel case)*," *All India Report, Supreme Court*, 1987, 1109. The Court permitted the construction of a hotel near land belonging to the Calcutta Zoological Garden, stating that tourism was important to the economic progress of the country, thereby underlining the constant controversy between development and the environment.

<sup>46</sup>"*Banawasi Seva Ashram v. State of Uttar Pradesh*," *All India Report, Supreme Court*, 1992, 920.

<sup>47</sup>"*Olga Tellis v. Bombay Municipal Corporation*," *All India Report, Supreme Court*, 1986, 180.

<sup>48</sup>"*Animal and Environment Legal Defence Fund v. Union of India*," *All India Report, Supreme Court*, 1997, 298.

### 3.3.2. The Doctrine of Public Trust

To further justify and perhaps extract state initiatives to conserve natural resources, the Court enunciated Professor Joseph Sax’s doctrine of public trust, obligating conservation by the state. In *M. C. Mehta v. Kamal Nath*,<sup>49</sup> the Court held that the state, as a trustee of all natural resources, was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership.

### 3.4. National Green Tribunal Act, 2010

Since its economic liberalization policy in 1992, issues of ecology and social justice have been the focus of a surge of social movements in India. These social movements set the base for expansion of rights-based approaches to challenging the impacts of growth and use of the courts. This was followed over the past twenty years by a series of lawsuits where the judiciary upheld citizen rights to clean air and water, and mandating public agencies to enforce laws in line with concerns of social and environmental justice.

In an effort to consolidate these trends, The National Green Tribunal (NGT) was created by an Act of Parliament in 2010 and was established as a dedicated fast-track court to deal with environmental disputes throughout the country. Its specific mission is “the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources.”<sup>50</sup> The NGT Act mandates the Tribunal be composed of a balanced mix of judges and technical experts who have to adhere to strict eligibility requirements. Decisions made by the NGT can only be challenged in the Supreme Court. India is the third country following Australia and New Zealand to have such a system.

The NGT has several features that make it unique. It has a wide jurisdiction to not only deal with violations of environmental laws, but also provide for compensation, relief, and restoration of the ecology in accordance with the Polluter Pays principle, as well as powers to enforce the Precautionary Principle. The tribunal also has the capacity to do merit review as opposed to only judicial review. Under the writ

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<sup>49</sup>“Indian Council for Enviro-Legal Action v. Union of India,” *All India Report, Supreme Court*, 1995, 2252 and “Indian Council for Enviro-Legal Action v. Union of India,” *All India Report, Supreme Court Cases*, 1996, 5, 281.

<sup>50</sup>Preamble of National Green Tribunal Act, 2010, [www.moef.nic.in/downloads/public-information/NGT-fin.pdf](http://www.moef.nic.in/downloads/public-information/NGT-fin.pdf)> Retrieved on 23-04-2014.

jurisdiction of the High Court or Supreme Court, the courts are essentially concerned with the “decision making process”<sup>51</sup> and not the merits of the decision. As a merit court, the Tribunal becomes the primary decision maker and therefore can undertake in-depth scrutiny into not just the law but also the technical basis of a particular decision.

In India’s quest for economic growth, environmental concerns often get steamrolled under the pretext of development. Affected communities have little voice in the process. Even though the law requires Environmental Impact Assessments (EIA) and public hearings, these are usually cosmetic, and EIAs often include false or incomplete data. India’s coal sector has been particularly notorious for its rubber-stamp approval processes with a record number of clearances being granted over the last five years. The National Green Tribunal has reversed some of them.

In 2012 the Tribunal made its first ruling when it ordered a halt to construction of a coal plant in Kutch in the western Indian state of Gujarat. The project was challenged in the tribunal by local fishermen and villagers protesting against the adverse impact of the project on the local ecology. The tribunal sided with communities by pointing out that the EIA included cooked data. The NGT also directed a halt to the construction of the plant, which had commenced despite not having obtained the requisite clearances.

After the Kutch ruling, the National Green Tribunal struck again, revoking the environmental clearance for coal mines in the central Indian state of Chhattisgarh – a state considered the heartland of coal. In 2011, the then Union Minister of Environment and Forests, Jairam Ramesh gave his approval to divert around 1,900 hectares of forest land for the purpose of coal mining in the Hasdeo Arand forest of Chhattisgarh. Hasdeo Arand is a pristine, unfragmented forest rich in biodiversity. The area also serves as a wildlife corridor for migratory elephants and had been set aside by the state government for an elephant reserve. Ramesh allowed opening up of the coal blocks, while rejecting the recommendations of the Ministry’s own Forest Advisory Committee (FAC), which had demarcated the area as ‘no-go’ based on the extent of forest cover present in the area. While on earlier occasions Ramesh had concurred with the FAC’s recommendations, he reversed his original decision by saying that he needed to consider the broader development picture, and that the coal blocks were restricted to the

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<sup>51</sup>Article 32 and 224 of Indian Constitution.

fringes of the forest. The project clearance was eventually challenged before the NGT by Sudiep Sreevastava a local lawyer and activist. Sudiep filed a petition challenging the order in December 2012 and within three months of the petition, the NGT had issued a stay on the felling of trees in the area. In March 2014, the tribunal issued an order that quashed the forest clearance given by the environment ministry to the controversial coal blocks in Hasdeo Arand.<sup>52</sup>

The NGT will never be able to solve all of India’s environmental challenges, yet it has dramatically transformed jurisprudence on environmental issues and provided a means of redress for local communities. In the fight between David and Goliath, the Tribunal is proving to be David’s effective weapon.

#### **4. Environmental Justice Principles**

An alternative approach to defining environmental justice that does state its desired ends, albeit very ambitious ones, was developed by environmental justice leaders during the 1991 First People of Colour Environmental Leadership Summit. Its “Principles of Environmental Justice” sets forth a 17-point paradigm.<sup>53</sup> These are to begin to build a national and international movement of all peoples to fight the destruction and taking of the lands and communities, and to re-establish the sacredness on the Mother Earth; to respect and celebrate each of the cultures, languages and belief about the natural world and the roles in healing ourselves; to insure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure the political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of the communities and land and the genocide of the coloured peoples. The 17-point paradigm offers the following:

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.

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<sup>52</sup>Green Tribunal of India News, <[http://awsassets.wwwfindia.org/downloads/ngn\\_v18.html](http://awsassets.wwwfindia.org/downloads/ngn_v18.html)> Retrieved on 23-05-2014.

<sup>53</sup>Wikipedia, “Environmental Justice,” <[http://en.wikipedia.org/wiki/Environmental\\_justice](http://en.wikipedia.org/wiki/Environmental_justice)> 7 May 2014.

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.

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 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 US 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 cities and rural areas in balance with nature, honouring the cultural integrity of all our communities, and providing fair access for all to the full range of resources.

13. Environmental justice calls for the strict enforcement of principles of informed consent, a halt to the experimental reproductive and medical procedures and vaccinations on of colour.



14. Environmental justice opposes the destructive operations of multinational corporations.

15. Environmental justice opposes military occupation, repression and exploitation of lands, peoples’ 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 experience and appreciation of 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 insure the health of the natural world for present and future generations.<sup>54</sup>

Robert Bullard has distilled the principles of environmental justice into a framework of five basic characteristics:

- (a) protect all persons from environmental degradation;
- (b) adopt a public health prevention of harm approach;
- (c) place the burden of proof on those who seek to pollute;
- (d) obviate the requirement to prove intent to discriminate; and
- (e) redress existing inequities by targeting action and resources.

In his view, environmental justice seeks to make environmental protection more democratic and asks the fundamental ethical and political questions of ‘who gets what, why and how much.’<sup>55</sup> The key equity issues in the environmental justice context are of a particular type which interconnects the concepts like ‘justice,’ and ‘fairness’ or ‘equity’. Practically it means that no population should be forced to shoulder a disproportionate share of exposure to the negative effects of pollution due to lack of political or economic strength.<sup>56</sup>

## 5. ‘Fairness’ and ‘Justice’: An Aristotelian Framework

With regard to environment, the nature of ‘justice’ and ‘fairness’ or ‘equity’<sup>57</sup> is complex and relative to the type of issue at stake. This is fortunate, because we have a long standing general characterisation of

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<sup>54</sup>“Principles of Environmental Justice,” Proceedings, *The First National People of Colour Environmental Leadership Summit* xiii (October 24-27, 1992) adopted in Washington, D.C.

<sup>55</sup>Tseming Yang, “Melding Civil Rights and Environmentalism: Finding Environmental Justice’s Place in Environmental Regulation,” *Harvard Environmental Law Review* 26 (2002), 04-08.

<sup>56</sup>Robert C. Solomon, and Mark C. Murphy, eds., *What Is Justice? Classic and Contemporary Readings*, New York: Oxford University Press, 2000, 3.

<sup>57</sup>For the present purposes, I shall use these three terms interchangeably.

a just solution for these distributive issues, summarised in Aristotle's dictum "What is just is what is proportional, and what is unjust is what violates the proportion."<sup>58</sup>

The fairness of a distribution, in other words, is to be assessed in terms of proportionality with some morally relevant quantifiable attribute ('differentiation parameter'). Aristotle's answer is too general to provide practical solutions for actual distributive problems. And even if a particular differentiation parameter is agreed upon – such as the 'degree of responsibility' of the well-known Polluter Pays Principle – the question of how to 'operationalise' (measure) it is all but trivial. Nonetheless, Aristotle's general characterisation of distributive justice ('justice of proportionality') is of crucial importance in providing a general conceptual framework for the equity issues arising in the context of environmental justice.<sup>59</sup> And while finding acceptable differentiation parameters will remain a critical task as concerns the practical implementation of equitable solutions, it is equally important not to lose sight of this 'bigger picture' (Polluter Pays Principle).<sup>60</sup> Measurements are indispensable in finding equitable solutions, yet they are at best meaningless and at worst counter-productive in the absence of a proper understanding of the larger issues at stake.

## 6. Environmental Justice and Environmental Ethics

The understanding of environmental justice is by de-assembling the term into the four traditional notions of 'justice' that are implicated by allegations of environmental injustice. Considering the above views of prominent philosophical implications of 'justice' and 'fairness' or 'ethics', Robert Kuehn explains that underlying the environmental justice are four concepts of justice and fairness or ethics: distributive, procedural, corrective and social justice.<sup>61</sup>

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<sup>58</sup>Aristotle, *Nicomachean Ethics*, F. H. Peters, trans., London: Kegan Paul, Trench & Truaners, 1982, V.3.39.

<sup>59</sup>F. M. Lynn, "Citizen Involvement in Hazardous Waste Sites: Two North Carolina Access Stories," *Environmental Impact Assessment and Review*, 7, (1987), 347-361.

<sup>60</sup>J. Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1972, 3-4.

<sup>61</sup>Robert Kuehn, "What's Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses," *Cornell Law Review* 67 (1993), 87.

### 6.1. Environmental Justice as Distributive Justice

Distributive justice has been defined as “the right to equal treatment, that is, to the same distribution of goods and opportunities as anyone else has or is given.”<sup>62</sup> Aristotle is often credited with the first articulation of the concept and explained it as involving “the distribution of honour, wealth, and the other divisible assets of the community, which may be allotted among its members.”<sup>63</sup> The focus of this aspect of justice is on fairly distributed outcomes, rather than on the process for arriving at such outcomes.<sup>64</sup>

In the environmental context, distributive justice involves the equitable distribution of the burdens from environmentally threatening activities or of the environmental benefits of government and private-sector programmes. More specifically, in an environmental justice context, distributive justice most commonly involves addressing the disproportionate public health and environmental risks borne by people of colour and lower incomes.

Distributive justice in an environmental justice context does not mean redistributing pollution or risk. Instead, environmental justice advocates argue that it means equal protection for all and the elimination of environmental hazards and the need to place hazardous activities in any community. In other words, distributive justice is achieved through a lowering of risks, not a shifting or equalizing of existing risks.

With such a strong focus on the inequitable distribution by race and income of environmental hazards, an often overlooked aspect of distributive justice is that it also involves the distribution of the benefits of environmental programmes and policies, such as parks and beaches, public transportation, safe drinking water, and sewerage and drainage. Sheila Foster has argued that a narrow focus on issues of distributive justice neglects the search for social structures and agents that are causing the environmental problems.<sup>65</sup>

### 6.2. Environmental Justice as Procedural Justice

Claims of procedural injustice also are common in environmental justice disputes, and it is not usual for poor people to complain about

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<sup>62</sup>Aristotle, *Nicomachean Ethics*, V.3.41.

<sup>63</sup>Aristotle, *Nicomachean Ethics*, V.3.49.

<sup>64</sup>Cole, *Environmental Justice Litigation*,” 513.

<sup>65</sup>Cole and Foster, *From the Ground Up*, Book Review, <<http://kar.kent.ac.uk/id/eprint>> retrieved on 04-04-2014.

both the distributive and procedural aspects of an environmental policy or decision. Indeed, in many situations, a community's judgment about whether or not an outcome was distributively just will be significantly determined by the perceived fairness of procedures leading to the outcome.

Procedural justice has been defined as "the right to treatment as an equal. That is right, not to an equal distribution of some good or opportunity, but to equal concern and respect in the political decision about how these goods and opportunities are to be distributed."<sup>66</sup> Aristotle referred to this as a status in which individuals have an "equal share in ruling and being ruled."<sup>67</sup> It involves justice as a function of the manner in which a decision is made, and it requires a focus on the fairness of the decision-making process, rather than on its outcome.

The Principles of Environmental Justice demand that public policy be based on mutual respect and justice for all peoples and free from bias or discrimination, affirm the fundamental right to self-determination, and insist on the right to participate as equal partners at every level of decision-making. Environmental justice complaints raise both *ex ante* and *ex post* considerations of procedural fairness. Looking at the process in advance of its use (*ex ante*), they question whether the decision-making and public participation procedures are fair to all concerned or whether they favour one side over the other. Also, looking back (*ex post*), the complaints question whether the completed decision-making process did, in fact, treat all with equal concern and respect.<sup>68</sup> One way to judge procedural justice *ex ante* is to determine if those to be affected by the decision agree in advance on the process for making the decision. Thus, procedural justice requires looking not just to participation in a process but to whether the process is designed in a way leading to a fair outcome.

In this respect, environmental decision-making processes have been roundly criticized by commentators who have examined issues of environmental justice and public participation. One common observation is that the predominant expertise-oriented, interest-group model of environmental decision-making favours those with resources and political power over the poor and the marginalised. Even the civic

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<sup>66</sup>Aristotle, *Nicomachean Ethics*, V.3.44.

<sup>67</sup>Aristotle, *Nicomachean Ethics*, V.3.45.

<sup>68</sup>M. D. A. Freeman, *Lloyd's Introduction to Jurisprudence*, London: Sweet and Maxwell Ltd., 2001, 523.

process, which outwardly seeks to advance community interests over private interests, may obscure the true private interests at issue and the continuing disparities in resources, power, and influence. In general, to achieve procedural justice, observers advocate developing more deliberative models of decision-making, providing disadvantaged groups with greater legal and technical resources, and ensuring equal access to decision-makers and the decision-making process.<sup>69</sup>

An unresolved aspect of procedural justice is whether a fair process can negate a claim that a disproportionate outcome is unjust. Some argue that if the decision-maker has given impartial attention to and consideration of competing claims to different benefits, an outcome would not be unjust even if the result were to subordinate one group to another. The principles of environmental justice implementing regulations indicate that a fair process alone will not negate claims of distributive injustice.

### **6.3. Environmental Justice as Corrective Justice**

The third concept of justice encompassed by the term environmental justice is ‘corrective justice’. This is a notion of justice that is sometimes referred to by other names and may be subsumed within claims for distributive or procedural justice. ‘Corrective justice’ involves fairness in the way punishments for lawbreaking are assigned and damages inflicted on individuals and communities are addressed. Corrective justice involves not only the just administration of punishment to those who break the law, but also a duty to repair the losses for which one is responsible. Therefore, as reflected in claims made in the environmental justice context, corrective justice encompasses many aspects of wrongdoing and injury and includes the concepts of ‘retributive justice’, ‘compensatory justice’, ‘restorative justice’, and ‘commutative justice’. The term corrective justice is used here because environmental justice seeks more than just retribution or punishment of those who violate legal rules of conduct. Corrective justice is also preferred over the phrase ‘compensatory justice’ because the latter term may imply that, provided compensation is paid, an otherwise unjust action is acceptable. It is also important to note that although some concepts of corrective justice view fault or wrongful gain as a necessary condition for liability, environmental justice principles impose responsibility for damages regardless of fault (e.g., the polluter-pays principle).

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<sup>69</sup>Martinez-Alier, *The Environmentalism of the Poor*, 1.

#### 6.4. Environmental Justice as Social Justice

The fourth aspect of environmental justice is implicated by the term 'social justice' – a far-reaching goal of the environmental justice movement. Social justice is a branch of the virtue of justice that moves us to use our best efforts to bring about a more just ordering of society – one in which people's needs are more fully met. The demands of social justice are: first that the members of every class have enough resources and enough power to live as befits human beings, and second, that the privileged classes, whoever they are, be accountable to the wider society for the way they use their advantages.<sup>70</sup>

A social justice perspective presents environmental justice as part of larger problems of racial, social, and economic justice and helps to illustrate the influence of politics, race, and class on an area's quality of life. This broader social perspective is with traditional environmentalism and its narrower focus on wilderness preservation and the technological aspects of environmental regulation. Environmental justice has been described as a "marriage of the movement for social justice with environmentalism"<sup>71</sup> integrating environmental concerns into a broader agenda that emphasizes social, racial, and economic justice.

Environmental justice's focus on social justice reflects reality because oppressed people often do not have compartmentalized problems: they do not separate the hazardous waste incinerator from the fact that their life is threatened. The disadvantaged communities do not separate these problems because their quality of life as a whole is suffering and the political, economic, and racial causes are likely interrelated.

Social justice influences can work in two ways. The same underlying racial, economic, and political factors which are responsible for the environmental threats to the community also likely play a significant role in which the area may suffer from other problems like inadequate housing, a lack of employment opportunities, poor schools, etc. In turn, the presence of undesirable land uses that threaten the health and wellbeing of local residents and provide few direct economic benefits negatively influences the quality of life, development potential, and attitudes of the community and may lead to further social and economic degradation.

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<sup>70</sup>Martinez-Alier, *The Environmentalism of the Poor*, 1.

<sup>71</sup>L. M. Gibbs, *Dying from Dioxin: A Citizen's Guide to Reclaiming Our Health and Rebuilding Democracy*, Boston: South End Press, 1984, 37.

## 7. Conclusion

A major problem with the environmental justice movements in the US version of the democratizing critique is that, like eco-populism more generally, it threatens to worsen the problem of environmental policy’s mission priorities. Environmental justice inevitably enlarges this challenge of missing priorities, and for similar reasons. The movement is a delicate coalition of local and ethnic concerns unable to narrow its grievances for fear of a similar ‘political bloodletting.’ Real priority-setting runs contrary to radical egalitarian value premises and no one (perhaps least of all a strong democratizer) wants to be deemed a victimizer.

Joan Martinez-Alier proposes that “the solution to unequal protection lies in the realm of environmental justice for all. No community, rich or poor, black or white, should be allowed to become a ‘sacrifice zone.’”<sup>72</sup> When pressed about the need for environmental risk priorities, and about how to incorporate environmental justice into priority setting, Martinez-Alier’s answer is a vague plea for non-discrimination, along with a barely more specific call for a “federal fair environmental protection that would transform protection from a privilege to a right.”<sup>73</sup>

Robert Kuehn argues that the way to establish environmental priorities is precisely by guaranteeing that such priorities are impossible to implement. This is symptomatic of a movement for which untrammelled citizen voice and overall social equity are cardinal values.<sup>74</sup> Ironically, in matters of health and risk, environmental justice poses a potentially serious, if generally unrecognized, danger to the minority and low-income communities it aspires to help. If one accepts that citizens inherently have limited time and energy to devote to their health, attention to distant or relatively minor health risks – however politically compelling – very likely means less attention for some more substantive health problems. And if one accepts that low-income citizens, in particular, have even fewer resources, and greater vulnerabilities, than more affluent citizens, then a focus on relatively low or unlikely risks could have a particularly insidious effect.

More frequent resort to a rationalizing, if not solely economic, perspective would encourage minority and low-income citizens and

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<sup>72</sup>Martinez-Alier, *The Environmentalism of the Poor*, 23.

<sup>73</sup>Martinez-Alier, *The Environmentalism of the Poor*, 29.

<sup>74</sup>Kuehn, “What’s Fairness Got to Do with It?” 90.

community leaders to think more carefully about priority-setting and myriad tradeoffs.<sup>75</sup> If conventional environmental justice advocacy cannot confront risk magnitudes honestly, it cannot help much in the assessment and management of tradeoffs, either of the risk/risk or risk/benefit varieties. The notion that attacking some risks may create others is largely foreign to environmental justice – beyond a fear that attacking the risk of poverty with industrial jobs may expose workers to hazardous conditions. A focus on community inclusion, although necessary to the ultimate acceptability of decisions, offers no automatic or painless way to sort through tradeoffs. When confronted with choices posing both risks and benefits – such as a proposed hazardous waste treatment facility that would create jobs, and impose relatively low risks, in a needy area – environmental justice offers, along with disgust that such horrendous choices exist, mainly community engagement and participation.<sup>76</sup>

Criticism of environmental justice as too myopic and a diversion of scarce resources away from other more important social and public health problems are not well-founded. Most often, environmental justice efforts do not wastefully divert a community's attention but instead bring people together to focus on a broad array of social justice problems. Government officials and firms seeking community acceptance for environmentally risky projects must as a practical and moral matter consider whether social justice is served by their projects.

Environmental justice advocates stress that the relevant issues are not demands for special treatment, but are grounded upon precepts of basic fairness and equal treatment: that there should be a level playing field for all stakeholders and that environmental burdens and benefits should not fall in disproportionate patterns by race and income.

The principles of Indian environmental justice are resident in the judicial interpretation of laws and the Constitution, and encompass several internationally recognized principles, thereby providing some semblance of consistency between domestic and global environmental standards. In India, the higher judiciary plays a rather stalwart role owing to its unique position and power, and due to the circumstances

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<sup>75</sup>Kuehn, "What's Fairness Got to Do with It?" 96.

<sup>76</sup>For historical perspective of Environment Justice in the American context, see Robert D. Bullard, "Environmental Justice in the 21st Century," Environmental Justice Resource Center at Clark Atlanta University, USA, <[http://ejrc.cau.edu/ej\\_in\\_the\\_21\\_century.htm](http://ejrc.cau.edu/ej_in_the_21_century.htm)> retrieved on 04-04-2014.



of inefficiency within the executive and the existence of a skeletal legislative framework.

Following Andrew Dobson’s pioneering work entitled *Environment and Justice* which studied the relationship between the two environmental movements took place in US and in India, I present six conclusions and these may be summarized as six theses:<sup>77</sup>

First Thesis: ‘sustainability’ and ‘justice’ may be related in three fundamental ways:

- i) The environment as something to be distributed
- ii) Justice as functional for sustainability (poverty eradication is pre-condition for sustainability)
- iii) Justice to the environment (here ‘environment’ is a ‘recipient’ rather as an ‘ingredient’ in doing justice.)

Second Thesis: Neither environmental sustainability nor social justice has determinate meanings; and this opens the way to legitimizing the pursuit of either of them, in terms of the other, in a number of ways, by tweaking or by making fine adjustments strategy.

Third Thesis: concerns of the environmental movement and movements for social justice are fundamentally different as far as the ‘natural’ environment is concerned, although they may sometimes coincide.

Fourth Thesis: the question of whether sustainability and justice are compatible objectives can only be resolved empirically, and the range and depth of empirical research required to resolving this question has not been done. Relationship between sustainability and justice is a complex one and it is therefore unwise to make determinate claims about them. Any statement regarding the relationship between them needs to be prefaced by an explanation of what type of social justice and what kind of environmental sustainability is under considerations. Empirical work, on relationship, is thin on the ground and such work would provide more solid intellectual foundation to sustainable development. We do not know enough to be able to say whether justice is or is not, a necessary and/or a sufficient condition for environmental sustainability.

It may be a necessary condition, but only under certain circumstances yet to be systemically explored, and it is Dobson’s claim that it is unlikely to be a sufficient condition since sustainability

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<sup>77</sup>Andrew Dobson, *Environment and Justice*, Oxford: Oxford University Press, 1998, 240-262.

questions are about more than justice. In this context, Brian Barry's prediction that "whatever redistribution among contemporaries is required by justice will also be observed the constraints that the interests of future generations be protected and justice will be true if the goods redistributed are 'spent' on sustainable practice."<sup>78</sup>

Fifth Thesis: no theory of justice can henceforth be regarded as complete if it does not take into account the possibility of extending the community of justice beyond the realm of present generation human beings.

- i) Idea of environmental sustainability acquires its greatest resonance in the context of future generations.
- ii) The environmental movement has also brought the non-human natural world into the political frame.

Sixth Thesis: liberal theories of justice are broadly compatible with the most common conception of environmental sustainability.

In the light of aforesaid conclusions, I suggest that theories of environmental justice should henceforth entertain an in-principle triangular conception of the community of environmental justice, with present generation, future generation and non human natural world at each of the vertices of a triangle.<sup>79</sup>

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<sup>78</sup>Dobson, *Environment and Justice*, 267.

<sup>79</sup>Dobson, *Environment and Justice*, 245.