Earthquake and Earth Justice
Emergence of the Environmental Justice Movement and its Relevance in Addressing Unanticipated Events

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Basic Questions

• Was environmental justice movement a response to unanticipated events?
• Or was it just a response to anticipated but neglected results because there was no voice to resist?
• Can environmental justice measures [coupled with policies, planning and coping and adaptive strategies] prevent and minimize the impacts of unanticipated events?
Outline of Presentation

• Anecdotal understanding of EJ Movement
• Issues
• Principles Evolved
• Contribution to international law
• EJ in South Asia
• Relevance in Addressing Unanticipated Events
• Issues for Discussion
Anecdotal Understanding

• 1980s: an up-shoot of social justice movement in the US that raised issues of social justice, equal protection, equity and an end to institutional discriminations.

• EJM fights against ecological destruction and calls for fair sharing of environmental benefit and burdens.

• Theories of environment, environmental justice, policies, laws, planning, governance, aesthetic relations, sacredness of mother earth cover different shades of EJM.

• NIMBY, LULUs; PIMBYs

• Affected groups: racial minorities, low-income and impoverished groups
EJ Issues in Different Countries

- **Europe**: discrimination to Romani people in diff countries.
- **UK**: Poverty and Environment, Health inequality and social exclusion, child labor in cotton industry.
- **France**: climate change
- **South Africa**: Waste from mining, mining accidents, work related issues: Envt a right (Art 24)
- **Australia**: citing of hazardous waste
- **Ecuador**: substandard oil mining and toxic waste dumping
- **South Korea**: pollution, infrastructure development-Saemangeum sea wall (33 km), Incheon canal.
- **North-South Dimension**: dumping of hazardous waste
Issues

• Desperate impact of pollution and neglect/discrimination
  – privileges for dominant group
  – mis-treatment/neglect of minorities, immigrants and low-income populations in the dumping of hazardous and other waste, release of toxin and other pollutants,
  – Exposure to pesticides
  – Health and education
  – Housing
Response

- Prevention of harm
- Fair treatment- same degree of protection
- Environmental elitism/environmetalism rejected- focus on fair and even handed enforcement of environmental laws
- Greater public participation in decision making and research
- Transparency, accountability and accessibility
- Protection of minorities in development of infrastructures (High dams, airport and mega projects)
- Removing poverty trap and improving quality of life through capacity building
Components of Environmental Justice

• Distributive Justice-
  – Distribution of environmental benefits and burdens
  – Laws recognizing substantive rights crucial for promoting access to benefits and burdens
  – Emphasis on enforcement of public duties

• Procedural Justice-
  – defining standing, liberalizing it
  – Access to review procedures through representative suits
  – Information and access to information
  – Participation in environmental decision making

• Value aspects: Justice as a value to social equilibrium- environment as value, environmental sanctity,
Principles Evolved

• **Human person at the center** of environmental discourse- Environmental degradation a common concern

• **right** to clean air, land, water, and food- right to be free from environmental hazards- compensation reparation...

• right to **participation** in decision making- access to info. ,prior informed consent

• **Equity , justice and mutual respect** the basis of partnership- cultural integrity- fair access to res.
Contribution to International law

• Human being brought to the center of environmental discourse
• Equitable global partnership and cooperation
• Development of the right perspective
• Eradication of poverty, quality of life focused [as an indispensable requirement of SD]
• Reduction and elimination of unsustainable patterns of production and consumption
• Access to information and participation in decision making and benefit sharing
Contd..

• Compensation to victims of pollution
• Relocation and transfer of activities and substances causing severe environmental degradation or harmful to human health proscribed
• Emergence of precautionary and polluter pays principle, and principle of prior informed consent
• EIA and internalization of environmental cost in project
• Capacity building and transfer of technology
Environmental Justice and South Asian Courts

• Expansive interpretation of rights- to include the right to a clean and healthy environment
• Questioning arbitrariness of law- seeking justness, fairness and reasonableness
• Liberalization of the principle of standi
• Complementarities of FRTs and DPSPs
• Proactive approach in environmental adjudication
Judicial Interventions

• Air, water, noise pollution
• Protection of underground water
• EIA/SIA
• Lung Space
• Protection of forest
• Mass Starvation/food security
• Health and environment
Strategic Tools

• Self-observation (Ratlam case, Dharahara case, Godavari case)
• Fact Finding and Expert Committees
• Invocation of Principles
• Education
• Compensation
• Continuing Mandamus
Principles Invoked

• Principle of Sustainable development
• Principle of Intra-generational and Intergenerational Equity
• Principle of Public Trust
• Precautionary Principle
• Polluter Pays Principle
• Principle of absolute liability
Candidate principles in SA

- Principle of Non-regression
- Common but Differentiated Responsibility
- Principle of Regional Cooperation
- Accounting and Payment for Ecosystem Service
- Restorative justice approach
Earth Justice and South Asian Courts

• EIA/SIA
• Questioning colored acquisition
• Resettlement and Rehabilitation
• Contribution in law making
  – Constitution making and Amendment –Bhutan, India, Pakistan, Nepal
  – Envt Act/Rules and Standard
  – Right to information Act
  – Forest Dwellers Act
  – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013
Earth justice

• Earth Justice: a holistic approach, acknowledgement of the natural process of change, preparedness to quickly respond, minimize damage and add vigor to human resilience.

• Safe habitat, safe land sites, open space, emergency service, health and environmental safety during the rescue and resettlement period.

• Recourse to justice made available at every stage from rescue to rehabilitation

• Distributive justice
Earth justice

- Control exploding population - straining upon earth resources
- Improving the decaying infrastructure
- Improve agriculture - save high nutrients lands for agriculture
- Reform our land tenure laws
- Sustainable land use policies
- Conservation of biodiversity and sustainable use of its components
- Green belts, urban parks and gardens-open spaces- biodiversity conservation
- Clean rivers, lakes and water bodies
- Address global environmental issues – Global warming, climate change
- Disaster preparedness
QUESTIONS re Earth Justice

• Can we prevent earthquake or tsunami ?-
  – May be not, but minimize their impacts.
• Can we prevent man made disasters of varieties: [e.g. Global warming, ozone depletion, collapse of the HIMALAYAN SYSTEM or smaller disasters like Bhopal or bursting of lakes, mines Or long term toxic effects of hazardous wastes?]
• Yes, we can- provided we work together.
What will we do with money if we do not have water, air is dirty, and food is poisoned?
Heaven and Hell

Heaven is where there is no law and promises are kept. Hell is where there is only law and due process is strictly observed.
Return to Basic Questions

• Was environmental justice movement a response to unanticipated events?
• Or was it just a response to anticipated results-neglected because there was no voice to resist?
• Can environmental justice measures promote Disaster Resilient Environmental Development? Yes, if coupled with policies, planning and coping and adaptive strategies are honestly implemented
Issues for discussion

• Other dimensions of Environmental Justice
  – Practiced by courts in SA not covered above
  – Practiced by courts in other Regions but yet to find place in SA decisions
  – Weak spots in the decisions
  – Direction that EJ should pursue

• Your thoughts ???????