

Structure of Environmental Adjudication

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Environmental adjudication as a whole has a very conflicting and double-edged background because with development and various other intervening factors comes a whole array of difficult issues that have to be dealt with. Environmental law is vital to humanity as it deals with some of the greatest hurdles faced by us such as health problems, lack of natural resources, as well as the ability for people who are affected to take part in the law-making process that involves their livelihoods. Usually a balance is not struck when a situation of environmental adjudication arises as either side needs to be compromised in order for to make a proper decision, therefore the judiciary must find a way for the impact to be lessened in order to deliver a fair and just decision. It has to take in important dynamic changes like climate change which is an ever present threat to security and wellbeing of the human life and property and includes deterioration of living conditions.

The battle that is fought frequently, with regard to environmental adjudication, is between the compromises of the environment against advancement and development. Both the conservation of the environment and development are essential to humanity but one important aspect that must be understood is that those with the mind-set of pushing forth development with not factoring in the importance of environmental protection could lead humanity down a disastrous path. Judges are an essential part in ensuring that laws are properly implemented without one side outweighing the other, therefore they are to a certain extent a shield that the environment can use to protect against excessive development.

In deciding a case, a Judge has to not only consider the implications of that particular case and issue, but also look at the larger spectrum and see how it effects the environment as a whole and study the sort of danger it poses to the flora and fauna. A Judge has a grave burden in realizing the chain of effects that could be set off to either the betterment of the environment or its hastened demise. Looking at crucial issues such as the dumping of toxic waste which is a major problem faced in many developing countries, it could be seen that the Judiciary has the power to limit and lessen the impact on the environment by putting forth an order to limit the amount of waste that is dumped, in turn controlling the amount of damage.

Education and sensitization including change in attitudes about the impact on the environment and the reasoning behind development is paramount as the awareness would ensure that the society has a clearer view of the implications and also know why environmental law and adjudication is important. Judges have a duty in educating the public through showcasing cases that deal with adverse effects on the environment by way of resolving them effectively. The courts also often play the role of carrying out checks and balances where the governance is weak, and does not implement the policy of protecting

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and safeguarding the environment, and the role of trusteeship mandated by Law in the issues of bioethics in environmental governance and the geopolitics of governance in managing climate changes and its adaptations.

Various countries such as Australia, India and the Philippines have brought forth “Green Benches” which deliver environmental justice through specialized individuals that have proper training to deal with cases that deal with the environment. The “Green Benches” deals with issues concerning urbanization, industrialization and other ecological problems that pose a harm to the environment, and doing so ensures that a matter of environmental law is handled diligently and gets the specific attention that it deserves as it is crucial to consider all the environmental implication that are caused as a result.

The threat of environmental degradation poses an unprecedented challenge to humanity. While addressing environmental degradation is important in the long run, it is crucial to recognize that especially for the developing countries like Sri Lanka, there are a number of other development issues that affect human welfare more immediately – such as hunger and malnutrition, poverty, health, and pressing local environmental issues. Seen from the development viewpoint, climate change vulnerability, impacts and adaptation are the main elements of the climate change problem that resonate. Development pathways also determine emission levels, and they have implications for mitigation strategies as well.

The importance judicial intervention in maintaining a balance between human welfare and environmental sustainability cannot be doubted. The judiciary is not only the final interpreter of the Constitution; it is also its guardian. The role of the judiciary is linked to the role of the rule of law. This is why we must understand that strengthening the judiciary means strengthening of the rule of law.

With regard to an issue as global as Environmental Justice, it is important to define the role of the judiciary in the international context by listing its functions, which may be broader than in the national contexts of various countries. However, the national and international legal systems are not always harmonized (as they should be) and may even conflict with each other.

It is important that we understand that Judiciary bears the inherent responsibility to move from written principles to applied principles to law. We must strengthen compliance with law through the strengthening of the system of liabilities and by building trust and incentives which have a priori effects of compliance enforcement. It is crucial that compliance is ensured by translating international agreements, associated with Environmental Law, into domestic law. It is also very important that we provide access to justice by ensuring environmental justice.

The main obstacle, as it stands, is a lack of knowledge, capacity, training and expertise in the systems that deal with the interpretation of environmental rules. In addition to this, there are Institutional gaps, internationally and nationally. Environmental law is also fragmented and limited as characterized by its nascent nature: Principles such as those included in the Rio Principles need to be operationalized and interpreted. Multilateral Environmental Agreements do not provide justice to affected stakeholders. There is also a lack of clear responsibilities and harmony among different court decisions which leads to the problem of

forum shopping or picking the ‘court of choice.’ There is also a lack of harmonization among domestic, regional and international courts.

Creating and disseminating knowledge regarding these issues is crucial. There is a need for increased knowledge in order to ensure an effective translation of international agreements into domestic law and compliance with national, supranational and international law and the adoption of effective and efficient decisions in order to maintain a fair process.

One of the most important functions of a judiciary is to foster the creation of a body of environmental law. This includes the definition of the implications of the Rio Principles and their integration into the larger body of environmental law. The judiciary can help to strengthen the system of environmental liabilities and to incorporate the environmental dimension into decision-making.

A unified and efficient dispute settlement mechanism would serve a very useful purpose if created and supported. So far the only dispute settlement mechanisms in place are either restricted to governments (ICJ) or to the parties that submit themselves to a specific system of arbitration. Through this mechanism, we may foster the linking of national courts to the international system of environmental system

The creation of a body to review the decisions of other dispute settlement mechanisms is of upmost priority to be considered. This body should focus on the review of the part of the decision dealing with the (global) environment. This may include the idea of an Environmental Supreme Court.

In making a diligent system, a consultative body on environmental law, open for requests from all courts and decision making bodies would serve a very essential role in the system. This body would only have an advisory function and would help to enhance the knowledge and to harmonize the decision making, eventually enhancing the consistency of the whole system of environmental law.

The Judiciary inevitably has a very difficult job in performing a balancing act to ensure that each decision is made in a way that benefits humanity by either not compromising environmental well-being or not halting essential growth and expansion. With the responsibility comes a great burden of ensuring that a proper and just balance is maintained to ensure that a chain reaction does not lead to an adverse and irreversible consequence.

References

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