

Significance of the Principle of Environmental Justice in the Protection of Environment: Sri Lankan Experience

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Abstract —Concept of Environmental Justice is a recently identified International Environmental Law Concept. The rationale for the concept 'environmental justice' is that people, regardless of their race, colour, nation or origin or income are able to enjoy equally high levels of environmental protection. It helps us to understand that unequal power relations in society result in the abuse of people and their environments. But there are some issues in concerning environmental justice in the capitalized society. This is a very novel principal in environmental law arena and currently this principal has been used by the courts in different countries. American courts took the initiative in introducing the principle. In Sri Lankan Superior Courts have been discussed the features of this principle under some other different environmental principals. But still there are some practical issues with regard to the direct applicability of the principle of environmental justice. Therefore, establishing and adopting the principle of environmental justice is restricted. Therefore, author seeks to find the validity of the principle of environmental justice in order to protect the environment. And further to assess the status of the applicability of the principle of environmental justice through Superior Court case interpretations in Sri Lanka. This research will be conducted as a literature review based on the secondary sources including statutes, text books, electronic data bases, journals etc. Special reference will be made to the Sri Lankan case Law. This research will be an analysis of the jurisprudence of Environmental Law principles as well. Principle of environmental justice is an emerging trend and Sri Lankan environmental law need to get the influence of the said principle. At the moment because of the novelty of the principle, still its applicability is very low in Sri Lanka. However, this is an utmost importance in protecting environment as whole. Moreover, up to some extent Sri Lankan superior courts have involved in applying the principle through Court interpretations.

Keywords: Environmental Justice, Equal Protection, Sri Lanka

I. INTRODUCTION

The word environment is derived from an ancient French word *environner*, meaning to encircle, by broadly applying surroundings, environment can include the aggregate of natural, social and cultural conditions that influence the life of an individual or community (Shelton. D and Kiss.A., 2005). The environment is endowed with priceless natural resources such as rivers, forests, waterfalls, etc. all these natural resources are essential for the survival of living beings. Nevertheless, the development activities of human beings have created a threat to the environment. Thus in order to control the adverse effect of human activities, there are environmental principles laid down in the environmental law in the national and international level. Familiarity with these principles can offer insight into the purpose and thrust of various legal mechanisms. That have been built upon them, and these principles are best understood in the context of the modern ecological era (Shelton. D and Kiss.A., 2005). Basically there are two types of environmental principles in environmental law. First are called as the old principles, such as; state sovereignty, principle of state responsibility, neighbourhood principle, etc. The other group consists with new principles, such as; precautionary principle, polluter pays principle, public trust doctrine, intergenerational equity, sustainable development and environmental justice. Recently principle of sustainable development was recognized as the emerging trend and tool in protecting environment. According to the report of 'our common future': sustainable development means, that the needs of the present without compromising the ability of future generation to meet their own needs (Brundtland Report, 1987). Currently this

principle has been developed in to very high level, specially by American experts in the environmental protection up to the level of environmental justice (Bowen. W, 2002). Apart from the principle of environmental justice all the other environmental principles are included in to Sri Lankan Legal system in different extents. Principle of environmental justice is a very novel and a rapidly developing principle in this context. Internationally this principle is a recognized principle in relation to protect the environment but domestically still it is an alien principle.

II. PRINCIPLE OF ENVIRONMENTAL JUSTICE

A healthy environment is a basic right of all the earth's inhabitants, a right reaffirmed by the Rio declaration (UN, 1992). In general, environmental justice seeks to ensure that authorities fairly allocate and regulate scarce resources to ensure that the benefits of environmental resources, the cost associated with protecting them, and any degradation that occurs (i.e all the benefits and burdens) are equitably shared by all members of society (Shelton. D and Kiss.A., 2005). United States environmental protection agency dealt with the environmental protection and according to them environmental justice means fair treatment and meaningful involvement of all people to the development, implementation and enforcement of environmental laws, regulations and policies. Currently this principle is a vital important principle in modern environmental protection. It strikes a balance between environmental protection and the rights of the people who use that environment. In most instances governments, policy makers etc. pay more attention into commercial benefits. Thus there will be no concern for the environmental protection and the rights of the people.

In the case of *Bean v. Southwestern Waste Management Corporation* (482 F. Supp.at 677) this principle was discussed and court held that its importance of establishing environment harm as well as the discrimination. Further it was held that use of land for waste dumping should not base only race cast etc. and if the authority use to dump waste on poor people's lands without proper environmental approval it considered as a discrimination and as a violation environmental protection so that sort of instances calculated as a

instances against the principle of environmental justice.

In this regard negative practices of the states directly affect the environment. A decade after *Bean* case, *East Bibb Twiggs Neighbourhood Association v. Macon – Bibb Country Planning and zoning commission* (706 F.Supp. 80, M.D. Ga. 1989) was decided. As *Bean*, it involved an equal protection suit to enjoy a land fill in a largely minority community. In here also plaintiffs were unable to prove the discrimination. The thing was the authority had no option in selecting land for the project.

Principle of environmental justice consists of three elements. They are fair treatment, equal protection and public participation.

A. Fair treatment

Fair treatment in environmental resources considered as a significant element in environmental justice. Fair treatment means that no group of people should bear an imbalance share of negative environmental consequences due to industrial, government or commercial activities. For an example, if waste disposal of a commercial operation is done in a place where a minority or poor group of people live, it brings out adverse effect to their health, housing, etc.

Accordingly it is imperative to conduct industrial, government or commercial activities in a manner by which both benefits and costs are distributed in a similar manner.

B. Equal Protection

Equal Protection ordinarily connected with the element of fair treatment. However, it has some different features than fair treatment. Specially under the equal protection it is utmost importance to give a same protection irrespective of their colour, cast, religion etc. In the book of Law and Environmental Justice: Theories and Procedures to address by Shelia. R. Foster, expressed that the equal protection is a cardinal element and it as the basic of the principle of environmental justice. In the case of *Boyd v. Browner* (897 F. Supp 590, CDDC 1995) this equal protection under environmental justice was examined. This case issued in the state of Texas, found to be contaminated with toxic chemicals. This was complaint by the black residents of an area in Texas. In court proceeding judges expressed their

views strongly on providing equal protection will assist in granting environmental justice. Then ultimately court held that the parties who were suffered had failed to satisfy the basic requirements. In addition the court added in dicta that they had failed to offer any proof of intent to discriminate. Moreover, in the case of *Rozar v. Mullis* (83 F. 3d 556, 1996) again involved a country landfill, this one in Georgia. However, the plaintiffs 'equal protection arguments misfired. Their claims against the country which had assertedly rejected a site in a white area and voted to build the land fill in a black one, where found to be time-barred. In case *Cox v. City of Dallas* (2004 WL 2108253, ND Tex 2004) city has failed, despite some efforts, to stop illegal dumping on a site located in a minority neighbourhood. The court finally found that the plaintiffs failed to establish by a preponderance of the evidence that the city intended to discriminate against them because of their race.

C. Public Participation

This is the last element in environmental justice. According to Robert D. Bullard in his book, called 'Race, Class and Environmental Equity' identifies public participation as a key element of environmental justice. Consequently public should get opportunity to engage in the decision making process in these kind of situations. And need to make appropriate space to providing suggestions or oppositions in an active manner. This dimension will be helpful to formulate public policy based on mutual respect and justice for all without bias. Furthermore, as discussed previously in the case *Baen v. South Western Waste Management Corp.*, it was held that views of the people who were lived in that garbage dumping area, are utmost importance because they are the one who knows every well about that garbage environment. If the corporations are not granting sufficient opportunity for public participation it is against to the principle of environmental justice.

III. IMPORTANCE OF ENVIRONMENTAL JUSTICE TO PROTECT ENVIRONMENT

Environmental justice is a way of thinking about environment and development which provides tools for organizing around issues (EJFN, 2000). Most of the developing projects and policy makers' decisions caused harm on environment. Basically environmental justice assists in promoting equitable protection in environment among all people irrespective of their race or

colour. Most of the environmentalists have warned of 'ecological catastrophe' unless carbon emissions are reduce by ninety per cent by the countries (Monbiot. G, 2006). It is estimated that one third on the planet will be desert by the year 2100 (Carthy MC, 2006). This is because of human activities and their commercialized decisions which had an impact on environment. Ultimately it will affect for ecological balance. To have an ecological balance there should be a justice in use of environment. Justice includes not only discrimination on people but also maximum use of environment resources and managing environmental resources. So it is clear that this principle of environmental justice concern not for a specific environmental issue. Practically it covers all environmental issues which can occur by human activities. Commonly environmental justice covers four major environmental issues. Such as; air pollution, water pollution, soil pollution and noise pollution.

A. Air Concerns

This is one of a major outcome of human development activities. As an example when garbage is dumping in a certain area it would directly affect in polluting that air quality. An as a result of that numerous gases and dust will release to air. Also this will contribute in increasing global warming. Global warming is only one component of a much deeper and more extensive ecological crisis (Cock J., 2007) it is not about any given ecosystem damage such as global warming, species loss, resource depletion, or the widespread intoxication by new chemicals... it is about the fact that these kinds of things are happening together (Kovel. J, 2002).

B. Water Concerns

In these situations water resources will get polluted easily. Mostly waste water will just connected to rivers or tanks. This can happened when a factory located near to water resources, entire water resource will be polluted. Water can be contaminated with emissions from certain human development or by policy makers' decisions.

C. Soil Concerns

The impact of all above mentioned activities of humans will pollute soil resource. Especially this will happen when garbage dumps to open lands. Sometimes several deposits of chemicals will affect for natural facts of the soil so that people in

that area will not be able to use it for their human usage. It creates an injustice on those people.

Above mentioned areas will affect not only for the environment but also it will directly affect on people who lives in those locations. So it will make an environmental injustice in society. Ultimately all above concerns will be a disturb for ecological system. It's know for a fact that we cannot stop human development activities, but if we can prove equal protection, fair treatment and opportunity for public participation then we can overcome these environmental concerns and can give more prominence to the principle of environmental justice. So then it will enhance a healthy and a clean environment for all human creatures irrespective of their colour, race, cast or religion.

IV. INTERNATIONAL FRAMEWORK

When we are focusing in for the principle of environmental justice, it is more in to fair use of environment and environmental protection without and discrimination. Therefore, rights of the people if light of the environment is a key component. So Universal Declaration on Human Rights (UDHR) is plays a remarkable role. According to the preamble of the UDHR ... whereas recognition of the inherent dignity and of the equal and inalienable right of all members of the human family is the foundation of freedom justice and peace in the world..

It clearly analyse that equal right is the foundation of justice. So when using and having the protection of environment, equal protection is utmost importance and non-discrimination is much needed.

Regarding the principle of environmental justice these is not a specific international tool. But principle of environmental justice was adopted at the First National People of Colour Environmental Leadership Summit in 1991. This highlights several aspects in environmental justice. Delegations of this summit gathered 1991 October in Washington DC, and drafted and adopted 17 principles of environmental justice. Since then, these 17 principles served as a defining document for the growing grassroots movements for environmental justice. Its principle 1 states that; environmental justice affirms the sacredness of Mother Earth, ecological unity and interdependency of all species, and the right to be free from ecological

destruction. It simply says the importance of environmental justice and the connection and unity of ecology and its interdependency of all species. It's very clear that environmental justice is not asking to not to use the environmental resources but it seeks the unity and collaboration of ecology and the needs of the people. Therefore, it can identify as a principle which has gone beyond the principle of sustainable development.

Moreover, in principle 3 of this document it express that; environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of sustainable planet. Also in principle 2 it articulates that demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias. It analyse the significance of granting environmental protection equally.

Apart from above provisions Stockholm Declaration (UN, 1972) is a cardinal tool in this context. According to principle 1 of the declaration 'man has the fundamental right to freedom, equally and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generation. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated'. In this section is directly discussing the requirements of environmental justice. In this principle it clearly says that all humans are having a right to clean environment equally and that right cannot be violated on any basis.

Further, in Principle 22 of the Stockholm Declaration it states that, states shall corporate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within then jurisdiction or control of such states to areas beyond jurisdiction. It means it clearly says that if any group of people got harm because of the environmental damages caused by human activities then states have a duty to compensate it to the victims. This is an encouragement for environmental justice.

Also according to principle 6 of the Stockholm Declaration; the discharge of toxic substance or other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless must be halted in order to ensure the serious or irreversible damage is not inflicted upon ecosystem. The just struggle of the people of ill countries against pollution should be supported. Through this principle declaration tries to establish the fair treatment and equal protection in relation to use of environment. Rio Declaration 1992 is also a prime international tool in relation to protection of environment. Its principle 2 is significant and its similar to principle 22 of the Stockholm Declaration. In that regard we can have the coverage of the said principles in Rio Declaration as well.

Apart from the environmental protection aimed conventions International Covenant on Civil and Political Rights (ICCPR) (UN, 1966) is also relevant. As spell out by the ICCPR Article 26; all persons are equal before law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground It clearly indicates the element of non-discrimination environmental justice. Similarly in International Covenant in Economic Social and Cultural Rights (ICESCR) (UN, 1996) Article 12(1) spells that, the state parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It is clear that the requirements of environmental justice are covered indirectly in this Article. Furthermore, International Convention on the Elimination of all Forms of Racial discrimination (ICRD) is another key tool in this regard. Especially Article 4 and Article 5 of the Convention discuss the non-discrimination and equal protection in law.

Approach by international tools covers all the elements in the principle of environmental justice. And especially by the First National People of Colour Environmental Leadership Summit in 1991 gives more prominence for this principle. Additionally all the other conventions which mentioned above is cardinal in protecting environment and ensuring equal rights among all humans without any discrimination.

V. SRI LANKAN CIRCUMSTANCES

When Discussing Sri Lankan experience I would like to select three examples. Firstly, blue madnal garbage mountain. This mountain of garbage has expanded throughout the areas of Madampitiya, Mattakkuliya, Kotahena and Blumandal covering 4 ½ acres because of the disturbance of natural flow of water system, it is negatively affected for rain water flowing system. As a result of this, this area will be easily affected for floods even low raining seasons and a good density of mosquitoes, flies have been increased (Divisional Secretariat, Kolonnawan, 2010). Due to this situation people who are living in this area have been victims of epidemics of dengue, malaria.

Because of this critical situation people who live in this area is suffering from lack of fresh or healthy air. It is revealed that this adverse situation has been negatively affected for children who are living this area. So it's very clear that when entire garbage of Colombo dumped in this area and as a result of this action that environment is polluted and people who live in this area suffer from the environmental issues. Therefore, there is a critical environmental injustice is evident.

Secondly, Rathupaswala water crisis. This was a highly controversial example for the environmental justice in Sri Lanka. Basically in this situation water resource of the area was contaminated by the location of a factory nearby. Then the Villages of Rathupaswala got number of disease due to water pollution. This pollution was revealed by an elephant and then only villages have noticed and after some investigations they grasped the issue. When locating a such kind of factories it is utmost importance to consider all factors. In this situation they have polluted the environment. When they locate it especially in Rathupaswala, it violate the rights of the villages in Rathupaswala.

Thirdly, water's edge case is another example in this context. In this case Petitioners presented their case on the basis of an infringement pertaining to the acquisition of land on the premise that such land would be utilized to serve a public purpose whereas, by this impugned executive or administrative action the land was knowingly, deliberately and manipulatively sold to a private entrepreneur to serve as an exclusive and private golf resort in Sri Lanka, one carrying a

membership fee of Rs.250,000/-. After furnishing the constructions ordinary people were not permitted to enter in to those lands. It was a place where general people also had access. From the constructions also that environment was abused up to some extent. And the decision of the policy makers, leads to a clear discrimination and with no environmental protection. The comfort of the wonderful area in Battaramulla was limited to rich. This led to a clear injustice and violates rights of general people.

According to the principle if environmental justice, no one will discriminate based on any ground and all should have a right to benefit the environmental protection. Above discussed situations clearly discriminate people and it caused for not granting a environmental protection.

VI. SRI LANKAN LEGAL FRAMEWORK

Principle of environmental justice is mostly dealt with the healthy environment to all. A series of policies and laws then govern activities in all sectors and at all levels of scale in Sri Lanka and these are underpinned by the need and the aim of promoting a safe and healthy living environment for all (EFL, 2006).The Constitution(1987) of Sri Lanka identifies the right to equality in Article 12. Under the Article 12 it discusses the equality before law, equal protection and non-discrimination. Consequently from the main source of the Sri Lanka has spells the main elements of environmental justice. However in this Article there is no particular concern in environmentally non-discrimination. But in *Bulankulama and others v. secretary, Ministry of Industrial Development*(2000, 3 SLR 243))Justice Amarasinghehas interpreted this Article in relation to environmental protection. Additionally, According to the directive principles of state policy in 1978 Constitution, the state shall protect, preserve and improve the environment for the benefit of the community (Constitution, 1987, Section 27(14)). This directive principle could be implemented by using Article 12 of the 1978 constitution, which discusses the equality. This article provides a platform to bring in the concept of 'environment justice'. When focusing for the environmental laws National Environmental Act No:47 of 1980 is the key legislation. It covers all area of environmental issues. Under the Act (Amendment No.56 of 1988) it discusses the environmental protection in Section 23 A 1.

Accordingly "The Minister shall determine by Order published in the Gazette the activities in respect of which a license is required to be obtained under this Act (hereinafter referred to as "prescribed activities") being activities which involve or result in discharging, depositing or emitting waste into the environment causing pollution." This section grants minister to make regulations to eliminate specially in situations like discharging, depositing or emitting waste into the environment.

Also under the Amendment (No.56 of 1988) Part IV B elaborates environmental quality. It prohibits certain environmental pollutions. Such as; pollution of inland waters (23G, 23H), pollution of atmosphere (23J, 23K), pollution of soil(23M, 23N), noise pollution(23P, 23Q, 23R), removal of litter(23S, 23T, 23U), Discharge of oil into inland waters(23V). Under these sections it clearly mentioned that it is not allowed to change the environmental quality in those aspects. In Sri Lanka the critical issue is dumping of garbage issue. This lead to number of other environmental issues. Waste is clearly describes in the National Environmental Act (Amendment No 56 of 1988) under Section 33 of the Act. According to the provision it includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume, constituency or manner as to cause an alternation of the environment. So it is evident that this waste will affect for the water, air and soil quality of Sri Lanka. Also noise concerns also a great threat for the environmental justice. For these issues there are some gazette notifications which spells certain measures. Such as National Environmental (Air Emission, Fuel and Vehicle Importation Standards) Regulation No. 1 of 2000 (Gazette Extraordinary No. 1137/35 of 23rd June 2000), National Environmental (Ambient Air Quality) Regulations 1994 (Gazette No. 850/ 4 of 20th December 1994),The National Environmental (Noise Control) Regulations No. 1 of 1996 (Gazette Extraordinary No. 924/12 of 23rd May 1996). These regulations give more effectiveness for the provisions of the National Environmental Act.

In the case of *De Silva v. Ministry of Forestry and Environment* (FR 569/98) it was held that the importance of the regulations to minimize environmental pollutions. This case was filled against an air quality problem.

Bulankulama and others v. secretary, Ministry of Industrial Development is a landmark case in environmental protection in Sri Lanka. Selling the deposit of phosphate was issued. In fact people in this area filled this case not only to protect the deposit but also they have investigated that after removing the entire phosphate deposit it will cause more floods in that area. So it is a clear environmental injustice. Because in one hand from this agreement the majority of the country might get few economical benefit but the people in this village will not get an environmental protection. But this issue was not that highlighted in the case. However, justice Amarasinghe gave a very progressive judgment through public trust doctrine. Under that Amarasinghe Justice said that state is not an owner of the property but he is a trustee. Also the balance of government powers and use of natural resources were discussed in this aspect. In *Gunaratne v. Ceylon Petroleum Corporation*, ((1996) 1

Sri L R 315) and *Premachandra and Dodangoda v. Jayawickreme and BakeerMarkar*, ((1993) 2 Sri L R 294) cases also the use of environmental resources were discussed. And the courts in those case followed the principle of public trust doctrine and gave judgments. Therefore, it is evident that to ensure principle of environmental justice we can use above mentioned mechanisms specially the use of principle of public trust doctrine is more easy in Sri Lanka.

Nevertheless, we have such laws still we can see this environmental injustice in Sri Lanka. Especially in the in some areas still using for dumping of garbage. A best example is Karadiyana garbage dumping area. This is an environmentally sensitive area and because of this problem people lived close by faced number of difficulties. The Rathupaswals village problem was another best example but fortunately the factory was relocated into a suitable area by the intervention of policy makers. In Waters Edge issue Supreme court of the Sri Lanka gave a judgment in favour of public trust doctrine and try to establish justice. Unfortunately after constructing that area it is still limited for mostly rich people.

VII. SUGGESTIONS TO IMPROVE ENVIRONMENTAL JUSTICE IN SRI LANKA

It is clear that in some instance we have agreed to the principle of environmental justice indirectly.

However, better coordination between the policy makers and affected persons regarding the implementation certain decisions is necessary. This can be achieved through conducting meeting and workshops. This will help to clarify any issues, doubts regarding the project and will help to implement environmental justice more effectively. Furthermore, the legal system should be more effective in addressing environmental violations.

VIII. CONCLUSION

Decisions of policy makers are utmost important in the process of development. But same time it is significant in considering rights of the people and environmental protection in the development process.

Through tracing the environmental issues that arise when implementing policy decisions, this report expounded the protections guaranteed under national and international law. It is discernible that Sri Lanka has an adequate legal framework to mitigate the environmental impact in different ways. However, the issues lie in its implementation. Furthermore, it is commendable that international standards relating to environmental justice in certain aspects have been absorbed into national system. It is suggested that Sri Lanka should be consistent in its application of the law. Moreover, it is recommended that coordinating among different bodies relating to the implementing environmental policies can be improved. Moreover, it is need to have an effective mechanism in collecting public participation in relation to policy maker's decisions.

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