



Book Review

Social Rights Judgments and the Politics of Compliance Making it Stick

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Malcolm Langford, Cesar Rodriguez-Garavito and Julieta Rossi (eds.) *Social Rights Judgments and the Politics of Compliance Making It Stick*, Cambridge University Press, Cambridge, 2017; ISBN No.: 9781107160217

In the past few decades the judgments on economic, social and cultural rights have increased dramatically, alike civil and political rights. This increase is despite traditional reservation concerning justiciability, feasibility or judicial conservatism. The justification of such adjudication can be increasingly embellished with the need for examining, systematising, refining and critiquing the emerging jurisprudence. However, despite such change in approach, the sketchy detail of post-judgement phase of litigation is pretty grim. Having received less attention, both advocates and scholars have raised the alarm that a significant number of judgments on economic, social and cultural rights remain unimplemented – which obviously, shifts our attention to issues related to compliance. In fact, as Langford et al. puts it, “advances in jurisprudence urgently need to be matched by action on the ground to ensure compliance of all concerned authorities with the judgments”¹. The problem is, ground-breaking judgments are often poorly or sluggishly implemented in practice.

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¹Malcolm Langford et al. ‘Introduction: From Jurisprudence to Compliance’ in Malcolm Langford et al. (ed.), *Social Rights Judgments and the Politics of Compliance Making it Stick* (Cambridge CUP, 2017) at p. 3.

Against the above backdrop, the edited volume, 'Social Rights Judgments and the Politics of Compliance' is a useful addition to the existing literature on economic, social and cultural rights. It begins with an introductory note on jurisprudence with respect to compliance, which essentially cites case laws on economic, social and cultural rights in various countries like South Africa, Nigeria and United States to highlight the struggle to transform progressive jurisprudence into progressive outcomes. The study also shows similar results in Czech Republic and Peru. Based on the various scholarly responses to this emerging narrative of compliance, the author persists on the lack of clarity on the extent of variance of such compliance. What this vagueness certainly denotes is that there is poor or lack of compliance. Compliance is the need of the hour. On that note, this chapter is important as it endorses the authors' contention that compliance 'may not only "influence broader policy and political outcomes", it is also central to rule of law, "undergirding and reinforcing the institutional framework for legality and constitutionality" and can have "powerful feedback effects on judicial decision making, independence and power"'², which is pertinent with examples. It suggests that non-compliance is not only costly but also fails to result in important behavioural changes. The overall impact is obviously manifested through status quo, despite judicial intervention. Therefore, this chapter sets the ideal backdrop, against which the book sheds light on the degree and causes of compliance with Economic, Social and Cultural rights judgments in the context of rule of law.

What can be derived from cases of implementation of civil and political rights judgment, as a best practice example for economic, social and cultural rights and whether there is any significant difference between the two sets of rights in terms of compliance, is what the following chapter by Cali and Koch, studies. Having questioned the categorisation of human rights into different 'generations', the study concludes that compliance with economic, social and cultural rights, like civil and political rights, hinges on who decides the compliance requirements at the international level and who responds to the compliance requirements at the national

²Ibid., at p. 5.

level. Notably, this means that the benchmarks for compliance of economic, social and cultural rights, on the one hand, and civil and political rights, on the other hand, are the same.

The next chapter collates the methods of assessing the enforcement and broader effects of the courts decisions. In this respect, Rodriguez – Garavito suggests that full range of effect of court’s rulings also include impact assessment – not only direct material effects, but also broader effects which are essentially indirect and symbolic. Taking the examples of jurisprudence of Colombian Constitutional Court, the author suggests ‘dialogic judicial activism’ which involves participatory monitoring to deepen the impact of courts intervention.

The book then shifts its focus on to country-based studies. Wilson and Rodriguez analyze the institutions and actors behind compliance with the judgments of Costa Rican Supreme Court. The compliance is not only dependent on high accessible judicial system but also on the nature of defending institution and length of time granted by the court to comply with the judgment. The concluding observation is that immediate action plans targeted at specific, decentralized institutions with autonomy with enhanced civil society mobilisation usually have higher likelihood of compliance. Notably, through study of a complex interplay of several actors, the author suggests the best combination of actors which improve compliance.

On a similar note, in the following chapter, Stgal, Rossi and Morales examine a slightly wider range of variables that explain the success of enforcement, namely the size of the case, complexity of the remedy, court’s stance, institutional strength, and political will to comply. Based on the study of thirteen social rights judgements in Argentina, the authors list the variables, which in addition to the above, also includes the role played by the size of the litigant group, the receptiveness of the judge and judicial objectivity, and broader political will that are responsible for strategies to ensure compliance.

Ferraz’s chapter on special features of economic, social and cultural rights judgments in Brazil ends up listing the legal and factual obstacles to enforcement. In addition to the scarcity of collective

suits or cause of action, the court's reluctance to entertain collective suits or remedies together with openness to individual claims decides the success rate of remedies and compliance. Interestingly, this features in many parts of Latin America.

The next two chapters feature the compliance mechanism in North America. Porter, taking examples of Canadian litigation, highlight the role of remedies in compliance. Through analysis of the jurisprudence in Canada, the author suggests that more open, dialogical and softer the remedies, it would result in greater impact even if it is difficult to enforce. On the other hand a judicial perception of the likelihood of enforcement shall also determine the nature of decisions and remedies. On that note a more systemic judicial intervention is crucial. Overall, the author suggests a change in judicial approach to pronounce more open, dialogic and softer remedies for a resulting greater impact and compliance.

Albisa and Shanor have studied the litigation in United States to subsequently explore, how social mobilisation and civic engagement have influenced the levels of compliance and impact. The authors particularly highlight that civil society activity, social movements and commitments, particularly before, during or after the judgment has a significant impact on the effectiveness of court's decision and compliance in the long run. In effect, the authors suggest that long-term impact of the judicial decision and effective compliance is not a one-time event but essentially a process involving interplay of multiple factors.

On a similar note, the essence of other factors, particularly civil society engagement in post-litigation process and compliance was also reiterated by Chitalkar and Gauri in the following chapter, through the structural right to food litigation before the Supreme Court of India. Using the narrative that the Court not only ruled the significant 2001 judgment but passed fifty orders that engendered the higher levels of compliance, the authors examined that not only did the Court declare the right to food as a fundamental right but it went on to explain the specific entitlements included under the right, along with creation of institutional mechanism to monitor compliance with its order. In essence, what was suggested was that effective compliance of court's decision was allied with civil society

engagement which was key to construct or shift public opinion concerning chronic hunger crisis.

Langford and Kahanovitz scrutinize six South African judgements on right to housing in urban areas using causal narratives of compliance. A dramatic variation from earlier descriptions of compliance was manifested not only imposing salience of civil society mobilisation but also highlighting the need for a more reflexive and experimental court which would be instrumental in ruling hallmark decisions.

The final set of case studies concerning domestic implementation and enforcement of recommendations of the African Commission on Human and Peoples' Rights essentially catalogued the range of factors crucial for domestic enforcement, namely capacity and mindset of litigant, civil society engagement, international community monitoring compliance, the regional bodies and effectiveness of relevant tribunals. Cabal and Philip, having analysed international ground breaking decisions further listed the key factors for compliance namely, the institutional mandate, the nature of remedies awarded, public opinion concerning a particular case, the social, political and institutional environment that effect international, regional or national bodies. Dobrushin and Alexandridis's chapter also examines decisions of United Nations and Council of Europe concerning right to housing of Roma tribes tracing the challenges of implementation of international and regional decisions. The concluding *Brink's* chapter studies the various costs of implementation, not only financial, but political and others.

Overall, the book examines the various facets of compliance, along with a range of factors essential for its success. Yet the book falls short of elaborating the challenges of enforcement, which is crucial for effective compliance. The subject of legal compliance is currently under scrutiny, particularly in the context of rights, monitoring and accountability. Enforcers, like multilateral bodies or Committees lacking the tooth of law, are few of the many challenges. Without such detailed narrative, the book falls short of being comprehensive. That said, the theoretical analysis embellished by case study examples is a valuable addition to the existing literature.