

From Policy to Practice: The Role of Sri Lankan Environmental Legislation on Sustainable Development Journey

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Abstract

Sri Lanka, a country focused on balancing economic success, environmental preservation, and human well-being, acknowledges the critical need for sustainable development. This research paper examines the role of environmental legislation in Sri Lanka's journey towards sustainable development. It explores the intricate relationship between the country's legal framework and its commitment to sustainable development goals. The paper explores into key pieces of legislation, illustrating how these laws embody the principles of sustainable development. Through qualitative analysis, including legal and policy reviews and interviews with experts, the study highlights the effectiveness of Environmental Impact Assessments and other legal tools in addressing ecological concerns while promoting economic and social well-being. The research underscores the judiciary's role in reinforcing sustainable development principles through landmark cases. Despite a comprehensive legal framework, the paper identifies challenges in enforcement and public engagement, emphasizing the need for ongoing adaptation to emerging environmental issues. The research provides insights into how Sri Lanka's environmental laws contribute to balancing ecological and socio-economic needs, offering lessons for global sustainable development practices.

Keywords: Biodiversity Conservation, Environmental laws, Environmental impact assessment, Sri Lanka, Sustainable development

1. Introduction

Sri Lanka, a mesmerizing Indian Ocean Island nation, has made great gains in economic growth and progress in recent decades (Senevirathna et al., 2018). While these improvements have provided several benefits to both the nation and its residents, they have also created ecological quandaries and concerns (Ministry of Environment, 2018). As Sri Lanka strives to delicately balance economic growth, environmental preservation, and human well-being, the importance of sustainable development becomes clearer. The Brundtland Commission defines sustainable development as "meeting current needs without jeopardizing future generations' ability to meet their own needs" (World Commission on Environment and Development, 1987). This entails a harmonic combination of economic progress, environmental protection, and

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social responsibility in order to create a prosperous and secure future for all. In the case "*Watte Gedera Wijebanda v Conservator General of Forests*"¹, Tilakawardane J. described sustainable development (at p. 359) as "*The phrase sustainable development" encapsulates the meaning that natural resources must be utilized in a sustainable manner, in keeping with the principle of intergenerational equity. This requires that the State as the guardian of our natural resource base does not compromise the needs of future generations whilst attempting to meet and fulfill the present need for development and commercial prosperity or short-term gain*"

Environmental law, a comprehensive legal framework, consists of interconnected statutes, common law, treaties, conventions, regulations, and policies. It broadly governs human interactions with the natural environment, aiming to reduce the adverse effects of human activities on both the environment and human society. Influenced by environmental principles like ecology, prevention, conservation, responsibility, sustainability, and cooperation, this branch of law integrates these concepts to guide its application and development (Tilakawardane et al., 2009).

The environment encompasses both non-living (abiotic) and living (biotic) external factors that influence an organism's life, development, and survival (Park, 2008). It includes an organism's surroundings, geographical areas, climate conditions, pollutants, and noise (Collin, 1999). The National Environmental Act (NEA) No. 47 of 1980, as amended by Acts No. 56 of 1988 and 53 of 2000, serves as the foundational charter for environmental protection, conservation, and management. Section 33 of this act defines the environment as encompassing physical factors like land, soil, water, atmosphere, climate, sound, odours, tastes, and biological factors including animals and plants.

The laws governing the environment in Sri Lanka have changed over time. These laws aim to address various aspects of environmental degradation and protection and act as the framework for the application of sustainable development. The Environmental Impact Assessment (EIA) Process is essential to Sri Lanka's sustainable development decision-making. The efficacy of EIAs in identifying potential environmental concerns and ensuring that development projects adhere to sustainable development principles has been highlighted by the National Environmental Act No. 47 of 1980. Section 23 of the above act highlights the significance of comprehensive EIAs in preserving the environment and encouraging responsible development.

¹ *Watte Gedera Wijebanda v Conservator General of Forests 2009 1 SLR 337 p.359*

Protected areas, national parks, and wildlife reserves have all played important roles in fostering long-term development. It is necessary to assess the effectiveness of legislative procedures in protecting key habitats, endemic species, and ecosystem services. Furthermore, the difficulties of matching conservation goals with the socioeconomic demands of local communities living in or near these protected regions should be investigated. Countries around the world, including Sri Lanka, have realized the significance of implementing comprehensive legal frameworks targeted at environmental protection and management in order to achieve sustainable development. Over the years, Sri Lanka's legal system has seen the enactment of many environmental laws and regulations aimed at addressing major environmental challenges and promoting sustainable practices. The purpose of this research paper is to examine the impacts of Sri Lankan environmental laws in promoting sustainable development.

This study is significant as it has the capability to look into the accomplishments of the Sri Lankan legal framework in achieving sustainable development and also the challenges encountered in doing this. It will give new and important perspectives on how well the current environmental laws and regulations work to prevent environmental degradation, preserve natural resources, and promote social and economic development. Literature on sustainable development in Sri Lanka emphasizes the country's dedication to protecting its natural resources and tackling environmental challenges (Aladuwa & Momsen, 2010; Ishwaran & Erdelen, 1990; Munasinghe, 2009). In Sri Lanka, a number of research have been carried out to look into particular aspects of environmental preservation and sustainable practices (Aladuwa & Momsen, 2010). However, an investigation of environmental laws and their direct connection to the nation's sustainable development objectives is still necessary. By conducting a review of Sri Lanka's environmental laws from the perspective of sustainable development, this study aims to fill the gap in the literature.

2. Methodology

This study employs a qualitative methodology, specifically a black-letter approach, focusing on legal analysis and policy review. It aims to deeply understand the legal framework and its effects on sustainable development in Sri Lanka. The analysis is grounded in an examination of pertinent legislation and case law. Further depth is added through interviews with legal practitioners and environmental experts, providing diverse insights on the effectiveness of the legal framework in fostering sustainable development in Sri Lanka.

3. Result and discussion

Environmental restrictions are critical in achieving sustainable growth in Sri Lanka (Atapattu, 2001). The country has recognized the importance of protecting its natural resources, environment, and diversity of life while pursuing economic growth and communal success (Jeremy et al., 2015). Over time, Sri Lanka has built a comprehensive legal framework to address ecological challenges and ensure that expansion is carried out in an environmentally sensitive and sustainable manner (Atapattu, 2001). The relationship that exist between Sri Lanka's environmental regulations and the ideals of sustainable development can be viewed in a variety of ways. This is how Sri Lanka's key environmental legislation correspond to the concepts that support sustainable development.

Article 27(14) of Sri Lanka's 1978 constitution mandates environmental duties for the State, while Article 28(f) imposes a responsibility on every citizen to protect the environment. These are part of the Directive Principles of State Policy and Fundamental Duties in Chapter VI of the constitution. Although there is no explicit right to a clean environment in the 1978 Constitution, the Supreme Court often uses the right to equality and equal protection (Chapter III) to address environmental issues. The National Environmental Act is a key piece of legislation in this area. Other laws also address specific environmental aspects. As per Section 31 of the National Environmental Act No. 47 of 1980 (amended), violating any provisions of this Act is a criminal offence, subject to imprisonment.

Article 12 of Sri Lanka's 1978 constitution, which guarantees equality before the law and equal protection for all citizens, is frequently invoked in environmental fundamental rights cases, either alone or alongside other rights. Neglecting to enforce environmental laws in specific projects or areas could breach the sustainable development concept, aimed at long-term resource and health protection. Sustainable development principles have been applied through Article 12 in several key cases, including “*Bulankulama v Secretary, Ministry of Industrial Development*”², “*H.B. Dissanayake v Gamini Jayawickrema Perera, Minister of Irrigation and Water Management*”³; “*Environmental Foundation Limited v Attorney General*”⁴, *Gunaratne v*

² *Bulankulama v Secretary, Ministry of Industrial Development (the Eppawela phosphate mining case)* [2000] 3 Sri L.R. 243

³ *H.B. Dissanayake v Gamini Jayawickrema Perera, Minister of Irrigation and Water Management (the Thuruwila case)* S.C.F.R. 329/2002

⁴ *Environmental Foundation Limited v Attorney General (1994) 1(1) S.A.E.L.R. 17*

*Homagama Pradehsiya Sabha*⁵, “*Sugathapala Mendis and Another v Chandrika Kumaratunga and Others*”⁶, “*Deshan Harindra (a minor) v Ceylon Electricity Board*”⁷, “*Environmental Foundation Limited v Urban Development Authority*”⁸, “*Watte Gedera Wijebanda v Conservator General of Forests*”⁹, “*Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others*”¹⁰.

The National Environmental Act No. 47 of 1980 underscores its alignment with the principles of sustainable development through necessitating Environmental Impact Assessments (EIAs) for development projects. The practice of EIAs plays a crucial role in proactively identifying potential ecological consequences during the project's conceptual stages. This early recognition enables the integration of precautionary strategies to guarantee the achievement of sustainable developmental objectives.

In the case “*Gunaratne v Homagama Pradeshiya Sabha*”, it is stated (at p. 28) that “*the integration of environmental protection, economic development, the right to development, sustainable utilization, conservation of natural resources, inter-generational equity, intra-generational equity, the polluter-pays principle are the substantive elements of sustainable development. The procedural elements of this include the environmental impact assessment process, access to information and public participation.*”¹¹ Although not explicitly mentioned, the National Environmental Act (NEA) of Sri Lanka implicitly incorporates sustainable development principles. Part IV, titled 'Environmental Management,' empowers the Central Environmental Authority (CEA) to create schemes for the utilization and exploitation of the country's natural resources. Specifically, Section 15(b) focuses on land use management, urging the 'wise use and conservation of land resources' to maintain a balance between national needs and resource availability. Other sections of the Act advocate for the 'rational exploitation' of various natural resources, aligning with sustainable development ideals.

⁵ *Gunaratne v Homagama Pradehsiya Sabha* (1998) 2 Sri L.R. 11

⁶ *Sugathapala Mendis and Another v Chandrika Kumaratunga and Others (Waters Edge case)* (2008) 2 Sri L.R. 339

⁷ *A.V. Deshan Harindra (a minor) v Ceylon Electricity Board* (1998) 5(4) S.A.E.L.R. 116

⁸ *Environmental Foundation Limited v Urban Development Authority (Galle Face Green case)*, S.C.F.R. No. 47/2004

⁹ *Watte Gedera Wijebanda v Conservator General of Forests* 2007 LKSC 15

¹⁰ *Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others (Chunnakam Power Plant Case)* 2019 SC FR No. 141/2015

¹¹ *Gunaratne v Homagama Pradehsiya Sabha* [1998] 2 Sri L.R. 11/ S.A.L.E.R 5(2) and (3) p. 28

The National Environmental Act (NEA) of Sri Lanka integrates environmental considerations into development via the Environmental Protection License (EPL) and the Environmental Impact Assessment (EIA) processes. The NEA requires all polluting activities, known as 'prescribed activities,' to comply with conditions in their respective licenses. Standards and criteria for these activities are detailed in regulations under the Act, with the National Environmental (Protection and Quality) Regulations No. 1534/18, dated 01.02.2008, specifying activities that need licenses and outlining the licensing procedure. Additionally, the National Environmental (Amendment) Acts No. 56 of 1988 and No. 53 of 2000 have expanded the power of Central Environmental Authority (CEA). Act No. 56 of 1988 brought significant amendments, introducing new sections: Part IV A "environmental protection," Part IV B "environmental quality," and Part IV C "approval of projects," to further empower the CEA in fulfilling its role and responsibilities.

Part IV A of the National Environmental Act, as amended, outlines prohibitions on activities causing pollution (referred to as "prescribed activities") unless authorized by an Environmental Protection License (EPL) and in compliance with specified terms, standards, and conditions outlined in the Act and its related regulations. Part IV B regulates the discharge or emission of waste into inland waters, the atmosphere, and soil. It also prohibits pollution in a manner that makes the environment poisonous, noxious, unclean, or is detrimental to human beings, fauna, flora, and overall environmental health and safety. Part IV C introduces a distinct procedure for approving projects. These projects are generally characterized as either specified large-scale projects likely to significantly impact the environment due to their scale of operations, or specified projects of any magnitude situated in or near environmentally significant or sensitive areas. Both types of projects are termed "prescribed projects" within Part IV C of the Act.

The incorporation of the Environmental Impact Assessment (EIA) procedure into Sri Lanka's National Environmental Act via Amendment No. 56 of 1988 represents a significant enhancement that aligns with international sustainable development obligations. This amendment underscores the importance of public participation in environmental decision-making, a principle highlighted in the case "*Gunaratne v Homagama Pradehsiya Sabha*"¹². The judiciary further reinforced this stance in "*Environmental Foundation Limited v The Land Commissioner*"¹³, emphasizing the vital roles of public involvement, information accessibility, and transparency for

¹² *Gunaratne v Homagama Pradehsiya Sabha* (1998) 2 Sri L.R. 11

¹³ *Environmental Foundation Limited v The Land Commissioner* (1993) 2 Sri L.R. 41

successful sustainable development, also seen in "*Environmental Foundation Limited v Urban Development Authority*"¹⁴.

The judiciary acknowledged the Principle of Sustainable Development for the first time in the case of the "*Bulankulama v Secretary, Ministry of Industrial Development*"¹⁵. This marked the initial judgment explicitly referring to international environmental law instruments, notably the Stockholm Declaration on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992.

In this case, the Sri Lankan government planned a joint venture with the U.S.-based Freeport MacMoran Resources Partners to mine phosphate deposits in Eppawela. Scientific estimates placed the phosphate reserves at 25 million metric tons, with an additional inferred reserve of 35 million metric tons. At that time, phosphate was being extracted at 40,000 metric tons annually, indicating the reserves would last for many years. However, the proposed project aimed to increase mining to 1.2 million metric tons annually for the first 12 years, and then 900,000 metric tons per year thereafter. This escalated extraction rate would deplete Sri Lanka's phosphate resources in about 30 years, ultimately leading to a dependence on phosphate imports.

In dismissing the proposal, the Court extensively deliberated on the concept of sustainable development. In the case of "*Bulankulama v Secretary, Ministry of Industrial Development*", while acknowledging the State's right to partake in economic development endeavors for the welfare of the people, Justice Amarasinghe stated (at p. 276) that: '*.... the petitioners do not oppose the utilization of the deposit. However, they submit that the phosphate deposit is a non-renewable natural resource that should be developed in a prudent and sustainable manner in order to strike an equitable balance between the needs of the present and future generations of Sri Lankans*'. Justice Amarasinghe further stated (at p.279) that "*the human development paradigm needs to be placed within the context of our finite environment as so to ensure the future sustainability of the mineral resources and of the water and soil conservation ecosystems of the Eppawela region, and of the North Central Province and Sri Lanka in general. Due account must also be taken of our unrenovable cultural heritage. Decisions with regard to the nature and scale of activity require the most anxious consideration from the point of view of*

¹⁴ *Environmental Foundation Limited v Urban Development Authority (Galle Face Green case)*, S.C.F.R. No. 47/2004

¹⁵ *Bulankulama v Secretary, Ministry of Industrial Development (the Eppawela phosphate mining case)* [2000] 3 Sri L.R. 243

safeguarding the health and safety of the people, naturally, including the petitioners, ensuring the viability of their occupations and protecting the right of future generations of Sri Lanka”¹⁶.

In the Supreme Court case of “*Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others*”, Justice Prasanna Jayawardena (at p. 51) strongly affirmed the principle of Sustainable Development. The case originated from a situation in which a company, namely, Northern Power Company (Pvt) Ltd, operated a thermal power station in the Chunnakam area of Jaffna in a way that polluted the groundwater, rendering it unsuitable for human use. In this case, the court established that: “*the State and its agencies are undoubtedly required to assist or undertake infrastructure projects, large scale agricultural projects, industrialization projects and other development projects which are aimed at achieving economic progress, an equitable division of prosperity and a good standard of living and quality of life for all Sri Lankans. At the same time, it must be ensured that such endeavors are geared to achieve ‘Sustainable Development’.* It is hardly necessary to say here that projects in the name of ‘Development’ which harm the environment result more in a deterioration in the quality of life of people of the country which comes inevitably with the destruction of the environment, than in true development.”¹⁷

The esteemed judge affirmed that the National Environmental Act, No. 47 of 1980, is crafted to attain Sustainable Development. Both the Central Environmental Authority and the Board of Investment bear the responsibility of promoting Sustainable Development to the extent that it is feasible and practicable. The failure to conduct a thorough Environmental Impact Assessment concerning the operations of the Chunnakam power plant was deemed a violation of this duty entrusted to these institutions. Thus, it is evident that the judiciary has played a highly consequential role in acknowledging and applying the principle of Sustainable Development within Sri Lanka's domestic context.

In the case “*Watte Gedera Wijebanda v Conservator General of Forests*” Supreme Court referred to Principle 21 of the Stockholm Declaration 1972 and Principles 1 and 2 of the Rio Declaration 1992 and Justice Tilakawardane stated (at p.358-359) that “... *Although the instruments and the constitutional*

¹⁶ *Bulankulama v Secretary, Ministry of Industrial Development (the Eppawela phosphate mining case)* [2000] 3 Sri L.R. 243 p.276

¹⁷ *Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others (Chunnakam Power Plant Case)* 2019 SC FR No. 141/2015 p.51

provisions cited above are not legally binding upon government, they constitute an important part of our environmental protection regime.” In the case of *Bulankulama v Secretary, Ministry of Industrial Development (2000)*, Justice Amerasinghe stated (at p 247) that " *Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature (Principle 1, Rio De Janeiro Declaration). In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it* ¹⁸ ." In Sri Lanka, Justice Tilakawardane , in *Wijebanda vs. Conservator General of forests*, stated (at p. 356), “*The right of all persons to the useful and proper use of the environment and the conservation thereof has been recognized universally and also under the national laws of Sri Lanka. While environmental rights are not specifically alluded to under the fundamental rights chapter of the Constitution, the right to a clean environment and the principle of inter-generational equity with respect to the protection and preservation of the environment are inherent in a meaningful reading of Article 12 (1) of the 1978 Constitution* ¹⁹ .”

In *Wijebanda vs. Conservator General of forests*, Justice Tilakawardane stated (at p. 356) “*The constitution in Article 27 (14) of the directive principles of state policy enjoins the state to protect, preserve and improve the environment. Article 28 refers to the fundamental duty upon every person in Sri Lanka to protect nature and conserve its riches* ²⁰ .” In *Environmental foundation ltd vs. Mahaweli authority of Sri Lanka*, Ratnayake J observed (at p.19) “*Although it is expressly declared in the Constitution that the Directive principles and fundamental duties 'do not confer or impose legal rights or obligations and are not enforceable in any Court of Tribunal' Courts have linked the Directive principles to the public trust doctrine and have stated that these principles should guide state functionaries in the exercise of their powers.*”²¹

Sri Lanka has gained recognition for its abundant biodiversity, showcasing a wide array of ecosystems and species (Jeremy et al., 2015). Demonstrating a strong dedication to the preservation of this biodiversity and the various ecosystems, Fauna and Flora Protection Ordinance No. 2 of 1937 (as amended by Act Nos. 49 of 1993, 12 of 2005) and the Regulations under the Ordinance, underscores this commitment. The legislation's primary focus

¹⁸ *Bulankulama v Secretary, Ministry of Industrial Development (the Eppawela phosphate mining case) [2000] 3 Sri L.R. 243 p.247*

¹⁹ *Watte Gedera Wijebanda v Conservator General of Forests (2007) LKSC 15 p.356*

²⁰ *Watte Gedera Wijebanda v Conservator General of Forests (2007) LKSC 15 p. 356*

²¹ *Environmental foundation ltd vs. Mahaweli authority of Sri Lanka 2010 1 SLR 1 p.19*

involves the identification and establishment of protected regions, and encompassing national parks and wildlife reserves. These legal measures are critical in promoting the sustainable use of natural resources. Furthermore, they serve as protectors of key habitats, offering a place of retreat for endangered species and safeguarding their survival for future generations.

The National Policy on Solid Waste Management places a strong focus on waste reduction, effective recycling systems, and the implementation of suitable waste disposal practices. Waste management is critical to maintaining environmental cleanliness, reducing pollution, and conserving resources for the well-being of future generations (Atapattu, 2001). Legal provisions which are responsible for the handling the waste include the National Environmental Act No. 47 of 1980, the Municipal Council Ordinance No. 16 of 1947, the Urban Council Ordinance No. 61 of 1939, and the Pradesheya Saba Act No. 15 of 1987. These regulatory frameworks actively promote correct disposal of waste procedures, recycling activities, and the implementation of waste reduction strategies in order to reduce environmental contamination while promoting sustainability.

Sri Lanka has regulations governing air and water quality standards to protect public health and the environment. Regulations under sections 23 and 32 of the National Environmental Act No. 47 of 1980 (National Air Quality Management Policy (2000)) and Marine Pollution Prevention Act, No. 35 of 2008 set emission standards for industries and vehicles, regulating waste management, and monitoring air and water quality. These laws aim to minimize environmental pollution and protect public health, contributing to sustainable development.

Sri Lanka established the Sustainable Energy Authority Act No. 35 of 2007 to promote renewable energy sources such as solar, wind, and hydropower that are consistent with the ideals of sustainable development. These initiatives offer the combined benefit of reducing reliance on renewable energy sources while also lessening the effects of climate change. Encouraging investments in environmentally friendly energy sources is critical for the transition to an economy with low emissions and an environmentally sound structure.

With a significant coastline, Sri Lanka recognizes the importance of protecting coastal areas from environmental degradation. The Coast Conservation Act No 57 of 1981 as amended by Act No 49/2011, focuses on sustainable coastal zone management and balancing development activities with environmental conservation. It ensures that coastal resources are utilized

in a way that preserves their integrity and benefits coastal communities in the long term.

Sri Lanka is vulnerable to the effects of climate change. The country has accepted international agreements like the Paris Agreement and implemented National Climate Change Policy of Sri Lanka, National Policy on Clean Development Mechanism, National Strategy for Clean Development Mechanism as well as National Adaptation Plan for Climate Change Impacts in Sri Lanka. These steps have been taken in order to strengthen the nation's resilience and reduce greenhouse gas emissions. Sri Lanka's legal framework emphasizes public awareness and participation in environmental decision-making processes. The section 23BB of the National Environmental Act No. 47 of 1980 mandates public consultation for certain development projects, ensuring that local communities have a say in issues affecting their environment and livelihoods.

These regulations play a critical role in advancing Sri Lanka's sustainable development by taking into account various ecological problems and advocating for the sustainable use of resources. However, achieving this sustainable development requires consistent efforts to effectively implement and enforce these laws. This includes maintaining constant awareness and adapting to changing environmental challenges. The need for action lies in collaborative efforts including governmental entities, societal organizations, commercial firms, and the general public. This collaboration ensures that these policies pave the way for significant and long-term sustainable development in Sri Lanka.

4. Conclusion

In conclusion, the research reveals that Sri Lanka's environmental legal framework is pivotal in shaping its sustainable development journey. The nation's comprehensive suite of laws, ranging from the National Environmental Act to specific legislations like the Fauna and Flora Protection Ordinance and the Sustainable Energy Authority Act, highlights a deep commitment for preserving biodiversity, managing resources responsibly, and embracing renewable energy. These laws, complemented by judicial interpretations that emphasize sustainable development principles, demonstrate a robust effort to balance ecological preservation with economic and social progress. However, the effectiveness of these laws hinges on their diligent implementation and enforcement, coupled with active public participation and awareness. The challenge for Sri Lanka lies in continually adapting its legal framework to meet evolving environmental challenges,

ensuring that the journey towards sustainable development is inclusive, effective, and resilient.

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