

Environmental Law in Sri Lanka

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History

- What could be called modern Environmental law in Sri Lanka took off after the Stockholm conference.
- However, historically in Sri Lanka there has been a tradition of conservation and protection of wildlife dating back over two thousand years. Historically one of the worlds first wildlife sanctuaries dates back to the 3rd century BC. The kings of that time developed system of agriculture and water management which still services today. But I think this is pretty much replicated all over South Asia.

Colonial Period

- Sri Lanka had a host of laws which were not classified as environmental laws per se but directly or indirectly dealt with various environmental issues. Many of these laws were passed in colonial times. I think this situation is very similar to that of India and other South Asian countries as were all have the same history of colonialism.
- Some of these colonial laws include the Fauna and Flora Protection Ordinance which was originally enacted in 1937 and the Forest Ordinance in 1907. Irrigation Ordinance
- Water Hyacinth Ordinance
- Flood Protection Ordinance
- Plant Protection Ordinance

Present Day

- In the present day prior to what may be called the environmental law era which perhaps dates from the Stockholm conference.
- The more recent ones are the
- Mines and Mineral's Act
- Coast Conservation Act
- Marine Pollution Prevention Act
- Fisheries and Aquatic Resources Act);
- National Heritage Wild
- erness Areas
- Soil Conservation Act; Felling of Trees (Control) Act;
- Control of Pesticides Act.

Sectoral Laws

- All these are sectoral laws and There is some disconnect between all thses laws as each is administered by a separate government department and sometimes there is no co-ordination between them.

Umbrella Law

- In addition we have the umbrella environmental law the National Environmental Act
- Passed by Parliament in 1980.
- It was the first in this region and was worked on after Stockholm with the assistance of UNEP.
- In 1988 it was amended to bring in EIA, for the first time in South Asia
- After 40 years it is in need of an overhaul but it remains to be seen if that will be done

Environmental rights

- The constitution does not recognize environmental rights.
- Sri Lanka, unlike India Pakistan and Bangladesh does not have a right to life clause in the current constitution.
- We also don't have socio economic rights in the fundamental rights chapter.
- In the past twenty years there have been three attempts at constitutional amendments which failed for political reasons the last time in 2016.
- I was on the FR committee of that and environmental rights and socio economic rights were included but unfortunately it did not progress.
- At the moment there is a 4th attempt at constitutional reform but again we are observing to see what outcomes it will have.

The judiciary and environmental jurisprudence

- Going through phases?
- Golden era of environmental litigation
- Public Interest litigation – why diminished

Constraints

- Nevertheless Sri Lanka has, overtime, developed a rich body of environmental litigation
 - Human Right
 - Writ actions
 - Right to life = right to euqlity
 - No representative standing

The clause used by lawyers to file writ actions is Article 27 of the Constitution which says that it is the duty of every person in Sri Lanka to protect nature and conserve its riches.

Regional influenceds

- Sri Lankan lawyers have been inspired by jurisprudence from India, Pakistan and Bangladesh in filing cases and making novel arguments.
- Kamal Nath case and PTD
- The environmental principles and concepts such as the polluter pays, the precautionary principle, intergenerational equity have all been judicially acknowledged.
- Cases have also been filed on public nuisance issues and on EIA issues.

What now?

- Political environment
- Economic environment