

The Role of the Judiciary in Promoting Sustainable Development in Sri Lanka

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Abstract

The concept of sustainable development, which recognises the need of utilizing the resources by the present generation, without compromising with the needs of the future generations is accepted as an approach which can assist in addressing many environmental concerns in the world. However, notwithstanding the continuous emphasis on the necessity of achieving long-lasting Sustainable Development both in global and domestic contexts, Sri Lanka has experienced the worst form of environmental destruction in recent years, all of which can be linked to the unsustainable efforts in development. These destructive schemes are often described as projects which are essential for the social and economic development and disregard the environmental impacts, and the administrative authorities find it challenging to enforce the existing laws and regulations. In this backdrop, this article analyses how the concept of Sustainable Development has been recognized and interpreted by the judiciary in Sri Lanka, which has always played a vibrant role in the environmental litigation and environmental protection of the country. The research is carried out using the black letter approach of research and international and comparative research methodology using constitutions, legislations, judicial decisions and international conventions as primary sources, and books, journal articles, conference proceedings, and internet resources as secondary sources. The article lays down that Sustainable Development has been a part of the Sri Lankan tradition and religious practice for centuries and the judiciary has in fact supplemented the principle already

found in the very roots of its legal system, linking it to the international instruments and obligations of the country.

Keywords: Environmental Protection, Judicial Activism, Sustainable Development, Sri Lanka

Introduction

A myriad of issues associated with the conventional economic oriented development including the continued destruction of the environment, poverty, marginalization and social injustice has warranted the states around the world, governments and administrative authorities to adopt wider definitions of development and to reflect beyond mere economic growth. In 1960s' Rachel Carson emphasized this concern in clear and coherent terms stating, "We stand now where two roads diverge. But they are not equally fair. The road we have long been traveling is deceptively easy, a smooth superhighway on which we progress with great speed, but at its end lies disaster. The other fork of the road the one less travelled by offers our last, our only chance to reach a destination that assures the preservation of the Earth" (Carson, 1962, p. 277). This concern reiterated in several subsequent international agreements, declarations and conventions created the common consensus and acceptance that the development is not only the achievement of short-term economic growth but the attainment of long-lasting Sustainable Development. Moreover, the contemporary interpretation of Sustainable Development places much weight on the environmental protection limb of Sustainable Development. This ideology lays down the preservation of the Earth's ecological integrity and sets limits to both economic and social development. It acknowledges that it is a fundamental and ecological reality that humans are an integral part of the community of life and there are ecological boundaries to be respected at a planetary scale (Bosselmann, 2006).

While the achievement of Sustainable Development forms one of the principal goals of government action plans and policies in Sri Lanka, the country has seen the worst forms of environmental destruction in recent years due to the short-sighted development plans and profit-oriented economic activities. These incidents include, among others, the construction of a road through the UNESCO World Heritage site of Sinharaja forest reserve (Ranawana, 2020),

construction of an artificial beach in Mount Lavinia and the destruction of Anawilundawa wetland which is one of the six RAMSAR wetlands in Sri Lanka (Ranasinghe, 2020). These incidents clearly demonstrate that Sri Lanka; an island renowned for its rich biological diversity and unparalleled natural beauty, has greatly deviated from the path to sustainability and environmental preservation and will be left a barren island in the near future if no immediate action is taken.

In this backdrop, it is important to analyse how the principle of Sustainable Development has been recognized in the Sri Lankan legal system. It is often accepted that the laws and legal practices can play an extremely significant part in the quest against environmental destruction, since law poses one of the main restrictions on human activities. As correctly pointed out by Aristotle, “at his best, man is the noblest of all animals; separated from law and justice he is the worst” (Jowette, 1885). In discussing the legal recognition of the principle of Sustainable Development in Sri Lanka, the judicial role in accepting, upholding and applying the principle shall be particularly analysed due to three main reasons. Firstly, Sustainable Development did not receive legislative recognition in Sri Lanka up until 2017, and its initial recognition in the legal system had entirely been judicial. Secondly, the role played by the Sri Lankan judiciary in the environmental protection has been extremely vibrant and progressive. This is particularly manifested in the chain of environmental judicial decisions delivered by the Supreme Court of Sri Lanka starting from the landmark *Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development* (*Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development*, 2000) judgement. Thirdly, the role of the judge is crucial in the Anthropocene where the environmental issues and their implications rapidly change its face. According to Judge Weeramantry, “It is beyond the competence of the legislature to anticipate every factual situation giving rise to environmental considerations, and consequently, it is the judiciary that would have to handle such situations when they arise for the first time. All these factors leave a significant area for the appropriate exercise of judicial discretion” (Weeramantry, 2005, pp. XVIII – XXV).

Accordingly, this study analyses the role played by the judiciary in Sri Lanka in promoting Sustainable Development while comparatively analysing the domestic application and interpretation of the principle with internationally

accepted standards. Through this analysis, the research seeks to determine whether the Sri Lankan version of the Sustainable Development goes in line with the internationally accepted standards or whether it still contains a room for expansion.

Literature Review

Sustainable Development is a well-recognized and well-respected principle in International Law. The literature review will focus on the recognition the concept has gained through global instruments, judgements and scholarly writings. The concept originally emerged in the UN Stockholm Conference on the Human Environment which considered how human actions were damaging the environment and endangering humankind (De Mel & Sirimanne, 2009, pp. 9-72). More specifically, the idea of Sustainable Development is embodied in principles 4, 13, 15-20 and 21 of Stockholm Declaration adopted on 16th June 1972. In terms of principle 4 of the Stockholm Declaration, Man has a distinct obligation to protect and sensibly manage the heritage of wildlife and these concerns should be considered in achieving economic progress. According to principle 13, “states should adopt an integrated and coordinated approach to their development in order to ensure that the development is compatible with environmental protection”. Principles 15 to 20 emphasize that human settlement, demographic policies, control of environmental resources, science and technology and education should all take environmental protection into account. Principle 21 lays down that the “States have the sovereign right to exploit their own resources pursuant to their own environmental policies”. All these principles reiterate the necessity of ensuring that the economic development of states is environmentally benign.

Then in 1987, the report of the UN sponsored Brundtland Commission titled ‘Our Common Future’, pointed out that while economic growth cannot stop, it must adopt to accommodate the planet’s ecological limits (De Mel & Sirimanne, 2009, pp. 9-72). The most commonly cited definition of Sustainable Development was laid down by the Brundtland Commission which defines it as “the development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (Brundtland, 1987). The Rio Declaration which is viewed as the genesis of the theoretical articulation of Sustainable Development came into

force in 1992. Although the declaration is non-binding, the principles in the declaration were formulated in strong legal terms (Barral, 2012, pp. 377–400). According to principle 4 of the Rio Declaration in 1992, “in order to achieve Sustainable Development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation of it”. Principle 25 of the same declaration lays down that, “peace, development and environmental protection are interdependent and indivisible”. The recognition of the Sustainable Development in both Stockholm and Rio is anthropocentric; most particularly, principle 01 of Rio Declaration considers human beings as the central concern of environmental decision making. While the two instruments failed to give an adequate consideration to the intrinsic values of nature independent of their relative usefulness to human beings, the role played by these two milestone instruments in the subsequent concrete recognition of Sustainable Development principle as an integral part of the environmental protection legal regimes; both domestic and international cannot be undermined.

References to Sustainable Development can now indeed be found in 112 multilateral treaties, roughly 30 of which are aimed at universal participation (Barral, 2012, pp. 377-400). This points out the common consensus existing among the international community on the significance and worldwide acceptance of the concept of Sustainable Development (Barral, 2012, pp. 377–400). The United Nations Sustainable Development goals and 2030 Agenda provide a comprehensive platform to measure progress towards sustainability. Sustainable Development has now even accorded the status of a Customary International Law principle. The academic debate on this matter is however inconclusive. The most authoritative opposition to Sustainable Development’s customary status has been expressed by Lowe who holds that the concept is not and cannot be a legal principle as it lacks normative status (Lowe, 2012, pp. 19–38). While there is no general commitment on the states to develop sustainably, there is an obligation to implement measures aimed at achieving Sustainable Development. In the *Shrimp-turtle case* the World Trade Organisation’s Appellate Body recognized the relevance of Sustainable Development for solving the dispute, and even drew specific legal consequences from it (United States Import Prohibition of certain Shrimp and Shrimp Products, 1998).

In the landmark *Gabcíkovo-Nagymaros Project Case*, the International Court of Justice recognized the significance of Sustainable Development independently of its inclusion in a treaty (*Gabcíkovo-Nagymaros Project Case (Hungary v Slovakia)*, 1997). The judgement of the court describes Sustainable Development as a concept as opposed to a principle. In the exact words of the court:

“Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards be given proper weight, not only when states contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of Sustainable Development” (*Gabcíkovo-Nagymaros Project Case (Hungary v Slovakia)*, 1997, p. 51).

However, a careful analysis on the weight placed by the court on Sustainable Development in the judgement shows that the Sustainable Development was considered a principle in the judgement irrespective of the use of the word concept to define it. Although the majority did not wish to go this far, the implication is that Sustainable Development is a legal principle, and in particular that other states have standing to complain of a failure to give proper weight to Sustainable Development in decisions regarding development projects (Boyle, 1997, p. 8).

In the separate opinion of Judge Weeramantry in the same case, his lordship recognized Sustainable Development as a principle and held:

“Development can only be prosecuted in harmony with the reasonable demands of environmental protection. It is thus the correct formulation of the right to development that right does not exist in the absolute sense, but is relative always to its tolerance by the environment. The right to development as thus refined is clearly part of modern International Law.

It is compendiously referred to as Sustainable Development” (*Gabcíkovo-Nagymaros Project Case (Hungary v Slovakia)*, 1997, p. 89).

The separate opinion of Judge Weeramantry in 1997 interestingly established how the needs of development can be reconciled with the protection of the environment using the ancient traditions followed in Sri Lanka.

In the Pulp Mills case, the Court made some limited but interesting comments on the legal implications of Sustainable Development by ascertaining that the object of article 27 of the Statute of the River Uruguay (which Argentina claimed Uruguay had breached) was “consistent with the objective of Sustainable Development” (Lowe, 2012, pp. 19–38). The court placed the right of equitable use within the broader context of Sustainable Development and stressed the obligation of each state to protect the river environment and its flora and fauna, and to take the necessary measures required by the treaty. These judicial pronouncements clearly indicate that the principle of Sustainable Development has well been recognized in the international legal regime at least as an objective and accordingly all the states shall respect their obligation to carry out developmental activities sustainably.

Methodology

The research was carried out using two fundamental methodologies. The first of these methodologies; black-letter approach of research, perceives law as a pure concept, independent of morality, politics, power or other outer influences (Chynoweth, 2004, pp. 481–502). This methodology is used to have a deep and an objective analysis of the law in the text, including legal provisions and judicial decisions that recognize and uphold Sustainable Development. Also, international and comparative research methodology is long used by the legislators and practitioners in the field of Environmental Law (Grossfeld, 1990) to assess the similarities and differences in environmental laws and practices in different jurisdictions, and what these commonalities or divergences reveal (Davis, 2017). The methodology is used in this study to compare the Sri Lankan version of Sustainable Development with its international counterpart. In doing so, international standards were used as the benchmarks against which the domestic application and construction of the Sustainable Development principle is assessed.

Analysis and Discussion

In this part, the author seeks to discuss how the principle of Sustainable Development is recognized in the Sri Lankan tradition and religious practice, and the domestic legal recognition of the principle, particularly through judicial activism.

The Recognition of Sustainable Development in Sri Lankan Tradition and Religious Practice

A careful analysis into the Sri Lankan tradition and religious practice clearly demonstrates that Sustainable Development is not an alien concept to Sri Lanka, it has long been recognized, respected and practiced in the domestic lifestyle of the country. To be precise, sources reveal that Sustainable Development and living in harmony with nature had been a significant part of the day to day lives of the Sri Lankans, centuries before its formal recognition in international legal instruments. According to Mahavamsa, the Great Chronicle of Ceylon, written in the 5th or 6th century, assumably by the Buddhist monk Mahānāma (later translated into English), the Sri Lankan indigenous communities are predominantly Sinhalese Buddhists who claim a heritage of 2500 years of civilization. According to the same source, this civilization is fundamentally shaped by the Buddhist Philosophy and advices of Buddhist monks (Geiger, 2003). According to Fonseka, in ancient Sri Lanka, political power could not be exercised independent of Buddhism and even the foreign invaders respected it and followed Buddhist traditions (Fonseka, 2009). In this context, it is pertinent to discuss the Buddhist recognition of Sustainable Development.

The necessity of living in harmony with nature has been emphasized throughout all three pitakas (chapters) referred to by the Buddhists; Sutta Pitaka, Vinaya Pitaka and Abhidamma Pitaka. One of the Thun Suttas (three scriptures) embodied in Sutta Pitaka, Karaniya Metta Sutta emphasizes certain qualities that shall be possessed by human beings; contented (Santhussako) and easily satisfied (Subharo) which fundamentally coincide with the idea of rationale, prudent and wise use of natural resources emphasized by the principle of Sustainable Development ('Piruvana Poth Wahanse', 2008). The

Maha Mangala Sutta, states the necessity of living in a suitable and pleasant locality (Patirūpa-desa vāso ca). A comfortable house is not sufficient to meet this requirement, one's surroundings must also be safe both socially and environmentally are two aspects emphasized in the concept of Sustainable Development. The Aggañña Sutta of Digha Nikaya provides how mother nature, being displeased with the exploitative behaviour of the selfish people, inflicted mild punishments on them including the withdrawal of bounteousness and generosity (Wimalaratana, 2010, pp.174-181). The Sutta stresses out the need for sustainable use of the environment and possible adverse consequences of the overexploitation of Earth's resources. The Sadāparibhūta Bodhisattva Sutta explains how Bodhisattva lived extremely carefully not to harm the Earth, how he disposed of his garbage, walked and talked with ultimate respect to the mother Earth (Yun, n.d.). Vinaya Pitaka, which contains rules of discipline for bhikkhus and bhikkhūṇīs, imposes several rules on the conduct of the monks to make them respect the environment and all its constituents while encouraging harmonious living with nature. According to Bhutagamavagga Pacittiakanda in Pacittiya Pali, monks are prohibited from cutting trees, excreting stool and urine in green grass and into the water, and spitting into and discharging garbage on waterways. Bhikkhunis are prohibited from throwing dust and waste from windows or in the fields full of crops. ("Vinaya Pitaka: The Basket of Guidance", 2012). These rules of conduct clearly establish a sustainable living in accordance with the nature. Buddha explains how a monk should go on alms round, just the way "a bee gathers honey from the flower without injuring its color or fragrance" ('The Dhammapada', 1985). This clearly explains that one's being shall not be a burden to the Earth.

Other than the above references, the need of protecting the environment has been reiterated in many instances in Buddhism. The Dhammapada states: "Cut down the forest (lust), but not the tree; from the forest springs fear. Having cut down the forest and the underbrush (desire), be passionless, O monks" ('The

Dhammapada’, 1985) and thus envisages that the man shall attempt the destroyance of forest named kleshas and not deforestation. In Vanaropa Sutta, the Buddha states: “*Ārāmaropā vanaropā, ye janā setukārakā; Papañca udapānañca, ye dadanti upassayaṃ*” which translated into English means that “those who plant orchards and gardens, who plant groves, who build bridges, who set up sheds by the roadside with drinking water for the travellers, who sink wells or build reservoirs, who put up various forms of shelter for the public, are those in whom merit grows by day and by night. They are the people that are established in the Dhamma, that are endowed with morality and that are bound for the deva realms” (Basnayake, 2016).

The ancient practices and lifestyles of the people in Sri Lanka were highly influenced by Buddhism and Buddhist practices and were therefore, extremely sustainable and environmentally benign. These practices were referred to by Judge Weeramantry in his famous separate opinion in *Gabcíkovo-Nagymaros Project Case*, where his Lordship states;

“I refer to the ancient irrigation-based civilization of Sri Lanka. It is a system which, while recognizing the need for development and vigorously implementing schemes to this end, at the same time specifically articulated the need for environmental protection and ensured that the technology it employed paid the due regard to environmental considerations. This concern for the environment was reflected not only in its literature and its technology, but also in its legal system, for the felling of certain forests was prohibited, game sanctuaries were established, and royal edicts decreed that the natural resource of water was to be used to the last drop without any wastage” (*Gabcíkovo-Nagymaros Project Case (Hungary v Slovakia)*, 1997, p. 96).

His Lordship further states:

“Another such environmentally related measure consisted of the ‘forest tanks’ which were built in the jungle above the village, not for the purpose of irrigating land, but to provide water to wild animals” (*Gabcíkovo-Nagymaros Project Case (Hungary. v Slovakia)*, 1997, p. 96).

Apart from these practices specifically cited in a prestigious judgement of the International Court of Justice, the construction of buildings and gardens, land and water management, and the conservation of the wildlife in the ancient Sri Lanka carry and reflect sustainability aspects which are clearly manifested in Kokabha, Badulla and Mihintale stone inscriptions, and the rock inscriptions

of Kassapa the 5th, Mahinda the 4th, Gajabhahu the 2nd and Sirisangabo kings (Fonseka, 2009). These practices and traditions are not merely a memory or a ruin of a gone era, but as correctly pointed out by Judge Weeramantry, “are the source from which the legal concepts of a civilization derive, and the ultimate yardstick and touchstone of their validity” (*Gabcikovo-Nagymaros Project Case (Hungary v Slovakia)*, 1997, p. 105). In this sense, it cannot be denied that Sustainable Development had long been an essential part of the Sri Lankan legal system, centuries before it was given a formal legal recognition by the international community.

The Legal Recognition of Sustainable Development in Sri Lanka

The initial recognition of the principle of Sustainable Development in Sri Lanka was purely judicial. It had not received a formal recognition within the legal spectrum of Sri Lanka until the landmark *Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development (Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development, 2000)* judgement was delivered by the Supreme Court in the year 2000. The case arose out of a proposed agreement sought to be entered into by the then government in Sri Lanka to lease out a Phosphate mine situated in the Eppawela region to a foreign company named Freeport Mac Moran of USA. In the judgement honourable Justice Amerasinghe referred to the principles 14 and 21 of the Stockholm Declaration in 1972 and principles 1, 2, 4 of the Rio Declaration in 1992, and held that Sri Lanka as a member country of the United Nations, cannot disregard or ignore the principles set out in these two declarations and they should be recognized as ‘soft law’. Moreover, his lordship stated:

They would be binding if they have been either expressly enacted or become a part of the domestic law by adoption by the superior Courts of record and by the Supreme Court in particular in their decisions (*Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development, 2000, p. 274*).

Thus, incorporating these principles into the corpus of domestic law in Sri Lanka. In the case, Justice Amerasinghe accepted, without any objection, the need of utilizing the Phosphate mine but at the same time emphasized the need of doing it sustainably. In stating that Justice Amerasinghe, following the footpath of Judge Weeramantry, made references to the sustainable and stable

agricultural development system prevailed in the ancient Sri Lanka, and recognized that the present rulers ought to do what the ancient rulers did; harnessing the key natural resources available within their natural habitats. However, his lordship further stated, “in doing so, due regard should be made by the authorities concerned to the general principle encapsulated in the phrase ‘Sustainable Development’ namely that human development and the use of natural resources must take place in a sustainable manner”. Stating that the honourable judge reiterated:

“The human development paradigm needs to be placed within the context of our infinite environment so as 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” (*Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development*, 2000, p. 279).

The judgement laid down three rules to be followed in utilizing natural resources:

“First, the conservation of natural resources for the benefit of future generations - the principle of inter-generational equity; second, the exploration of natural sources in a manner which is ‘sustainable’, or ‘prudent’ - principle of sustainable use: the integration of environmental considerations into economic and other development plans, programmes and projects - the principle of integration of environmental and development needs” (*Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development*, 2000, p. 279).

Bulankulama judgement thus justified the use of Sustainable Development principle in the absence of any legislative recognition in two basic ends; the principle is rooted in the ancient traditions and religious practices in Sri Lanka and, the adoption and application of the principle is a part of the international obligation of the country.

In the subsequent *Watte Gedara Wijebanda v Conservator General of Forest and eight others*, the honourable Justice Shiranee Thilakawardena linked the principle of Sustainable Development with the public trust doctrine and held: “Under the public trust doctrine as adopted in Sri Lanka, the State is enjoined to consider contemporaneously, the demands of Sustainable Development through the efficient management of resources for the benefit of all and the

protection and regeneration of our environment and its resources” (*Watte Gedara Wijebanda v Conservator General of Forest and eight others*, 2007, p. 358).

Her Lordship recognized Sustainable Development as “encapsulating the meaning that natural resources must be utilized in a sustainable manner, in keeping with the principle of intergenerational equity. It requires that the state as the guardian of the 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”. Following the *Bulakulama* approach, the honourable judge held that although the principles of Rio and Stockholm declarations are not legally binding, they form an integral part of the environment protection legal regime in Sri Lanka (*Watte Gedara Wijebanda v Conservator General of Forest and eight others*, 2007, p. 358).

In the most recent environment related Supreme Court judgement, *Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others*, Justice Prasanna Jayawardena upheld the principle of Sustainable Development in very vivid terms (*Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others*, 2019). The judgement arose out of a case where a company; Northern Power Company (Pvt) Ltd has operated a thermal power station in Chunnakam area in Jaffna, in a manner which has polluted groundwater making it unfit for human use. In the case court held that:

“The State and its agencies are undoubtedly required to assist or undertake infrastructure projects, large scale agricultural projects, industrialisation 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 endeavours 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” (*Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others*, 2019, p.51).

The honourable judge established that the provisions of the National Environmental Act, No. 47 of 1980 are designed to achieve Sustainable Development, and the Central Environmental Authority and Board of Investment have a duty to ensure Sustainable Development as far as it is practical and possible. The failure to conduct a proper Environmental Impact Assessment with regard to the operations of the Chunnakam power plant was thus held to be a breach of this duty vested within these two institutions.

Therefore, it is well-manifested that the judiciary has played an extremely significant role in the recognition and application of the principle of Sustainable Development in the domestic context of Sri Lanka. The domestic legal recognition of the principle follows the same path adopted in the key international environmental instruments; Stockholm and Rio declarations. While the conformity of the local recognition of the principle with international standards is praiseworthy, Sri Lanka has also failed to protect the environment against adverse developmental activities for the inherent values that nature represents which does not hold a direct link to human beings. By contrast, the contemporary legal trend in the international arena is the recognition of independent and inherent rights of the environment through constitutional, legislative or judicial mechanisms. As per Chapter 7 of the Constitution of Ecuador which was enacted in 2008, rights of nature are recognised as “following the Andean belief of divinity of mother Earth or Pachamama”. Also, Bolivia adopted rights of nature into its legislative framework through “the Law of Mother Earth (Ley de Derechos de La Madre Tierra) in 2010 and, the Framework Law of Mother Earth and Integral Development for Living Well (Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien) (Framework Law) in 2012”. New Zealand implemented the rights of nature through the Te Urewera Act in 2014 and Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017. India adopted rights of nature through *Mohd Salim v State of Uttarakhand and others (Mohd Salim v State of Uttarakhand and others, 2017)* and *Lalit Miglani v State of Uttarakhand and others (Lalit Miglani v State of Uttarakhand and others, 2017)* which recognized the Ganges and Yamuna rivers as legal persons. The recognition of rights of nature will provide the judiciary an avenue to safeguard nature against developmental activities for the inherent values that they hold without necessarily having to link it to human beings.

In 2017, Sri Lanka Sustainable Development Act, No. 19 of 2017 was enacted with the objectives of ensuring that the national policy and strategy on Sustainable Development is prepared, providing the legal framework for developing and implementing such national policy and strategy, ensuring an ecologically efficient use of natural, social and economic resources, promoting the integration and maintaining the equipoise of environmental, economic and social factors in the making of all decisions by government and formulating strategies to facilitate these objectives. However, the real world impact of this enactment has been extremely limited and still there has been no judicial decision which has enforced the provisions of this relatively novel act.

Conclusion and Recommendations

The idea emphasized by the Sustainable Development principle that the economic development should be environmentally benign and socially inclusive is clearly reflected in the Sri Lankan religious practice and the ancient tradition. Therefore, the principle is not a novel concept to be adopted fresh. However, irrespective of its strong, deep rooted attachment to the foundation of the legal system in Sri Lanka, up until 2017, the legal framework did not specifically recognize Sustainable Development. In this backdrop, the role played by the judiciary in Sri Lanka in the recognition of the Sustainable Development principle is extremely progressive and vibrant. During the time, when Sustainable Development had not been recognized specifically anywhere in the legislative body of Sri Lanka, the judiciary, most particularly the Supreme Court of Sri Lanka upheld, applied and adopted the principle referring to international legal instruments, and the traditions and practices rooted in the Sri Lankan society. In doing so the judiciary followed the exact footpath set by its international counterpart, the International Court of Justice. Therefore, it is not erroneous to hold that the legal recognition of Sustainable Development in Sri Lanka follows international standards. However, it was also evident that the modern reading of the strong version of Sustainable Development which places much weight on the environmental protection limb of Sustainable Development has not been adopted in Sri Lanka. The country's reading of Sustainable Development has always been on the necessity of harmonizing economic development with environmental protection.

However, given the rate of environmental deterioration, destruction and pollution, maybe the time has come for Sri Lanka to adopt and uphold the strong Sustainable Development for the sake of humans, nature and all its constituents. Accordingly, if Sustainable Development can be promoted and implemented within the legislative discourse of Sri Lanka, it is beyond doubt that the judiciary will be further empowered to discharge their duties in environmental protection of the nation. This opens the path to new scholarly researches which can focus on how the principle of sustainable development can be so introduced within the legislative corpus of Sri Lanka.

References

- Barral, V. (2012). Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm. *The European Journal of International Law*, 377–400.
- Basnayake, D. S. (2016). Buddhist Insights for Pragmatic Environmental Conservation as Shown in Vanaropa-Sutta [Paper Presentation]. Proceedings of the International Conference on the Humanities, University of Kelaniya, Kelaniya, Sri Lanka.
- Bosselmann, K. (2006). Strong and Weak Sustainable Development: Making the Difference in the Design of Law. *South African Journal of Environmental Law and Policy*, 13, 39-49.
- Boyle, A. (1997). The Gabčíkovo-Nagymaros Case: New Law in Old Bottles. *Yearbook of International Environmental Law*, 8, 13–20.
- Brundtland, G. (1987). *Our Common Future: The World Commission on Environment and Development*. Oxford University Press: Oxford.
- Carson, R. (1962). *The Silent Spring*. Houghton Mifflin: Boston.
- Chynoweth, P. (2004). The Idea of the University and the Contemporary Legal Academy. *Sydney Law Review*, 26, 481–502.
- Davis, S. (2017). *Research Methods - Comparative Methodology*. <https://uweascllmsupport.wordpress.com/2017/11/15/research-methods-comparative-methodology/>

- De Mel, M. & Sirimanne, N. (2009). Environmental Challenges and Basic Legal Principles. In Gomez, M. (Ed.), *Judges on Environmental Law* (pp. 9- 72). Environmental Foundation Limited, Colombo 05, Sri Lanka.
- Fonseka, L. (2009). *මහල රජ දරුවන්ගේ පරිසර ප්‍රතිපත්ති (Environmental Policies of Ancient Sinhala Kings)*, Lalitha Fonseka: Colombo.
- Gabcíkovo-Nagymaros Project Case (Hungary v Slovakia)*, ICJ Reports 78 (1997).
- Geiger, W. (2003). *The Mahavamsa*. Asian Educational Services: New Delhi.
- Grossfeld, B. (1990). *The Strength and Weakness of Comparative Law*. Clarendon Press: Oxford.
- Jowette, B. (1885). *The Politics of Aristototele*. Oxford University Press: Oxford.
- Lalit Miglani v State of Uttarakhand and others*, HC U'chal. (2017).
- Lowe, V. (2012). Sustainable Development and Unsustainable Arguments. In D. Freestone & A. Boyle (Eds.), *International Law and Sustainable Development: Past Achievements and Future Challenges*, pp. 19–38. Oxford University Press, Oxford.
- Mohd Salim v State of Uttarakhand and others*, HC U'chal. (2017).
- Piruvana Poth Wahanse. (2008). Mahamevna Sadhaham Prakashana: Colombo.
- Ranasinghe, I. (2020). *Anawilundawa Wetland Destruction: Businessman, Backhoe Driver Remanded*. <https://economynext.com/anawilundawa-wetland-destruction-businessman-backhoe-driver-remanded-73481/>
- Ranawana, A. (2020). *President Orders Resumption of Road Construction through Sinharaja*. <https://economynext.com/president-orders-resumption-of-road-construction-through-sinharaja-73440/>
- Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others*, SC (FR) Application No. 141/2015. (2019).
- The Dhammapada. (1985). Buddhist Publication Society: Kandy.

- Tikiri Banda Bulankulama v Secretary, Ministry of Industrial Development*, 3 Sri LR. (2000).
- United States Import Prohibition of certain Shrimp and Shrimp Products*, WT/DS58/AV/R. (1998).
- Vinaya Pitaka: The Basket of Guidance. (2012). Create Space Independent Publishing Platform: South Carolina.
- Watte Gedara Wijebanda v Conservator General of Forest and eight others*, SC Application No. 118/2004. (2007).
- Weeramantry, C. G. (2005). Introduction - Judges and Environmental Law. In D. Shelton & A. C. Kiss (Eds.), *Judicial Handbook on Environmental Law*. UNEP: Nairobi, Kenya.
- Wimalaratana, B. (2010). *The Present Environment Crisis and the Way out: The Buddhist Perspective*. Anussathi.
- Yun, H. (n.d.). *Environmental and Spiritual Preservation*, Bliia Sri Lankan Chapter: Battaramulla, Sri Lanka.