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The public trust doctrine and sustainable development: An aspect of environmental law

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The objective of this study is to introduce the public trust doctrine and to examine its application in relation to sustainable development. To facilitate this study judgments of the superior courts of Sri Lanka, India, the United States and several other countries are referred to.

The international instruments relating to environment demonstrate the concern of the international community for a healthy environment for all life forms including human beings through sustainable development. Sustainable development according to Bruntland Report (1987) is the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The public trust doctrine is an essential element of judicial process to facilitate towards sustainable development.

The public trust doctrine in essence means that powers vested in public authorities are not absolute or unfettered but are held in trust for the public, to be exercised for the purposes for which they have been conferred and that their exercise is subject to judicial review by reference to those purposes. Administrative acts and decisions contrary to the public trust doctrine and/or violative of human rights would be in excess or abuse of power and therefore void. The Court expressed the view that in such judicial review the historical English law limitations on prerogative writs are no longer applicable, because now Sri Lankan courts not courts of the Crown but are bound by the public trust doctrine and are subject to fundamental rights.

Undoubtedly the State has the right to exploit its own resources pursuant, however, to its own environmental and developmental policies and laws. Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment. Human beings are at the centre of concern for sustainable development. In order to achieve sustainable development, decision making process must also comply with public trust doctrine.

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Community engagement in forest resource protection in Sri Lanka dry zone: A success story

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This paper describes the setting, the strategies utilized and the outcome of a pilot community forest protection project implemented in the Sri Lanka Dry Zone. The experiment was executed under a partnership between the Forest Department (FD) and the Sri Lanka Australia Natural Resource Management Project (SLANRMP) resourced by the Australian Aid International Development (AusAID). The purpose of the SLANRMP is to test approaches to community management of natural resources for poverty reduction. A degraded 150 ha forest patch known as *Nikawekanda* North West Dry Zone was selected. This forest has only about a third of its area under forest cover while the rest is occupied by grass as a result of burning. The forest fire has destroyed the trees and the vegetation every year over the past 2-3 decades. The remaining forest area is under severe threat. The tussock grass cover acts as a trigger to spread fire during the dry months.

Upon identification of the households which would directly benefit from a programme of effective protection of *Nikawekanda*, the project supported a series of participatory exercises involving both the community as well as the authorities. The process uncovered useful information such as sources of forest fire and the process of destruction, strategies to prevent fire, forest planting and management options, the community benefits from forest protection, community preparations, etc. among others. Subsequently, a strategic action plan prepared entirely through community participation focused not only on the forest management but also on other rural resources and livelihood activities. Small group

formation involving all households directly benefiting from the forest resource and formation of a village apex organization were important activities in July 2003. The group members assisted by officials and other facilitators prepared a resource management plan which includes forest protection. The awareness and education activities of the plan resulted in improved awareness about forest fire and the need for fire prevention. The action plan was co-ordinated and managed by a committee representing members from each of the groups.

The most obvious success of the pilot experiment has been the prevention of burning of *Nikawekanda* through community efforts for the fourth consecutive year. It is likely that community efforts will be continued into the future. The paper also describes the results of community engagement including women actions in fire control and forest management. Based on the outcome produced through community actions as well as its potential sustainability, the paper recognizes the pilot as a success story.

The final section of the paper highlights lessons learned from the success story at *Nikawekanda*. The multi sector approach focusing forest as well as the management of the entire resource base, providing community support on vital areas of livelihoods, participatory planning and learning approaches throughout the experiment, the employment of seven different methods aimed at forest protection, encouraging small groups and their federation to the village organization and collaborative work relations with all agencies are highlighted. Recognizing that the full benefits of forest management can only be realized in the future, the paper discusses the need for continued community support until such time the village organization is adequately empowered to manage the forest resource in collaboration with FD officials and others.

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Positioning sustainable development as a people's programme -the institutional response

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Institutionalization and intervention strategies today have come to play a major role in the public discourse. This is a truism of environmental law especially in the third world which is trying to keep pace with the global economic development while also carrying the burden of environmental degradation heritage that was passed on by the unscrupulous development strategies, both indigenous and transnational. Developing countries today are increasingly indulging in redrafting their economic policies within the language of environmental conservation.

Thankfully in India, this redrafting has been conditioned by a conversation between the institutions of governance, the judiciary and most importantly organized groups of the public. Policies and policy implementation in India have been the results of this conversation.

My paper brings out instances of how such conversation can be an effective instrument in making sustainable development an achievable goal. Today in India environment and sustainable development have become a people's programme which is not just aimed at drawing judicial attention but translating such judicial directions into achievable programmes. I highlight here an example of organized group activity making sustainable development not just a constitutional guarantee but a people's movement for better life.

The judicial statement in *Tarun Bharat Sangh Vs. Union of India* (AIR 1992 SC 514) is a reflection of sustainable development becoming a campaign. The court said, "Litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioners concern for the environment, ecology, and the wildlife should be shared by the government". This statement sums up the philosophy of public life today, a conversation between the institutions in the society today.

Such conversation has a demonstrable effect in environmental policy today. Today the administrative policies are directed at insisting environmental audit of every economic activity.