

Environmental Laws in Sri Lanka

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We in Sri Lanka have enacted nearly forty statutes such as the Fauna and Flora Protection Ordinance dealing directly with the conservation of the environment and a further sixty such as the Urban Development Authority dealing indirectly with the subject of environment. Despite so many enactments, the lack of awareness of the laws and lethargic implementation has resulted in the absence of adequate protection for the environment.

The majority of the public are unaware of the provision contained in the legislation to protect their rights with regard to the environment. The provisions contained in Section 98 of the Criminal Procedure Code (abatement of nuisance), or in Section 68 of the Police Ordinance can be effectively utilized to overcome simple problems relating to the environment. Yet, the incidence of the public resorting to these provisions has been negligible. No doubt due to the ignorance of these provisions or a lack of civic concern.

Civic consciousness is lacking in two main respects, on the one hand, people do not respect the need for self discipline in the matter of disposal of rubbish or waste materials, throwing them away at the nearest convenient spot regardless of the pollution of the environment. On the other, even those who notice others committing such harmful practices, do not consider it their duty to protest, object or report it to the authorities, except perhaps where it affects them personally.

Apart from the Criminal prosecution, any decision by administrative authorities which may constitute a hazard or a potential hazard to the environment, could be challenged by way of Writ of Certiorari and Mandamus either to quash the decision of the administrator or to compel him do any act which would remove any steps harmful to the environment. This provision is rarely used and the incidence of application to Courts for the issue of Writ has been negligible.

As a country yet in the process of development, we are also faced with the conundrum of sacrifices in the short term for benefits in the longer term. How do we conceive a man on the poverty line, that he should refrain from a remunerative exercise such as coral mining, in the interest of coast preservation in the future.

Another factor which has impeded the effective use of environmental laws is the lack of knowledge or awareness on the part of the officers involved in their implementation. This weakness has also resulted in inadequacies in the laws not being brought to the notice of responsible authorities.

For example the last amendment to the Fauna and Flora Protection Ordinance was in 1970 and that too by way of regulation. The fines stipulated for offences have not kept pace with inflation and in today's context, windfall profits which can be realized by the sale of crocodile or leopard skins or ivory and the paltry sums imposed as fines when such poaching is detected, makes it a worthwhile risk to run.

Take the fine for elephant poaching which the statute has limited to a maximum of Rs. 1,000, and compare the possible fine with the value of a pair of elephant tusks which would fetch more than Rs. 200,000 in the open market.

It must also be pointed out that decisions such as in the case of Attorney General Vs Manawadu reveal that our judges do not appear to be guided by the rule of interpretation that an amendment must be construed to give effect to the evil which it sought to rectify. It is good, noble and traditional, to extend the law as far as it can be stretched for the benefit of the accused. Should we not at the same time take cognizance of the irreparable damage being done to generations to be born by the illicit raping of our forest reserves.

The Felling of Trees (control) Act which prohibits the felling of any tree gazetted by the Minister has had only one tree ie: Jak tree, gazetted under it. This act seems to have faded into oblivion thereafter.

Another areas is the lack of updating antiquated laws and regulations to keep pace with economic and environmental developments making some of the statutes obsolete. For example the Fauna and Flora Protection Ordinance provides for the maintenance of a register of privately owned elephant tusks. Upto date no such register has been regularly maintained.

In the last decade several organizations and groups have provided yeoman service in awakening the need to protect the environment and we have seen carefully planned laws being enacted and moves towards better implementation of the laws so enacted. These enactments have seen the inclusion of provisions contained in foreign legislation. A classic example in the inclusion of the Environmental Impact Assessment (EIA) procedure contained in the Coast Conservation Act, the National Environment Act 47 of 80, (amended in 1988) considered to be the high water mark of environmental legislation in the country, the amendments to the Forest Ordinance, and the National Heritage Wilderness Areas Act.

Even then, we are yet a long way from home. We have not built the infrastructure to implement these laws. Take the licensing requirement brought into operation by the July 1990 regulations to the National Environment Act. It is an offence for any person to discharge any waste into the environment without obtaining a licence from the Central Environmental Authority.

The Environmental Impact Assessment requires all property developers to submit an Environmental Impact Assessment in order to obtain a licence before commencing any development project in the country. There also is provision for the public to oppose any Impact assessment submitted by a developer.

The Central Environmental Authority has identified as many as 5000 industries as requiring a licence. Of these about 250 have been identified as heavy polluting industries. The implementation of the law must necessarily await the infrastructure for an examination of all these premises.

The Forest Ordinance has been updated by an amendment and a series of regulations by gazette notification. However this Ordinance originally enacted as a revenue earning measure does not fulfil a role of a enactment for conservation.

Another disturbing aspect is the lack of co-ordination among various institutions with over-lapping jurisdiction in the field of environment protection. A case in point is the Environmental Impact Assessment requirement contained in both the National Environment Act and the Coast Conservation Act. This has caused confusion as to whether the assessment could be submitted and licence obtained from either agency or whether it should be obtained from both agencies.

Overlapping jurisdiction has sometimes led to agencies to seeking to shift the burden on one another and it is the protection of the environment which suffers. Take the recent tug a war between the Wildlife Department and the Forest Department over the territory of the Singharaja Forest.

The conclusion we can arrive at, is that there are several areas of the subject which need strengthening. There has to be greater awareness among the public and the officials entrusted with the implementation of the laws relating to environment protection.

The plethora of laws should be subjected to a careful study to avoid duplication and overlap and perhaps be consolidated. The various Departments involved or concerned in the subject should be better coordinated.

We are hopeful that all these problems and greater co-ordination among the various agencies carrying out environmental conservation activities in the country would result from the establishment last year of a Ministry for Environment.