

Pollution and the Law

Priyani Wijesekera
Attorney-at-Law
Secretary, Law Commission.

Penalties for environmental damage in Sri Lanka are prescribed in a large number of enactments ranging from the Penal Code to Local Government legislation and offences may range from actual pollution to merely carrying on an activity which has the potential to cause human harm or indulging in an activity without a required permit. If actual pollution is involved its effects may vary from minor discomfort to irreparable damage, extinction of plant and animal life and even death to humans. The offending activities themselves may have been reckless, negligent or deliberate or if the offence is one of absolute liability it may be a simple error of judgement.

The importance of safe environment has been the subject of many a scientific and social programme and cannot be over-emphasised because its continuance is vital for the existence of life itself. The developed countries started taking notice of the purity of the environment when the damage started affecting life and today many governments have started programmes for the protection and improvement of the environment as a subject of the utmost importance, not only for the scientists, educationists and social workers but also legislators and policy makers.

A survey of the statutory provisions already in existence in Sri Lanka shows that the law as it stands cannot effectively protect the environment from serious pollution. The purpose of this Paper is not to survey the environmental legislation in Sri Lanka and indeed such a task would add great length to its substance. However it would be of interest to highlight some of the rarer enactments touching on the subject.

- (a) The Crown Lands Ordinance of 1947 provides for the protection of water ways, the foreshore and the prevention of soil erosion.
- (b) The Food Act No. 26 of 1980 makes provision for control of Contaminants like micotoxine, heavy metals and biological contaminants.
- (c) The Urban Development Authority Law No. 41 of 1978 and its subsequent amendments makes provision for the development of environmental standards and preparation of schemes for environmental improvements.
- (d) The Forest Ordinance of 1907 and its amendments attempt, among other acts, to prevent the felling, cutting, sowing, converting or removing of any trees or timber and removing of any forest produce. It also makes provision for the handling of fire in forests.
- (e) The Plant Protection Ordinance of 1924 was enacted to make better provision against the introduction into Sri Lanka and spread therein of weeds, pests and diseases injurious to plants.
- (f) The Control of Pesticides Act No. 33 of 1980 provides for the safeguarding of pesticide quality to achieve the desired effect on pests without adverse effects on crops and as non target organisms in the environment.
- (g) The Soil Conservation Act No. 25 of 1951 attempts to prevent soil erosion and prescribes methods such as afforestation, erection of dams, cantons ridges etc. to prevent damage to the soil.
- (h) The Agrarian Services Act No. 58 of 1978 enables regulations to be made amongst other matters, as use of protective gear in the application of agro-chemicals and the prevention of industrial waste and effluent from flowing into paddy fields and minor irrigation works.
- (i) The Fauna and Flora Protection Ordinance No. 44 of 1964 as amended makes provision for the declaration of National Wildlife Reserves, protection of certain animals and prohibition of the exports of animals or their skins or flesh etc.
- (j) National Aquatic Resources Research and Development Agency Act No. 54 of 1981 makes provision for the development, management and conservation of aquatic resources in the inland waters, coastal wetbelt and off-shore areas.
- (k) The Coast Conservation Act No. 57 of 1981 makes provision for the ban of coral mining etc.

- (l) The Marine Pollution Prevention Act No. 59 of 1981 attempts to give effects to the international conventions for the prevention of pollution by oil dumping.
- (m) National Environment Act No. 47 of 1980 makes provision for the protection and the management of the environment and the establishment of the Central Environmental Authority.

The above list only gives a fleeting glance at some of the large number of enactments dealing with the subject. A comprehensive list of legislation appears in the schedule attached hereto.

Legislation reflects the desire seriousness and concern with which the government has so far treated this subject. In the ancient texts of the Roman Law (institute of Justinian – See Leaze as Roman Law) it was accepted that the air running water, the sea and sea shore belonged to all men. The Constitution of Sri Lanka recognises the importance of the environment wherein it states in Article 27(14) as follows:

“The State shall protect, preserve and improve the environment for the benefit of the community.”

Pollution is frequently the by-product of legitimate activities from which the public benefits. These activities cause pollution because they produce waste for which no perfect and infallible reduction, recycling, storage or disposal methodology exists as yet. The damage is implicit and is often indirect, cumulative and gradual and long term effects can only be prevented by halting individual incidence that produce it. Therefore this long term potential threat must be balanced against technological necessities and economic realities.

Today most countries have a number of Laws, Acts, Regulations or policy directives on the topic Environmental Pollution. In Sri Lanka the lands are scattered and haphazard and a basic law relating to the environment still revolving.

It may be opportune at this stage to reflect on the shortcomings and deficiencies in the existing legislation. Names of the existing laws are colonial and out-dated and their scope is restricted. Therefore a new look has to be taken in the light of present circumstances, and it is best to introduce a totally new package of legal reforms, based on a foundation of environmental conservation balanced with economic development which could cover all aspects bearing on the environment eg. – Soil conservation, protection of forests and animal life, industrial pollution, marine pollution, protection on sea shore and nuclear pollution. Furthermore some of the laws which are out-dated or dead should be repealed revised. Eg. – The Pearl Fisheries Ordinance (1920). Quite often penalties prescribed in these various laws are woefully inadequate and hardly acts as a deterrent. Therefore the offenders usually act with high handedness and impurity when it comes to degrading the forest and coral reserves. Some fines are as low as Rs. 25/. Many countries in the west have suggested that degradation of the environment should be treated as a crime suggesting life imprisonment in the case of intentional damage. It is suggested that in Sri Lanka too environmental harm should be treated as a serious crime and should attract heavy penalties. Apart from this another drawback is the lack of capacity in Sri Lanka to implement the laws. This may be due to various reasons ranging from inadequate funds to shortage of administrative facilities. Environmental quality is a value so fundamental, unique and threatened, that very seriously to harm or endanger it merits express prohibition in new legislation classing these as crimes.

Schedule

Irrigation Ordinance – 1900	Agrarian Services Act No. 58 of 1978
Land Development Ordinance – 1935	Water Resources Board Act No. 29 of 1964
Crown Lands Ordinance – 1947	Tourist Development Act No. 17 of 1968
Mines and Minerals Law No. 4 of 1973	Flora and Fauna Protection Ordinance – 1937
Cosmetics, Devices and Drugs Act No. 27 of 1980	Coast Conservation Act No. 57 of 1981
Food Act No. 26 of 1980	Fisheries Ordinance – 1940
Town and Country Planning Act of 1946	Chank Fisheries – 1956
Urban Development Authority Law No. 41 of 1978	Pearl Fisheries – 1956
Forests Ordinance – 1907	Marine Pollution Act No. 54 of 1981
Water Supply and Drainage Act No. 2 of 1974	Factories – No. 45 of 1942
Plant Protection – 1924	Gas Ordinance – 1869
Pesticides Act No. 33 of 1980	Petroleum Ordinance – 1887
Soil Conservation Act No. 25 of 1951	National Environmental Act No. 47 of 1980