

Preliminary Year
Sri Lanka Law College

Environmental Law



Empowers Independent Learning



Independent Law Student Movement

All Rights Reserved
iGuide,
Sri Lanka Law College.

Copyright

All material in this publication are protected by copyright, subject to statutory exceptions. Any unauthorized reproduction of any portion of the material contained herein for sale or profit, without the written consent of iGuide, may invoke inter alia liability for infringement of copyright.

Disclaimer

This material is intended to be peripheral supplement for the revision of the subject, solely to supplement students' academic needs. They are not a substitute for the lectures, or the knowledge transmitted thereof.

Reviews, responses and criticism

iGuide,
Sri Lanka Law College,
244, Hulftsdorp Street, Colombo 12

Compiled by
iGuide Committee 2020

President

Nadeeshani Gunawardena

Co Secretaries

Arqam Muneer
Vivendra Ratnayake

Senior Committee

Nuwan Atukorala
Udani Ekanayake
Heshani Chandrasinghe
Rashad Ahmed
Nipuni Chandrarathne
Upeksha Perera
Ravindra Jayawardana
Nisansala Madhushani
Kavita Nissanka
Senandi Wijesinghe
Tehara Jayawardhana
Aranya Devanarayana
Poorni Mariyanayagam

Junior Committee

Osura Vindula
Dasuni Salwatura
Gayani Rathnasekara
Charith Samarakoon
Sharlan Kevin Benedict
Ashraf Mukthar
Marshadha Mackie
Amanda Chandrarathne
Vishwa Hewa
Uthpala Warusavithana
Githmi Ranathunga
Tameshiya Dahanayake
Chamalee Palihawadana

Special Thanks To:

Amali Charithma
Amanda Pabudunayake
Darshanie Miharanie Jayathilake
Deshan Peiris
Dilshi Wickramasinghe
Harindu Shehan
Hasthika Weerasinghe
Lahiru Weerasinghe
Lihini Dodangoda
Nimashi Pathirana
Pali Dewanarayana
Rozanne Chrisentia Irshad
Shani Fernando
Shenali Anthony
Thilini Jinendra

Inter-generational equity

It is based on the principle that while the present generation is entitled to exploit the limited natural resources of the earth for its subsistence and survival, the future generations also have a resource for their subsistence. It is recognized that there should be equity between the generations in the subsistence use of the earth's natural resources.

This principle was first recognized in the **Stockholm Declaration**. **Principle 1** says:

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and the future generations.”

Principle 02 further elaborates that the natural resources and the eco-systems must be safeguarded for the benefit of present and future generations.

Climate Change Convention also incorporates this principle. **Article 3(1)** says that ***“The parties should also protect climate system for the benefit of the present and the future generations of humankind, on the basis of equity.”***

This principle is closely linked with that of Sustainable Development and it is in fact incorporated in the definition of sustainable development. It is also inter-connected to precautionary principle.

The principle of inter-generational equity has been articulated in the domestic laws of Sri Lanka. **Section 17 of the NEA** makes it compulsory for the CEA to *‘recommend to the Minister the basic policy on the management and conservation of the country’s natural resources in order to obtain the optimum benefits and to preserve the same for the future generations’*.

Case law in both national and international level has expressed and upheld the principle.

In the case of **New Zealand v. France (1995) Vol.3 (1 and 2) SAELR 7**, Justice Weeramanthry observed that “New Zealand’s claimant that its rights are affected does not relate only to the rights of the people presently in existence. The rights of the people of New Zealand include the rights of the unborn posterity. Those are rights which a nation is entitled and indeed obliged to protect”.

The most significant case up to date on the issue is the **Juan Antonio Oposa and Others v. The Honorable Fulgencio S. Factoran and another (1994) Vol.1 (3) SAE LR 113**

- The petitioners were minors suing through their parents, on behalf of the generations yet to be born seeking the court to cancel all timber licenses against the felling of virgin tropical rain forests.
- They stated that they have a right for themselves but also a duty to defend the rights of the future generations.
- They were successful in their suit.

The dictum is significant as it recognizes not only the right of the petitioners to a sound environment but also their rights to represent future generations and defend their rights as well.

The principle of inter-generational equity has also received judicial notice in Sri Lanka. It was discussed in the context of the sustainable use of natural resources in the **Eppawela Case**.

In the case of **SmithKline Beecham Biological v. State Pharmaceuticals Corporation of Sri Lanka and Others**, Amarasinghe J made reference to the rights of the future generations.

- This case concerned the award of the tender for the supply of the rubella vaccine. On the issue of whether the tender should be awarded to the lowest bidder, Amarasinghe J stated ***“Obviously, the cheapest, as the common experience shows, may not procure the best product; when any authority is dealing with a product concerned with the lives of the of people, including the unborn citizens of Sri Lanka- would the government compromise; may it gamble?”***

This concept was also mentioned in the Indian case of **M C Mehta v. Union of India (the tanneries case) AIR 1988 Supreme Court 1037 at 1039**.

Polluter-Pays Principle

The polluter-pays principle means that those who are responsible for causing the pollution must bear the cost of such pollution. But in many instances the costs of pollution are borne by the state or the public, rather than the polluters

Example - An industry discharge pollutants into a river. The ways in which the public bear may the economic loss of such pollution:

- a. The river can remain polluted and unsuitable for certain downstream activities , thereby causing economic loss for those who utilize the river*
- b. The river may become unsuitable for agriculture, fisheries or even for recreational purposes.*

The direct or indirect cost of these problems may include medical costs, loss of livelihood, degradation of natural resources and the cost of cleaning up the river.

These costs would generally have to be borne by individuals, public authorities or communities. The polluters pay principle tries to ensure that such costs are ultimately borne by the polluters in the form of taxes and fines or as compensation to those who have been adversely affected by the pollution or being compelled to repair the damage to the environment.

A wide interpretation was given to this principle by the Indian Supreme Court **in M.C Mehta v Kamal Nath and Others (1997) Vol. 4 (3) SAE LR 122; (1997) 1 SCC 388** extending the liability not only to compensate the victims of pollution but also to cover the cost of restoring the environmental degradation.

- In this case the state government had leased public land to a private hotel company. The hotel company has engaged in operation to divert the natural course of a river to prevent the further flooding of the hotel, causing fears of serious ecological damages.
- Holding that the company was bound to pay the cost of restoring the environment the court stated that the absolute liability for harming the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

In the case of **Indian Council for Enviro-Legal Action and Others v. Union of India and Others (1997) Vol.4 (1) SAE LR 2** several chemical factories in the state of Rajasthan were

discharging poisonous chemical wastes and polluting the environment including the ground water. Several hardships were caused to the villagers as a result. Upholding the polluter-pays principle the Court held that the responsibility for repairing the damage is that of the offending company.

In the case of **Vellore Citizens Welfare Forum Case** the court held that the polluter must compensate the affected persons and also pay the cost of restoring the damaged ecology.

This Principle was also discussed in the **Eppawela Phosphate mining case - Bulankulama v Secretary, Ministry of Industrial Development (2002) Sri.L.R 243** Justice Amarasinghe said

“ The cost of environmental damage should , in my view , be borne by the party that causes such damage, rather than being allowed to fall on the general community to be paid through reduced environmental quality or increased taxation in order to mitigate the environmentally degrading effects of a project ”

These cases are examples of polluters being required to both compensate affected people and bear the cost of environmental damage already caused.

Precautionary Principle

The Precautionary Principle is based on the premise that that it is better to prevent environmental degradation in the first place than allow it to occur and then try to repair the damage.

The precautionary principle has been incorporated in several international conventions.

The Principle 15 of the **Rio Declaration** states that *“In order to protect the environment, the precautionary approach shall be widely applied by states, according to their capabilities. Where there are threats of serious irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing the effective measures to prevent environmental degradation”*.

Also, **the Climate Change Convention** in **Article 3(3)** and **The Convention of Biological Diversity** in its preamble articulate the precautionary principle.

To prevent environmental degradation it is necessary to assess the possible impacts on the environment whenever a particular activity is carried out. In order to do so, the risks

to the environment must be assessed in the light of scientific and other knowledge available at that time. However, the lack of full scientific certainty regarding such harm must not be used as a reason to avoid taking steps to prevent harm to the environment.

The precautionary principle has been addressed in judgments of the ICJ.

New Zealand v. France (1996) Vol 3 (1&2) SAE LR page 7

- This case concerned a dispute between the two countries over France's intention to conduct underground nuclear test in the South Pacific.
- Majority of judges dismissed the application of New Zealand objecting to such testing. However, in the dissenting judgment Weeramantry J stated, "The proof or disproof of the matter alleged may present difficulty to the claimant as the necessary information largely be in the hands of the party causing or threatening the damage. The precautionary principle gives the court the basic rationale for considering New Zealand's request and not postponing the application until such time as the full scientific evidence becomes available in refutation of the New Zealand contention.

The precautionary principle was cited by the Supreme Court of Sri Lanka in the **Eppawela phosphate mining case**.

- The petitioners alleged that there will be massive and irreversible environmental pollution and health impacts as a result of the project including the large scale mining and the construction of a factory for the production of phosphoric and sulphuric acid in Trincomalee, both of which are highly polluting substances.
- The petitioners further stated the past records of environment pollution by Freeport MacMoran (the major shareholder and the 5th respondent).
- In this case Amarasinghe J applied the precautionary principle and pointed out the way in which the principle evolved from the Stockholm to the Rio Declarations.

Common but Differentiated Responsibility

All countries have a responsibility to co-operate with each other in protecting the both the environment in their own countries as well as the global environment. It is accepted that all countries have contributed to some extent to environmental degradation within their territories and such degradation would affect the international community as a whole.

However, it is argued that developed countries have caused more harm to the global environment than the developing countries by consuming more of the earth's natural resources and cause more pollution. Therefore they should bear a greater burden of environmental protection than the developing countries. Further, they have more economic resources to contribute towards environmental protection than the developed countries which are still trying to achieve basic standard of living for their people.

The principle of common but differentiated responsibility emphasized

- Firstly, that protection of the global environment is the common concern of humankind and that of all the States.
- Secondly, it acknowledges the fact that various States in various stages of economic development may have different capabilities to do so. Therefore the developed countries may be called upon to make a greater contribution.

This principle has been recognized in **Principle 07** of the Rio Declaration; *"States shall co-operate in a spirit of global partnership to conserve and restore the health and integrity of the Earth's eco-system. In view of the different contributions to global environment degradation, States have a common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and the technologies and financial resources they command"*.

It has also been recognized in **Article 3 (1) of the Climate Change Convention**.

Sustainable Development

Sustainable development was defined in the Brundtland Commission report as ***“development that meets the need of the present without compromising the ability of the future generations to meet their own needs”***

Development needs and environmental concerns should be balanced in order to achieve sustainable development.

The Rio conference was a significant milestone that set a new agenda for sustainable development. Principle 4 of the Rio Declaration states that ***“in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”***

Principle 1 – “Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”.

Sustainable development relates to issues of over exploitation of natural resources and irreversible destruction of the environment in the process of development by the present generation, thus compromising the ability of the future generations to meet their own needs. The concept of sustainable development is thus inter-connected with other concept of environment law such as polluter pays, precautionary principle and inter-generational equity. When decisions are made on development issues, the environmental impact of such development must be taken into account both at national and international level.

This concept has been articulated in

- ***Article 3(4) of the Convention of Climate Change***
- ***Article 5 of the Desertification Convention***

The concept of sustainable development has been discussed in cases in both national and international level.

Gabcikovo-Nagymares, Hungary v. Slovakia (1997) Vol.4 SAE LR 197

- Case on a dispute between the two countries for the construction and operation of a project over the River Danube. In this case ICJ discussed the concept of sustainable development at length.
- Weeramantry J observed that the project in question was important to Slovakia from the point of development and Hungary claimed that the project would

cause extensive environmental damage. A principle must be followed which pays due regard to both considerations.

- Development cannot be perused to such a point so as to result in substantial damage to the environment. Therefore development can only be prosecuted in harmony with the reasonable demands of environmental protection.

The principle of Sustainable development has been incorporated into the domestic laws as well. Though it is not explicitly mentioned, certain sections in the NEA reflect this principle.

- In **Part IV** of the Act titled '**Environmental Management**', the CEA is vested with the power to formulate the schemes by which the natural resources of the country should be utilized and exploited.
- **Section 15(b)** which relates to land use management, states that one of the objects of the scheme should be '*to encourage the prudent use and conservation of land resources in order to prevent an imbalance between the needs of the nation and such resources.*'
- The other sections of the Act specify that various natural resources shall be subject to '**rational exploitation**'
- The EPL and the EIA processed introduced by the NEA seek to integrate environmental concerns with development processes.

The principle of sustainable development was recognized by the judiciary in **Bulankulama v. The Secretary, Ministry of Industrial Development Case (Eppawela Phosphate mining Case)**

- In this case, the government proposed to enter into a joint venture with a foreign company to mine the phosphate deposits in Eppawela.
- According to scientific evidence, phosphate would be mined and exported within a period of 30 years.
- In rejecting the proposal the Court considered the concept of sustainable development at length.
- This is the first judgment, which specifically refers to international environmental law instruments, including the Stockholm Declaration and the Rio Declaration.
- While recognizing the right of the State to engage in economic development activities for the benefit of the people. Amarasinghe J stated that;

'..... the petitioners do not oppose the utilization of the deposit. However, they submit that the phosphate deposit is not a non-renewable natural resource that should be developed in a prudent and sustainable manner in order to strike an

equitable balance between the needs of the present and the future generations in Sri Lanka..'

He further stated that: *'the human development paradigm needs to be placed within the context of our finite environment so as to ensure the future sustainability of the mineral resources and of the water and the soil conservation ecosystem of the Eppawela region, and the North Central Province and the Sri Lanka in general. Due account must also be taken of our non-renewable cultural heritage.'*

In **Gunarathne v. the Homagama Pradeshiya Sabha**, the Supreme Court held that publicity, transparency, and fairness are essential if the goal of sustainable development is to be achieved.

The Indian Supreme Court cited the principle of sustainable development in the case of **Vellore Citizens Welfare Forum v. Union of India and Others AIR 1996 SC 2715; Vol.4 SAE LR 90 at 106**

- This case concerned the large scale pollution caused by the tanneries in Tamil Nadu.
- The Court upheld the complaint of the petitioners that excessive harm was caused to the environment and the people by this industry.
- Kuldeep Singh J observed that although the leather industry in India is a major foreign exchange earner and is of vital importance to the country, *"it has no right to destroy the ecology, degrade the environment and pose a health hazard."*
- He further observed that *"the traditional concept that development and ecology are opposed to each other, it is no longer acceptable. 'Sustainable development' is the answer."*

Public trust Doctrine

This doctrine rests on the principle that certain resources like air, sea, water, fauna and flora have such a great importance to the people as a whole, that it would be wholly unjustified to make them subject to private ownership. The said resources being a gift of the nature should be freely available to everyone irrespective of the status of life.

The doctrine of public trust is essentially a restriction on the private ownership of public lands or public property. According to the English Common Law principles of public trust, certain types of lands which are put to certain types of use must be held for all people of the State and cannot be given to private ownership to be used for commercial purposes.

Illinois Central Railroad Company v. State of Illinois which is the most celebrated public trust case in American law.

- The Illinois Legislature had made an extensive grant of submerged lands to the Illinois Central Railroad Company. The grant included the land underlying Lake Michigan.
- The Supreme Court held that the State of Illinois cannot abdicate its authority over navigations in the waters of Lake Michigan, by granting submerged lands to the Railroad Company.
- It was further held that the title of the state of Illinois to the lands in question was held in trust for the people of the state.

Some state constitutions specifically incorporate the public trust doctrine. For example, the **Hawaiian Constitution** declares that, ***“All public natural resources are held in trust by the State for the benefit of the people”***.

The doctrine of public trust was categorically held to be a part of the law of India, as discussed in the case of **M C Metha v Kamal Nath and Others (1997) Vol. 4 (3) SAE LR 122**

- This case involved the grant of state land on lease for the construction of a motel on bank of river Beas
- Kuldeep Singh J held that the public trust doctrine was a part of the law of India.
- The prior approval granted by the Government of India, Ministry of Environment and the lease-deed in favor of the Motel are quashed and the motel was ordered to pay compensation for the damage caused to the environment.

- It was further held that the granting of State land to private ownership for commercial purposes violated the public trust.

It should be noted that the doctrine does not impose an absolute prohibition on the state in alienating public land to private owners or for purposes other than the recognized ones. This can be done if it is in the public interest.

At national level the public trust doctrine is a legal principle which has its roots in both Roman law and English Common Law.

The Sri Lankan Constitution does not explicitly recognize the PTD. The Supreme Court has developed the Doctrine of Public Trust on the basis of 'Sovereignty of the people' set out in **Article 3, 4 of the Constitution, Article 12(1)** and the principles of Rule of Law which is the basis of our Constitution.

In Sri Lanka, the public trust doctrine can be traced back to 247-207 BC, when Arahath Maninda preached to King Devanampiya Tissa, ***"O great king, the birds of the air and the beasts have an equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou are only the guardian of it".***

In **the Eppawela Phosphate mining case**, an application claimed an imminent infringement of the FR due to the proposed agreement between the government and a foreign company for the exploration and mining of the phosphate deposits.

- In recognizing violation of FR, Amarasinghe J elaborated as to the scope of the PTD as applied in Sri Lanka. This case first pronounced the nexus between Article 3 and PTD.
- The Court holds that Article 3 is an expression of democratic values, in that it affirms that the people are the ultimate sovereigns and that holder of powers of government are only temporary bearers of those powers. There for such power can only be exercised to further the interests of the people.

In **Sugathapala Mendis and Others v. Chandrika Bandaranayake Kumarathunga and Others S.C. F.R No.352/2007** (popularly known as the ***Water's Edge case***), involved the lease and the transfer of land to Asia pacific Ltd for a price less than the true value of the land.

- The petitioners alleged that the national interest, national economy and the FR if the citizens had suffered by the abuse of executive power vested in the president.

- Thilakawardena J in declaring that the FR of the petitioners under Article 12(1) has been violated, stated that , several transactions which the cabinet had approved has no force in law because they were in violation of the PTD. The land which was acquired for public purpose was alienated to private persons arbitrarily.
- It was further held that, 1st respondent (Mrs. Bandaranayake) has failed to further the public interest, has betrayed such trust bestowed upon her by the constitution and by the people.

In the opinion on the **19th Amendment** to the constitution a seven judge bench of the Supreme Court held that the Executive, the Legislative and the Judiciary being the custodians of government, exercise powers in trust for the people.

The public trust doctrine was also discussed in the case of **Environmental Foundation Ltd. v. Urban Development Authority and Others S.C. F.R 47/2004**

Environmental Protection Licenses (EPL)

Part IV A of the NEA dealing with 'Environmental Protection' seek to provide regulate the discharge , deposit or emission of waste to the environment by means of an Environmental Protection Licenses. The goal of this part of the act is to ensure that the discharge, deposit or emission of waste by industrial, commercial or other undertakings, is done according to prescribed standards and procedures.

Section 23A of Part IVA was **amended by Act No.53 of 2000**. Section 23A as amended provides that the Minister may determine the 'prescribed activities' which requires an environmental protection license before they commence or continue operations.

The amendment in 2000 made it a criminal offence to violate the terms and conditions of the licenses. The earlier Act only provided for the cancellation or suspension of the license if the license holder violates the conditions. Under the amendment such person may be liable to a fine not less than Rs. 10000 or to a term of imprisonment not less than one year or both.

The framework for the EPL procedure is set out in the **National Environment Act** and **National Environmental (Protection and Quality) Regulations.**

According to the NEA upon an application being made to the CEA for an EPL and upon the prescribed fee being paid, the CEA may issue a license to such person authorizing him/her to discharge, deposit or emit waste into the environment in accordance with the standards that may be prescribed under the Act. All such licenses are valid for a period of 3 years and shall be renewable.

According to **Regulation 8**, the CEA shall issue the license only if it is satisfied that:

- a) The license will not be used to contravene the provisions of the Act or these regulations;
- b) No irretrievable hazard to man and environment or any nuisance will result from the acts authorized by the license;
- c) The applicant has taken adequate steps for the protection of the environment in accordance with the requirements of the law.

The CEA may suspend or cancel a license if,

- A person to whom the EPL has been issued violates any of the terms, standards or conditions contained in it.
- If the receiving environment has been altered or changed due to natural factors or otherwise , or
- Where the continued discharge, deposit or emission of waste into the environment under the authority of the EPL will or could adversely affect any beneficial use.

According to **Regulation 10**, when the license is suspended or cancelled according to **Section 23DD** of the NEA, the CEA may, before doing so give the holder of the license an opportunity to show cause why such order should not be issued.

According to **Section 23EE** an applicant for an EPL who is aggrieved by the refusal of the CEA to grant a license, or any holder of a license who is aggrieved by its suspension or cancellation, or refusal to renew the license may within 30 days notified of such decision, appeal to the Secretary, Ministry of Environment. The Secretary's decision is final.

It should be noted that the CEA has delegated its power to issue EPLs to local authorities in the case of industries polluting on a small scale.

There have been several cases relating to issue of EPLs. Most of these cases have been filed by petitioners aggrieved by the refusal of the CEA or the relevant local authorities to grant the license.

In the case of an **Appeal under Section 23E of the NEA by G L M Kamal Fernando (1995) 2 SAELR 16**, it has been held that the conditions imposed by the authority granting the license must be reasonable and not arbitrary.

- In this case when the appellant applied for an EPL in respect for a brick kiln, the CEA has imposed two conditions on the construction of the kiln, namely :
 - I. -That it should be situated at least 200 meters away from the 3rd respondents residence, and
 - II. -that the smoke from the kiln be disposed of by means of a chimney 30 meters high.

The appellant was unable to comply with the first requirement and was denied the license.

- It was found that the CEA had no general guidelines regarding the distance to be maintained between brick kilns and the residential premises.
- The Secretary held that under the circumstances the conditions imposed on the Appellant requiring him to maintain a distance of 200 meters was arbitrary and had no technical basis.

In the case of **Jayawardena v, Akmeemana Pradeshiya Sabha and four Others (1998) SAELR 10 ; (1998)1 SLR 316(Supreme Court),**

- The petitioner submitted an application to the CEA to set up a metal crusher and paid the inspection fee. CEA inspected the site and recommended granting the license.
- The petitioner thereupon applied the Akmeemana Pradeshiya Sabha for a license and paid the required inspection fee. After visiting the site the pradeshiya sabha issued the EPL and the petitioner started operations.
- Two days later the petitioner was requested to stop operations due to a protest from the nearby residents.
- It was found that the petitioner had not obtained a trade license. And he was obliged to do so under the terms of the license. After an inspection it was advised that an EPL should not be issued, as the location was unsuitable for a metal crusher.
- The petitioner filed action stating that his FR under **Article 12 and 14(1) (g)** has been violated.
- The Court pointed out firstly that the Pradeshiya Sabha was exercising the powers of the CEA which had been delegated to it under Section 26 of the NEA.

- It was held that as the petitioner failed to comply with the conditions under which the license was granted and causing air and noise pollution. The CEA and the pradeshiya sabha was entitled to cancel licenses without giving the petitioner an opportunity to show cause why it should not be cancelled.
- Amarasinghe J further pointed out, the petitioner's occupation or enterprise was unlawful in terms of Section 23A read with 23B of the NEA therefore Article 14(1) (g) was not violated.

V D S Gunaratne v. Homagama prasedhiya Sabha and Five Others (1998) 5 SAE LR 28

Environmental Impact Assessment and Approval of projects

An **Environmental Impact Assessment** report has been defined under **Section 33** of the NEA.

It is a written analysis of the predicted environment containing the following:-

- ✓ An environment cost-benefit analysis
- ✓ Description of the project including the avoidable and unavoidable adverse impacts.
- ✓ A description of alternatives to the activity together with the reasons why other alternatives were rejected.
- ✓ Irreversible and Irretrievable commitments of resources.

EIA examines how the project might cause harm to people, their homeland or to their livelihood, or to other developments. After predicting potential problems the EIA identifies measures to minimize the problems and outline ways to improve the project's suitability to the proposed environment.

The assessment is conducted prior to the commencement of the project. A prior environmental assessment enables impacts to be identified and mitigatory measures to be incorporated into the planning process before the project commences and thus reduce the harm caused to the environment.

The EIA process was first introduced to Sri Lanka by way of the **Costal Conservation Act No 57 of 1981**. The provisions regarding EIA are contained in **Part III** of the Act entitled **“Permit Procedure”**.

Further, international conventions have also incorporated this concept. **Principle 17 of the Rio Declaration** states that

“Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”

The EIA provisions in the National Environmental Act

The amendment to the NEA by the **Act No. 56 of 1988**, introduced the EIA procedure into the statute. The relevant provisions are contained in **Part IV C** of the NEA entitled **“Approval of Projects”**. The required regulations are **National Environmental (Procedure for Approval of Projects) Regulations**.

Section 23 Y and 23Z of the NEA empowers the Minister to gazette a list of state agencies as **‘Project Approving Agencies (PAAs)’** and a list of projects as **‘Prescribed Projects’**. All prescribed projects must obtain prior approval from the relevant PAAs before the commencement of the project. A list of such prescribed projects and project approving agencies is found in the regulations. Examples –

- *Prescribed projects*
 - ✓ *Construction of hotels exceeding 99 rooms or 40 hectares*
 - ✓ *Development of Industrial Estates and Parks exceeding an area of 10 hectares*
- *Project Approving Agencies*
 - ✓ *Central Environmental Authority*
 - ✓ *Urban Development Authority*
 - ✓ *Ceylon Tourist Board*

The act applies to all projects carried out by both the State and the private sector.

The project approval may be based on an Initial Environmental Assessment (EIA) or an Initial Environmental Examination as decided by the PAA. **(Section 23 BB)**. The IEE is carried out for projects which are likely to be less harmful. The EIA is carried out for projects that may produce **‘significant impact’** to the environment.

Public participation - The Act makes it mandatory that the EIA is made available to the public and that the public be invited to send their comments to the relevant PAA. The PAA should publish a notice in the gazette and one newspaper each in Sinhala, Tamil and English and notify the public the place and the time the report may be inspected. The PAA shall forward the comments to the project proponent who is required to respond to them in writing.

Public Participation in environmental matters has been recognized in the **Rio Declaration**. Principle 10 states that:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making process. State shall facilitate and encourage public awareness and participation by making information widely available.”

There have been several instances of intensive public involvement in controversial projects. ***Examples are the Upper Kotmale Hydro Power Project and Colombo-Katunayake Expressway.***

Public Hearings- the PAA may, if it considers it appropriate to do so in the public interest provide an opportunity to any person who has made comments, to be heard in support of his comments. However, it is not mandatory to do so. Public hearing was held in the case of ***Upper Kotmale Hydro Power Project.***

Grant of Approval- After the project proponent has submitted its response to the public comments; the PAA shall, with the concurrence of the CEA either

- ✓ Grant approval for the implementation of the project subject to specified conditions; or
- ✓ Refuse approval for the implementation of the project with reasons for doing so.

When approval is granted for any project, such approval shall be published in gazette and in one newspaper each in Sinhala, Tamil and English.

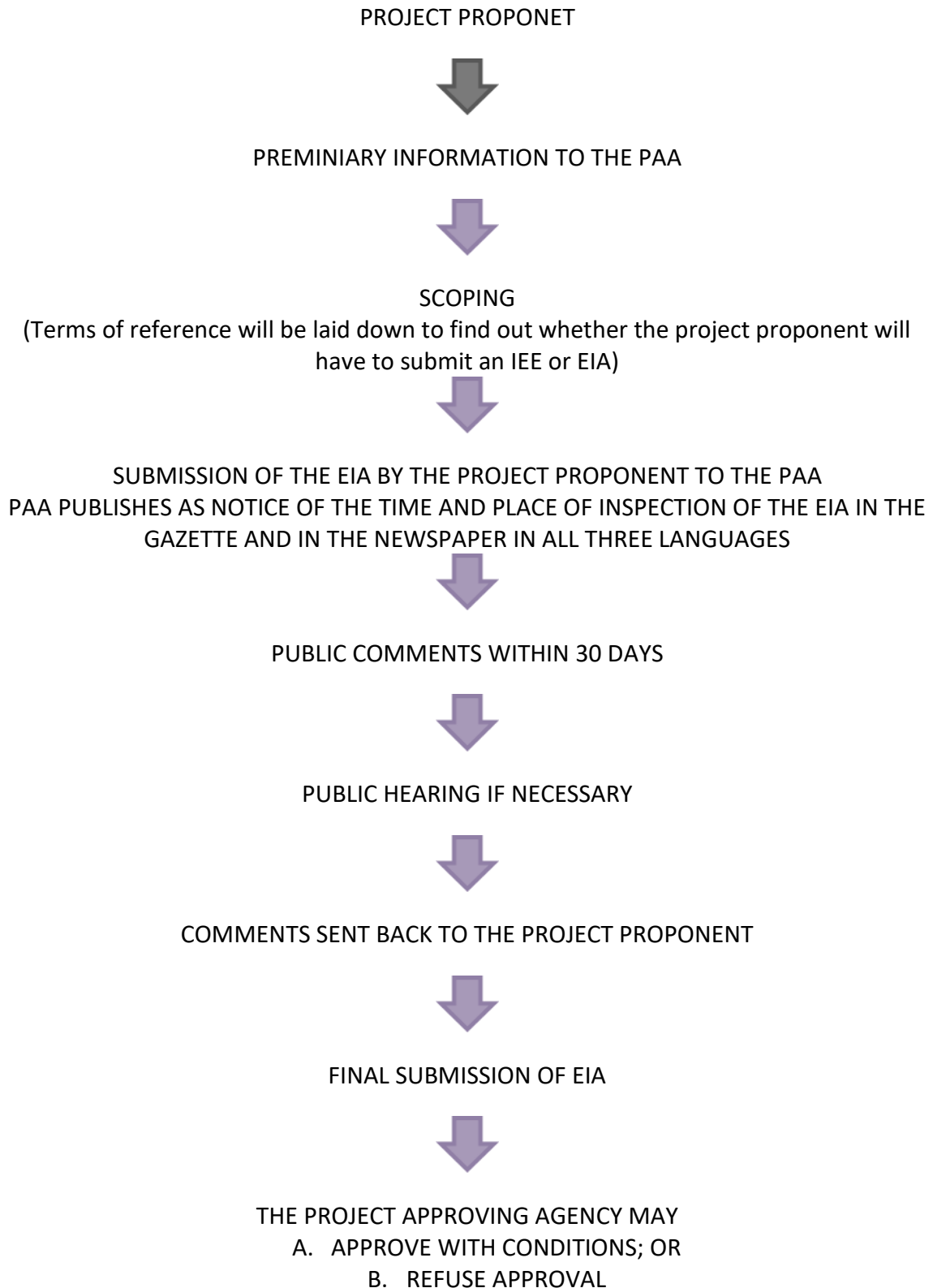
Appeals- According to section 23 DD of the NEA, if a PAA refuses approval for a project, the person or persons aggrieved by that decision shall have a right to appeal to the

Secretary, to the Ministry in charge of the subject of Environment. The decision of the Secretary shall be final.

The first appeal under these provisions was the **Appeal under Section 23DD of the NEA by Rajawella Holdings (Pvt) Ltd Vol.1 SAE LR 155.** In this case the PA had approved the project subject to certain conditions and the project proponent was appealing against some of the conditions.

Alterations or abandonment of the project- Section 33 EE of the Act and Regulation 17 states that if any alterations are being made to an approved project or if the project is being abandoned, the project proponent shall inform the PAA of the alterations or the abandonment of the project. Where it is necessary the project proponent shall obtain fresh approval in respect of such alterations.

The procedure for the approval of projects (Summary)





APPROVAL TO BE PUBLISHED IN GAZETTE AND NEWSPAPERS



APPEAL BY THE AGGRIEVED PERSONS (PROJECT PROPONENT) TO THE SECRETARY OF MINISTRY IN CHARGE OF ENVIRONMENT WITHIN 30 DAYS OF THE DECISION OF THE PAA



THE PROJECT PROPONENT SHALL INFORM OF ANY ALTERATION OR ABANDONMENT OF THE PROJECT TO THE PAA AND GET FRESH APPROVAL IF NECESSARY



THE PROJECT APPROVING AGENCY SHALL MONITOR THE PROJECT

Nuisance

There are three types of nuisance actions namely,

- Private nuisance
- Public nuisance
- Statutory nuisance

Statutory Nuisance

A nuisance which has been specifically created by a statute is called statutory nuisance. The relevant provisions prohibit people from doing specific acts and impose penalties for them.

Statutory nuisance are found in several statutes in Sri Lanka. Examples:-

- ***Nuisance Ordinance No. 15 of 1982***
- ***Municipal Council ordinance No. 29 of 1947 (relevant to public health)***
- ***Urban Council Act No. 16 of 1939 (relevant to public health)***

Private Nuisance

Private nuisance covers situations in which an individual may be obstructed in the peaceful and unobstructed use of his or her land or property.

An action for private nuisance is filed in the District court under the provisions of the Civil Procedure Code.

Public Nuisance

Public nuisance is an act or omission which endangers or adversely affects the general public. Public nuisance is a crime and therefore will be prosecuted by the state. Environment related actions in public nuisance are noise pollution, air and water pollution, disposal of garbage.

When can an individual sue in public nuisance?

An individual or more members of the group of people affected can bring a tort action for public nuisance only if he or she can prove that he or she has suffered greater loss or injury than the other members of the community and has been particularly affected by nuisance.

Actions for public nuisance

The Penal Code

- ***Section 261 of the penal code defines public nuisance.***
- ***Section 283 and 284 contain provisions for the punishment of a person who causes a public nuisance.***

Although criminal liability is imposed for the commission of these offences, the sanctions are extremely limited. Therefore the provisions do not have much deterrent value.

The Code of Criminal Procedure

The principle relief for members of the public affected by a public nuisance, either actual or imminent is the abatement of the nuisance. The procedure for an abatement of public nuisance is contained in **Chapter IX of the Code of Criminal Procedure.**

Section 98 of the code empowers a Magistrate to make a conditional order in respect of any nuisance. The categories of nuisance for the purpose are stated in **Section 98 (1)** as:

- Any unlawful obstruction or nuisance in any public way, harbor, lake, river or channel;
- Any trade or occupation or the keeping of any goods or merchandize that is injurious to the health or physical comfort of the community;
- The construction of any building or the disposal of any substance that is likely to cause conflagration or explosion;
- Any building or tree that is in such condition that it is likely to fall and injure passersby;
- Any tank, well or excavation adjacent to any public way or place which may be a danger to the public.

An affected person, against whom a conditional order is made, is entitled to have the order set aside or modified. After recording evidence from the affected person and the complainant and any other witness, the magistrate may modify or set aside the conditional order or make the same absolute under **section 101.**

According to **section 102**, when an order is made absolute, the person will be required to perform the act directed by the order within the specified time. If such order is disobeyed he or she will be liable to specified penalties.

Section 103 states that if the act is not performed, the magistrate may cause it to be performed and may recover the costs of performing it.

If the magistrate, while making an order under section 98, considers that immediate measures should be taken to prevent imminent danger or serious injury to the public, he may issue an **injunction order** under **section 104**.

The power given to a Magistrate under the criminal procedure code has been exercised not only against private defendants, but also against statutory and local government bodies.

M M Khalid and three others v. Chairman, Sri Jayawardenepura Kotte Urban Council (1996) vol 3 (3) SAE LR 62

- Actions were brought as a private plaint under section 98 of the criminal procedure code.
- The plaintiffs claimed that the urban council was dumping garbage in the vicinity of Senanayake Avenue which is a residential area and causing public nuisance to the residents.
- On the basis of the complaints the court issued a conditional order on the respondent Urban Council. The respondents then filed objections stating among others, the following.
 - ✓ Garbage was been disposed under the provisions of section 118 of the urban council ordinance.
 - ✓ It was the only site available to the urban council.
 - ✓ There was no danger to the plaintiffs 'health and well-being.

The court rejected the objections. It pointed out that section 121 of the urban council ordinance states that garbage must be disposed of in a manner which does not cause a nuisance.

In India too, the Supreme Court has issued orders against Municipal authorities which has caused a public nuisance.

- ***Municipal Council Ratlam v. Vardichand***
- ***MC Mehta v. Union of India (The Municipalities Case) AIR 1988 SC 1115***

The courts have not hesitated to shut down factories which were polluting the environment and causing a nuisance to the public.

The case of **Singalanka Standard Chemicals Ltd. v. T.A. Sirisena and others (1996) vol.3(3) SAE LR 69** concerned a petition made to High Court of Avissawella from the Magistrates Court of Homagama to revise a conditional order of the Magistrate halting the operation of the Respondent-Petitioner's chemical factory.

- Petitioners instituted the action under Chapter IX of the Criminal Procedure Code to halt the operations of this factory which produced Sulphuric acid on the ground that it constituted a public nuisance by polluting the well water and the environment in general.
- It was held that there is **no legal impediment** to the issue of an order under Section 98(1) for the purpose of shutting down a factory.

The conflict between the nuisance action and the EPL regulations and other statutory provisions

In the case **of Keangnam Enterprises Ltd. v. E A Abeysinghe and eleven others (1994) Vol.1(1) SAE LR 1, (Court of Appeal)** the question at issue was whether statutory provisions, i.e. section 23A of the NEA , ousted the power of the Magistrate to make orders under Section 98 of the CPC

- The magistrate granted an injunction under Section 104 of the CPC and also entered a conditional order under Section 98(1) for the removal of the public nuisance caused by the quarry. At the time the Magistrate made his order, the company had applied for the EPL but has not obtained it.
- The Court of Appeal in the present application for a license was not sufficient to invoke he provisions of the NEA and oust the jurisdiction of the Magistrate, and the revision application would be dismissed.

Although this issue has not been conclusively determined by an appellate court it appears that this position is that the EPL license does not oust the jurisdiction of the Magistrate to hear cases of public nuisance.

In the case of **Marshall v. Gunaratne Unnanse 1 NLR 179**, it was held that a permit issued under the Police Ordinance was not a defense to a public nuisance action under the Penal Code

Absolute Liability

It is the application of Strict Liability but without the exceptions. It is a remedy for the environmental issues in tort.

The right to compensation in the environmental cases has been traditionally linked to strict liability as enunciated in **Ryland's V. Fletcher**

The rule of Absolute liability was established in the landmark case of **M. C Metha v. Union of India and Shriram Foods and Fertilizers Industries AIR 1987 SE 965 982** in this case the Supreme Court of India was dealing with claims arising from the leakage of Oluem gas from one of the units of Shriram Food and Fertilizers Industries. As a consequence of this leakage one person died and several suffered serious injury.

The action was brought through a writ petition under **Article 32** of the Indian constitution by way of Public Interest Litigation.

The court had in mind the earlier leakage of the deadly MIC gas from the Union carbide plant in Bopal where more than 3000 people died and lakhs of others were subject to various kinds of diseases. In the rule of Strict Liability laid down in Ryland's v. Fletcher was applied to such situations, people having "**hazardous and inherently dangerous**" industries would escape the liability for the havoc caused by pleading some exceptions to the rule in Ryland's.

The Supreme Court took a bold step and evolved the rule of absolute liability as part of Indian law in preference to the rule of strict liability. It is expressly declared that the new rule was not subject to any of the exceptions under the rule in Ryland's and Fletcher.

The following rules were laid down by the Supreme Court in this case;

- When an enterprise is engaging in **hazardous or inherently dangerous activities**, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not restricted by any exceptions.
- The enterprise cannot escape liability by showing, it had taken all reasonable care and there was no negligence on its part.

There was a lot of controversy regarding the compensation payable to the victims. Several cases were filed claiming compensation. The government of India passed the **Bopal gas Disaster (Processing of claims) Act** to takeover and peruse the claims of the victims.

In the **Union Carbide corporation v. Union of India** (popularly known as the **Bopal gas disaster case**) , the Supreme Court decided to follow the principle in *M.C Mehta v. Union of India*, where the Court laid down the rule of absolute liability in preference to the rule of strict liability.

After a long drawn litigation, the Supreme Court passed an order directing the payment of a sum of \$470 MN.

The principle of Absolute Liability was also cited in the case of **Enviro- Legal Action v. Union of India.**

Air Pollution

Air pollution is the presence of any pollutants that reduce the air quality thereby threatening the health and welfare of people, plants and animals.

The main causes of air pollution are human activities, which includes vehicle emissions, industries and power plants, burning of solid waste.

Air pollution from vehicle emissions is a major problem in urban areas. High volumes and poor maintenance, coupled with improper traffic management had led to air pollution.

These pollutants can directly and indirectly cause health impacts, global warming, melting of glaciers, and depletion of the Ozone layer, reducing the yield of agricultural crops, climate changes and rise of the sea level. Air pollution in a particular place can also affect other parts of the country due to the dispersal of pollutants through wind currents.

Part IV B of the NEA which deals with “**Environment Quality**” makes reference to the pollution of the atmosphere. **Section 23 J and 23 K** contains provisions relating to pollution of the atmosphere.

There are regulations relating to the prohibition of materials which deplete the ozone layer.

National Environmental (Ambient Air Quality) Regulations specify the quality of the surrounding air. It specifies permissible ambient air quality standards and specifies the maximum permissible amounts in the ambient air of pollutants such as carbon monoxide and nitrogen dioxide.

Air quality regulations- In the case of **Lalantha de Silva v. Nandimithra Ekanayake (Minister of Forestry and Environment) and Others FR 569/98** the petitioners complained that the Ambient Air Quality standards were not being maintained in some parts of the Colombo metropolitan area. He further maintained that this is due mainly to pollution caused by motor vehicles and in order to maintain these standards the Minister of Environment should specify other standards as well under Section 23 of the NEA.

The petitioner therefore sought a direction of court to the Minister to make and gazette regulations specifying:

- ✓ Mobile Air Emission Standards
- ✓ Fuel Standards
- ✓ Vehicle Specification Standards for importation

As a result of this case the **National Environmental (Air Emission, Fuel and Vehicle Importation Standards) Regulation No. 1 of 2000** was gazette. These regulations set out the following standards:

Part I-Mobile Air Emission Standards- These sets out the permissible Mobile Air Emission limits for every motor vehicle in use in Sri Lanka and no user of a motor vehicle shall discharge emissions in to the atmosphere which exceed these standards. The commissioner of Motor traffic is empowered to authorize any garage as an accredited garage for the purpose of testing and certifying these standards in relation to any motor vehicle.

Part II- Fuel Standards – every person who supplies fuel for the use of any motor vehicle shall comply with the fuel standards.

Part III – Vehicle Specification Standards for Importation – Every person imports any motor vehicle into Sri Lanka shall comply with the vehicle specification standards.

In addition to the above specific provisions, the general provisions of the **Penal Code** set out in **Section 271** provide that whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health, commits an offence in terms of the Code

Geethanie and Environmental Foundation Limited v. Minister of Environment and others led to the preparation of road maps to reduce air pollution.

Human Rights and Environmental Protection

Human beings are totally dependent on their natural environment for the survival and the degraded environment will have a devastating impact on the people and the communities. The recognition of interdependence between humankind and the environment has translated itself in a human rights context.

The relationship between human rights and environment is widely recognized. The 1st international document which articulated this link is the Stockholm Declaration. In its preamble it proclaims *“both aspects of man’s environment, the natural and man-made are essential to his well-being and to the enjoyment of basic human rights”*.

Principle 1 of the Declaration also talks about this link. Environment has been linked not only to civil and political rights but also to economic and social rights.

Principle 1 of the **Rio Declaration** also provides for this.

The Sri Lanka Constitution

The constitution of Sri Lanka does not expressly recognize the right to a healthy environment as a constitutionally protected fundamental right, nor does it expressly recognize the right to life as a fundamental right.

However, it, does, under the chapter titled “ **directive principles of state policy and fundamental duties** ” specifically recognize that the state has a duty, albeit unenforceable, to protect, preserve and improve the environment for the benefit of the community, and the supreme court has held that some fundamental rights in the constitution implicitly recognize the right to life.

Furthermore, the constitution imposes a fundamental duty on every person in Sri Lanka to protect nature and conserve its riches (Article 28 (f)), which is also known as unenforceable duty.

▪ Article 12

Although the constitution does not contain any specific fundamental right pertaining to the enjoyment of a healthy environment, the Supreme Court has entertained, afforded relief and settled many fundamental rights applications relating to environmental issues, on the basis of the equal protection provisions contained in **article 12(1)** of the constitution.

This principle was applied in the Eppawela phosphate mining case, where the petitioners asserted that the action of the government in entering into this project was arbitrary and

unreasonable, therefore discriminating against them. And the EIA report would be bias and their comments would not be considered as the government already is committed to the project. They also challenged that their rights under Article 24(1) (g) and 14 (1) (h) are violated.

- **Right to Life**

Our Constitution does not expressly mention the right to life. However it is argued that recognition of the right to life is implicit in all other rights that are expressly set out, since such rights would be meaningless without the right to life itself.

An environmental case that attempted to invoke the right to life on the basis that such right is implicitly recognized by the constitution was **Deshan Harinda (minor) v. Ceylon Electricity Board** which involved severe noise pollution from a diesel generation that was affecting young children. The case ended in settlement, the legal argument on right to life was not tested and this question still remains open.

However, right to life is expressly provided in **Article 21 of the Indian Constitution. M C Metha v Union of India (Tannaries Case)**

- **Right to clean and healthy environment**

Case law in India and other countries have extended the right to life to include the right to a healthy environment.

In the Philippines case of **Juan Antonio Oposa and Others v. The Honorable Fulgencio S. Factoran and another (1994) Vol.1 (3) SAELR 113**, the Supreme Court held that, the State shall protect and advance the right of the people to a balanced and healthy ecology. And further held that the state has an obligation to preserve, protect and advance it not only to present by also for generations to come.

- **Freedom of Association**

The right found in **Article 14(1) (c)** is essential to organize people, communities and non-governmental organizations to monitor decisions and projects which may impact adversely on the environment and their lives.

- **Right to information**

Access to information is essential to public participation in decision making and monitoring state and private agencies. This has been recognized by the **Rio Declaration**.

In **Environmental Foundation Ltd v Urban Development Authority (Galle Face Green Case)** the Supreme Court held that the right to freedom of speech and expression may include the right

to information that would enable a person to effectively exercise rights in respect of a matter that should be in the public domain.

In this case the petitioner which was a non-profit making environmental organization filed a FR application in public interest seeking disclosure of the vesting order issued under the UDA law vesting Galle Face Green in the UDA, and the agreement entered into by the UDA with a private company to lease it.

The right to information was not expressly provided in the Sri Lankan Constitution, but with the 19th amendment to the constitution this right was included in Chapter III of the Constitution.

Solid Waste Management (SWM)

Solid waste, especially Municipal Solid Waste [MSW], is a growing problem in urban areas of Sri Lanka and this problem is aggravated due to absence of proper solid waste management systems in the country. At present in many instances solid waste are collected in mixed state and being dumped in environmentally very sensitive places like road sides, marshy lands, low lying areas, public places, forest and wild life areas, water courses etc. causing numerous negative environmental impacts such as ground and surface water pollution, air pollution. Further, the open dumps of solid waste are ideal places for breeding of disease vectors like Mosquitoes.

SWM may be defined as the discipline associated with the control of generation, storage, collection, transfer and transport, processing, and disposal of solid waste in a manner that is in accordance with the best principles of public health, economics, engineering, conservation, aesthetics, and other environmental considerations and that is also responsive to public attitudes.

No comprehensive technical guidelines are available at present in Sri Lanka addressing all important elements of waste management systems. The present set of guidelines is aimed to cover only the municipal solid wastes.

Policies, laws and standards According to the Local Government Act, the Local Authorities in Sri Lanka are responsible for collecting and disposal of waste generated by the people within their territories. The necessary provisions are given under -

- ✓ The **sections 129, 130 and 131** of the **Municipal Council Ordinance**;
- ✓ the **sections 118, 119 and 120** of the **Urban Council Ordinance**;
- ✓ and **sections 93 and 94** of the **Pradeshiya Sabha Act**.

It is stated that it is the duty of these local authorities to provide for:

- Properly sweeping and cleaning of the streets, including the footways, and collection and removal of all street refuse;
- Due removal at proper periods of all house refuse, and due cleansing and emptying at proper periods of all latrines and cesspits; and
- Proper disposal of all street refuse, house refuse and night-soil.

Provincial Councils have been given the powers to manage solid waste, as a devolved subject under the 13th Amendment to the Constitution of Sri Lanka. Sometimes the Nuisance Ordinance is used by local authorities to stop undesired dumping

National Environmental Act

The National Environmental Act (NEA) of 1980 which was subsequently amended in 1988 provides the necessary legislative framework for environmental protection in the country.

The Ministry of Environment prepared the **National Strategy for Solid Waste Management** in 2000, which recognized the need for SWM from generation to final disposal through a range of strategies, based on the **3-R principal**, as well as the need for decentralized actions as well as centralized actions such as developing the market conditions for sale of recyclable materials and products made from recycled materials.

National Strategy for Solid Waste Management available at present highlights the importance of waste avoidance, reduction, reuse, and recycling and final disposal in an environmentally sound manner and still giving high priority for waste recycling over disposal.

This was superseded by a **National Policy for Solid Waste Management** prepared in 2007 *“to ensure integrated, economically feasible and environmentally sound solid waste management practices for the country at national, provincial and Local Authority level”*.

A major activity that sprung from the National Policy is the setting up of the **Pilisaru Programme** in 2008, to solve the solid waste problem at the national level, with the help of the **“Pilisaru Project”** at the Central Environmental Authority, with the concept of reusing the resources available in the collected garbage to the maximum before final disposal. While technical and financial assistance on SWM to the local authorities is a major role of Pilisaru, it is also empowered to take legal action against those local Authorities that are not managing their solid waste properly.

In addition, **a general guideline for the implementation of SWM** was prepared by the Central Environmental Authority in 2005, (which is available in the CEA website.) The Central Environmental Authority has stipulated regulations giving standards and criteria for generation, collection, transport, storage, recovery, recycling, disposal or establishment of any site or facility for the disposal of any waste specified as 'Scheduled Waste', and such activities need an EPL for operation. **(Government Gazette Extraordinary No. 1534/18 - FEBRUARY 01, 2008).**

A specification for Compost from Municipal Solid Waste Management and Agricultural Waste was stipulated by the Sri Lanka Standards Institution as Sri Lanka Standard 1246: 2003 (UDC 628.477.4).

Water pollution

Water pollution is the contamination of water bodies. (e.g. lakes, rivers, oceans, aquifers and groundwater). This form of environmental degradation occurs when pollutants are directly or indirectly discharged into water bodies without adequate treatment to remove harmful compounds. Water pollution affects the entire biosphere – plants and organisms living in these bodies of water.

Water pollution is a major global problem which requires ongoing evaluation and revision of water resource policy at all levels (international down to individual aquifers and wells). It has been suggested that water pollution is the leading worldwide cause of deaths and diseases, and that it accounts for the deaths of more than 14,000 people daily.

Water is typically referred to as polluted when it is impaired by anthropogenic contaminants and either does not support human use, such as drinking water, or undergoes a marked shift in its ability to support its constituent biotic communities, such as fish. Natural phenomena such as volcanoes, algae blooms, storms, and earthquakes also cause major changes in water quality and the ecological status of water.

In Sri Lanka water pollution is mainly caused by, domestic agricultural and industrial activities. Pollution done majorly by Sediments, sewage, trace elements in water, inorganic pollutants, etc. causes cancer, health issues, threat to aquatic life sources, toxicity, etc.

Relevant Provisions

The NEA provisions on 'environmental quality', 'environmental protection' and the 'approvals of projects' are all relevant for the prevention of water pollution.

- ✓ The NEA mandates that subject to the provisions pertaining to the EPL, the discharge or emission of waste into inland waters in contravention of prescribed standards is an offence. **(Section 23G)**
- ✓ The provisions of the law also contain a general prohibition on the pollution of inland waters **(Section 23 H)**
- ✓ In terms of **Section 270 of the Penal Code** it is an offence to voluntarily corrupt or foul the water of any public spring, reservoir, so as to render it less fit for the purpose for which it is ordinarily used.

Examples:

- Kelani river pollution- according to Central Environmental Authority (CEA) 23 odd factories situated on Kelani valley and 20 odd factories expel effluents to river.
- The Environmental Protection License (EPL) granted to the Coca-Cola beverage factory which is blamed for oil leakage into the Kelani River was temporarily suspended.
- Residents of Rathupaswala alleged their supply of drinking water had been contaminated due to chemicals being released by a factory in the area, Dipped Products Ltd (DPL) owned by the Hayleys Group.

Soil contamination/pollution

Soil contamination or soil pollution is caused by the presence of xenobiotic (human-made) chemicals or other alteration in the natural soil environment. It is typically caused by Drilling of oil refineries, Accidental spills, Acid rain (which is caused by air pollution), Intensive farming, Deforestation, Genetically modified plants, nuclear wastes, Industrial accidents, Landfill and illegal dumping.

The most common chemicals involved are petroleum hydrocarbons, naphthalene and benzo(a)pyrene), solvents, pesticides, lead, and other heavy metals. Contamination is correlated with the degree of industrialization and intensity of chemical usage.

The concern over soil contamination stems primarily from health risks, from direct contact with the contaminated soil, vapors from the contaminants, and from secondary contamination of water supplies within and underlying the soil.

Under the Sri Lanka Soil Act (1996) there are several institutions responsible to protect soil resources. The institutions are: ministries such as environment, land, Mahaweli development, housing, highways, plantation industries, finance, provincial councils, mines and minerals, forestry and irrigation.

The Soil Act clearly proposes measures, activities and research in order to protect soil resources from various damages. Due to poor implementation of regulations and lack of public awareness, rich soil in the hill country has been eroded. One obvious repercussion of soil erosion is reservoir sedimentation. For example, the more than 40% of the full capacity of the Polgolla Dam is filled with silt. Colombo is the most affected urban area which faces a serious threat with respect to the disposal of around 1500 tons of solid waste material per day.

There is little national law on structural soil protection; some indirect protection appears in forestry laws that are designed to avoid erosion and consequent flooding. A few cases have been decided. One example is from the **Environment Appeal Tribunal of Mauritius, Case No. 03/01, Mrs. Jamamloodeen Dulloo v. Minister of Environment.**

The National Environmental quality provisions of the NEA provide for the regulation of soil pollution. **Section 23 M of the Act** provides that no person shall discharge or deposit waste into the soil, except in accordance with such standards or criteria as may be prescribed under the Act. **Section 23N (1) of the NEA** contains general provisions for the prevention of soil pollution.

Noise pollution

- NEA defines noise pollution as: *“the presence of sound at a level which causes irritation, fatigue, hearing loss or interferes with the perception of other sounds and with creative activity through disturbance”* (Section 33)

-Unlike other environmental problems, noise does not lead to chemical or organic pollution of natural resources but instead affects human beings and other animals directly. In recent years, noise has been recognized not only as an annoyance but as a serious health hazard as well.

-Types of noise pollution range from community noise to occupational noise, with examples including barking dogs, household appliances, security alarms, loud music, road traffic, air traffic, machinery use, and construction.

-High noise levels can contribute to cardiovascular effects in humans and an increased incidence of coronary artery disease. In animals, noise can increase the risk of death by altering predator or prey detection and avoidance, interfere with reproduction and navigation, and contribute to permanent hearing loss.

-Noise pollution has traditionally been controlled by the laws pertaining to nuisance. One of the first attempts at regulating noise through specific laws can be found in the noise codes of Portland, Oregon, USA. The government of India has rules and regulations against firecrackers and loudspeakers, but enforcement is extremely low.

-The CEA may require local authorities to comply with its recommendations, for the regulation of noise pollution. **(Section 10 (i) (VI) of the NEA)**

-Subject to the provisions pertaining to the EPI, the NEA prohibits the emission of excessive noise other than in compliance with prescribed standards or limitations. No person may emit greater in volume, intensity or quality than the levels prescribed for objectionable noise and tolerable noise. **(Section 23 P, 23Q and 23R of the NEA)**

-In terms of the **Police Ordinance**, any person who makes noise in the night so as to disturb the repose of the inhabitants without having obtained a license for that purpose commits an offence.

-Al Haj M T M Ashik and Four Others, Trustee of Kapuwatta Mohideen Jumma Mosque Denipitiya Weligama V. R P S Bandula OIC Weligama and Nine Others (2007)

– led to the preparation of new regulations in regard to noise pollution The Supreme Court gave its decision, in simplified terms, the right of one party to use loudspeakers

was weighed against the annoyance, disturbance and harm caused to those other parties who are compelled against their will to listen to the amplified sounds which emanate from these loudspeakers.

The order contains valuable information regarding the position of the law in respect of noise pollution, especially that caused by the inconsiderate use of loudspeakers. The Court considered whether it was permissible to force members of the general public to become captive listeners— on the grounds that a noise, is protected if it is made in the course of a religious ceremony, particularly if the Police have issued a license for the use of loudspeakers. The Court stated clearly that no religious body is entitled, by reason of claimed religious practice, to commit a public nuisance by excessive noise.

-Under National Environmental (Community Noise Control) regulations laws, loudspeakers and amplification may not be used between 10 pm and 6 am. The exceptions are announcements made in times of emergency or disaster, and in the case of special religious functions and special occasions.

-Schools, hospitals and courthouses have been declared “**silent zones**”,