

Role of the Judiciary in Balancing Developmental Rights and Environmental Rights in Sri Lanka: A ‘Band-aid’ or A ‘Cure’?

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The ‘development discourse’ in Sri Lanka perceives developmental rights in juxtaposition to environmental rights, which results in environmental externalities. Environmental rights are becoming harder to ignore due to calamities arising from climate change. Nevertheless, being a developing country, with pressing economic challenges affecting the quality of life, developmental rights cannot be undermined either. This study engaged in a critical analysis of qualitative data collected through a library research embodying primary (case law and legislation) and secondary sources (books, journal articles, reports) in order to determine the existing jurisprudence on the two rights. Accordingly, it was found that the judiciary reviews both rights as a ‘public trustee’ and does not favour one over the other. Therefore, albeit competitive at times, they are not viewed as mutually exclusive rights. In striking a balance between the two rights, the judiciary, deriving jurisdiction and power from the Fundamental Rights Chapter, State Directive Principles and Article 126 of the Constitution of Sri Lanka, has adopted creative interpretations utilizing international environmental law principles such as ‘precautionary principle’, ‘polluter-pays principle’, ‘sustainable development’ and ‘inter-generational equity’. However, the aptness in relying solely on the judiciary to make such a balance is contentious. As judicial review adopts a case-by-case approach, the outcome is unpredictable and uncertain. More importantly, it could be regressive in the realization of sustainable development in the country, as the judiciary intervenes only after a dispute transpires. Further, judicial power could only be exercised within the four corners of the law respecting democratic values of ‘Separation of Powers’ and ‘Checks and Balances’. Judicial activism in this regard is proven to be a band-aid rather than a cure to the problem. Therefore, there is a real need to provide a comprehensive solution by enacting progressive legislation seeking to balance the two rights.

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