

FROM A PALE PRESENT TO A GREENER FUTURE: RECOMMENDATIONS ON EXPANDING ACCESS TO ENVIRONMENTAL JUSTICE IN SRI LANKA

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Introduction

Environmental law strives to address environmental issues. However, the lack of access to justice regarding environmental issues, proves to be a hindrance to the progress of this work. Moreover, it has set back the genesis of the *sui generis* interpretation of environmental laws and left manifold environmental losses without effective reparation. Though there are studies analyzing the concept ‘access to environmental justice’, research and institutional reforms for its expansion are scarce. In an attempt to respond to this need, this study, based on the analysis of written documents aims to reflect on the inadequacy and ineffectiveness of the means of access to environmental justice in Sri Lanka and make recommendations for its improvement.

Methodology

The material for this qualitative research is drawn from the Constitution of Sri Lanka and legislative enactments (both foreign and local), case reports, scholarly texts/articles and reports. In making recommendations a basic comparative study is carried out through reference to India, Australia and New Zealand.

Results & Discussion

The demand for access to environmental justice can be considered under the following:

To uphold the rule of law: violation of laws that are enacted to regulate issues related to environment should provide sufficient access to justice so as to penalize such violators. To redress the victims who suffer from inevitable health hazards and loss of property due to environmental pollution. To restore and preserve the environment by paying compensation.

Environmental justice is accessed in Sri Lanka through Article 126(2) of the Constitution of 1978. It redresses the violations of constitutionally ensured fundamental rights (FR) and freedoms. FR actions pertaining to environmental matters are generally instituted under Article 12 which ensures the right to equality. The failure to apply relevant environmental laws to a particular situation is considered as subjecting the people affected by that situation to an unequal treatment of law. Since adequate access to environmental justice is a prerequisite for environmental democracy, many foreign jurisdictions have introduced reforms to establish special judicial bodies. For instance, 'Green Benches' are established within the system in existence and 'Environmental Courts/Tribunals' have been instituted extraneous to the existing hierarchy of courts. A structure which facilitates the coexistence of both could also be introduced to a legal system to strategically expand access to environmental justice.

The concept of 'Green Benches' would be an ideal intermediate step in systematic expansion of access to environmental justice in Sri Lanka. In India, the Supreme Court has a special division bench to hear environment-related matters. This would ease the large number of litigations at the Supreme Court of Sri Lanka, especially in deciding environment related FR cases. It is not mandatory here that the bench be composed of judges with both technical and legal expertise in environmental issues but is recommended for effective adjudication.

Furthermore, as an initiative to expanding access to environmental justice in Sri Lanka, either an Environmental court or an Environmental Tribunal could be established. Here, the Land and Environment Court of New South Wales, Australia, which was established under the Land and Environment Court Act, 1979 is ideal to be referred to due to its novelties such as benches that comprise of both judges and expert members, extended jurisdiction covering appeal, judicial review and enforcement and recognition as a court of record. The New Zealand Environment Court established under the Resource Management (Amendment) Act, 1996, also entertains a wide range of powers and functions such as the capacity to make declarations of law and issuing enforcement orders at its discretion.

The unique features of the National Green Tribunal (GNT) in India is also considered in the present research. This special tribunal was constituted under the National Green Tribunal Act No.19 of 2010, for effective and quick disposal of cases relating to environmental protection, enforcement of legal rights relating to environment and to grant remedies and compensate environmental harm.

Conclusion

The above evaluation indicates therefore that the existing system of justice should be prudently reformed to meet the increasing demand for the effective expansion of access to environmental justice in Sri Lanka.

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