

About the book

Judges & Environmental Law: A Handbook for the Sri Lankan Judiciary

This publication brings together a collection of essays on different aspects of the environment. It sets out to enhance the understanding of judges and seek their cooperation in the enforcement of Sri Lanka's environmental legislation and policies. The publication is the product of a process of collaboration between the Environmental Foundation Limited, the Sri Lanka Judges' Institute and the United Nations Environmental Programme. This handbook has been drafted by a group of well established and respected legal practitioners in the field of environmental law and has been edited by a legal academic. The publication was guided by an eminent panel of judges.

Chapter 1: Environmental challenges and basic legal principles explores some of the environmental challenges we face at the current moment. The chapter discusses environmental change and inter-dependence and why there is an urgent need to act to protect the natural environment. Basic environmental concepts including environmental degradation, pollution, remediation and restoration are considered and the impact on the health and well being of the population discussed. This chapter also deals with the emergence of environmental law in Sri Lanka and discusses some important laws, policies and institutions. The doctrine of public trust is also dealt with.

Chapter 2: Environmental laws, institutions and mechanisms analyses the several provisions of the National Environmental Act and the role of the Central Environmental Authority. It looks at the issue of licensing, the regulation of waste and the environmental impact assessment process. Public participation and public hearings are also discussed. The chapter examines air, water, soil, noise and marine pollution in detail and the legal regime in this regard. The Coast Conservation Act and the regulation of mines and minerals are considered. The legal regime in relation to the control of pesticides is also discussed.

Chapter 3: How environmental cases come before the courts considers how environmental cases have been litigated before the courts of Sri Lanka. Environmental matters have been litigated as a fundamental rights violation despite the absence of an explicit right to a clean and healthy environment in the constitution. The chapter looks at case law of the Supreme Court in this regard and analyses some of the judicial approaches to constitutional interpretation. How the Supreme Court has exercised its 'just and equitable jurisdiction' under Article 126(4) is considered in this chapter.

Chapter 4: The interpretation of scientific evidence in environmental cases covers the relationship between scientific evidence and environmental litigation. 'Proof' of facts in environmental litigation may often entail scientific reports or expert testimony. Judges are then called upon to evaluate the credibility of this evidence in deciding the case before them. Inspection reports and analytical reports and the standards that should apply to these reports are discussed in this chapter. It also examines some of the challenges posed by these reports where they contain scientific data and some of the specific problems associated with interpreting scientific reports.

Chapter 5: Multilateral Environmental Agreements and the Sri Lankan legal system surveys some of the major Multilateral Environmental Agreements and summarises some of their provisions. The chapter also looks at international environmental law and its relationship with the Sri Lankan legal system. Monism and dualism are discussed briefly and some examples where Sri Lankan courts have used international norms as interpretive aids is also mentioned.