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A CRITICAL EVALUATION
OF THE
ENVIRONMENTAL LAWS, IN SRI LANKA

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A DISSERTATION PRESENTED TO

THE DEPARTMENT OF TOWN AND COUNTRY PLANNING
UNIVERSITY OF MORATUWA, KATUBEDDA, SRI LANKA.

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OF THE REQUIREMENTS FOR THE DEGREE
OF MASTER OF SCIENCE

IN
TOWN AND COUNTRY PLANNING

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SYNOPSIS

This study comprises a critical evaluation of the Environmental Laws in Sri Lanka, as part of the academic requirement of the M.Sc. in Town and Country Planning Degree Course. A comprehensive study has been attempted here to evaluate the Common-law and the Statutory laws and assess their strengths and weaknesses in exerting a positive influence on the environment.

The study constitutes Six Chapters. Chapter one delves into a survey of environmental laws in Town and Country Planning. The importance of legislative provisions is discussed in the overall protection of the environment.

Chapter Two prevails on the management of natural resources through legislative enactments. The laws are examined in relation to the protection and maintenance of natural resources in the country.

Chapter Three highlights some important dimensions in forestry, wildlife and tree preservation. In this context, the appropriate laws are evaluated to appraise their impact on those integral resources of the environment.



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Chapter Four bears on the indispensable aspects of the aquatic environment. The relevant laws are reviewed against this background in perceiving the dominant problems in its scope.

Chapter Five focuses on the salient features of pollution which besets the environment. Legislative enactments are analysed to identify the proportion of pollution and find their origins.

Chapter Six summates the findings of the study and enunciates specific recommendations for timely implementation of the law to protect and enhance the quality of the environment.

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INTRODUCTIONBACKGROUND:

A critical awareness of the human environment is not a concern peculiar to the present day. That we are so moved about the condition and conservation of our surroundings is patent proof of an earlier care, of a nurture by generations long past without whose touch and husbandry we should have no environment worthy of our desire. Until the recent past no one in Sri Lanka would have understood the relevance of the environmental laws as a major arm of the National Executive. When in the mid 1960's the National Environmental Authority was no more than an idea and felt need, the word environment had for many intimately concerned in the policy of the birth of the Authority no more than a topographical connotation. What is new today is an awakening to realise that the environment we use and have created, has an anatomy of independent parts and functions.

Our ancestors had worked in an sporadic manner, fashioning and fabricating the natural resources. The dimension of their consciousness, unlike ours, did not reach to the totality, to the wholeness, of the human environment. Nevertheless the heritage they left us, which is the environment we now cherish and would improve, was itself the atefact of guided law and rational policies. Those who would comprehend the law as it stands today for the protection of the environment will find an

extensive web, ready woven, a gossamer of statutory texts and case law stretching back into a past when in the law of torts neighbour sought redress against neighbour for nuisance of various kinds, when legislators focussed their attention on housing, on factory conditions, and on the neglect of husbandry. It was all environment. Much needs to be done in framing new laws and policies to give expression to the implications to the present awakening. But, be he politician, planner, legal practitioner or surveyor, he who fails to know the law starts out on a false scent. Besides which the law as it now stands in the sum and the substance of the knowledge incumbent upon the present day practitioner to profess.

THE SCOPE OF THE STUDY



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An attempt is made to collate and analyse that knowledge in this study. A comprehensive practical treatise is of prime importance to the lawyer the surveyor and the planner and as such the relation of the protection of the environment - to the law is shown diviating the orthodox pattern of the legal text book and relate the law to the subject. The various means provided by the law for the protection or improvement of our environment are very considerable in their scope although the sources relevant to a specific problem may, on occasion be difficult to trace. Thus, it can be said that, with certain exceptions, most threats to our surroundings can be remedied with the aid of the law,

provided that the correct administrative channels can be identified.

In the past few years much has been said about the practical problem relating to the protection of environment. These discussions have been of great interest, and the growth of constructive comment on the part of scientists, is particularly to be welcomed. However, the views most usually expressed tend to be either of a scientific nature, or to consist merely of generalised statements or moral or aesthetic values. These are, unfortunately, of limited assistance when one becomes practically involved in negotiation with administrative authorities, or in the conduct of a case on behalf of objectors at a public inquiry. The prime reason for this limitation is that it is a basic principle of the court systems of justice that "expert" views - whether of a technical or of an artistic nature - should be presented by the expert in person, so that he may then be open to further examination and cross-examination in order to test fully the value of his assertions. Thus, the expression of second hand opinion, or of alleged fact without proof of validity, are afforded little weight.

The purpose therefore, in this study is twofold. First, a consideration is offered regarding the essentially practical difficulties which arise in seeking to protect or improve the human environment; these problems relate either to the actual process of persuasion of

people (either individually, collectively, or in Ministerial form), or to the implementation of the law as it at present stands; and it is with this in mind that the following chapters are written.

Secondly, it is attempted to provide an overall view of the current situation with a critical evaluation in relation to the environmental laws seen in context. In the sometimes well-nigh impenetrable jungle of environmental administration this may serve to reduce the difficulty of "seeing the wood for the trees" - whereby painful collisions may, perhaps, be avoided. In too many cases the public and the general professional practitioner are unaware of the rights which they, or the community as a legal entity, are entitled to enforce.



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In the final chapter, therefore a few critical areas are studied in detail where the environmental degradation is visible with regard to pollution. The intensity of the problem is highlighted here with its severe consequences. Concluding the study the implementation aspect is stressed with the necessary recommendations, to overcome the delay in prosecutions and enable effective enforcement of the law.

THE METHODOLOGY OF THE STUDY

The study evaluates the environmental legislation with a critical approach. Both the common law and the statutory legislation are examined to assess their impact on environmental protection. On one level,

environmental law appears to be a hodgepodge of statutes (amounting to 75 important laws) dealing with diverse matters in the environment. At a much higher level, environmental law presents broad problems of social policy which may be analysed more usefully by ecologists and economists than lawyers.

Hence through each Chapter it is aimed to identify pervasive legal issues underlying environmental laws and doctrines. These pervasive issues generally relate to the process of intergrating environmental policies into a social system which evolved with little regard for such matters. This process involves implementing environmental policies through a legal system that stresses administrative discretion, judicial restraint and respect for the authority of different levels of government. A critical evaluation of such pervasive issues has been made rather than around particular statutes or environmental problems. In order to make the matters dealing with these issues comprehensible, a basic background into the important environmental dimensions is given without directly touching upon the law. Law is reviewed against this background to identify its strengths and weaknesses. (Figure I depicts the process adopted in the study)

Finally, at a time that the concept of environmental protection is gaining ground, it is expected that this study although done as an academic exercise, would help the legal practitioner and planner to understand and evaluate the role played by law, in enhancing the 'quality of life' and 'human happiness' within the context of the environment.