

Establishing Rule of Law to Achieve Sustainable Development: The Pathway for National Growth in Sri Lanka

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Abstract - Rule of Law is a fundamental constitutional principle that should be respected by all states. The importance of establishing rule of law to achieve sustainable development is highlighted in international law. United Nations mechanisms have also identified that establishing rule of law through the protection of human rights, eradication of poverty and equitable exploitation of resources would lead countries to achieve sustainable development. Thus rule of law, while ensuring social and economic development guarantees environmental protection through the proper operation of law. The role of the government and its effective functioning is considered paramount within this scope and all citizens owe a duty to enjoy their rights without causing damage to the environment. In this manner it is seen that rule of law becomes the centre point for sustainable development and Sri Lanka should be concerned in establishing rule of law to facilitate the achievement of sustainable development goals 2030 set by the United Nations. Thereon this paper discusses the importance of establishing rule of law in the pathway of achieving sustainable development. Attention is paid to international standards on the concept and thereby loopholes in the existing national legal framework have been identified. Moreover the role of judiciary and administrative institutions in enabling justice and proper enforcement of law is highlighted. It is noted that Sri Lanka must develop a comprehensive national framework with an effective monitoring procedure and responsible institutions for the achievement of sustainable development which would lead its way to comply with international standards and ultimately to national growth.

Keywords— Rule of Law, Sustainable Development, National Growth

INTRODUCTION

Rule of Law establishes that every person is subject to law and is bound by the laws and regulations of the country and held accountable in its face. Rule of Law ensures the equal distribution of resources, protection of human rights and access to justice. Rule of Law becomes a crucial aspect in sustainable development which aims to meet the development needs of the present generation while conserving the resources for the future generations. Though the importance of establishing rule of law in order to facilitate sustainable development has been broadly identified in international law, in Sri Lanka it is seen that certain barriers are imposed in ensuring rule of law which has thereby caused a hindrance in the achievement of sustainable development. This research has attempted to address this research problem by evaluating the international and domestic frameworks of rule of law and sustainable development. In such a background this research has been conducted with the main objective of analysing the relationship between rule of law and sustainable development and discussing how establishing rule of law would lead to sustainable development thereby national growth in Sri Lanka through the compliance to international standards and effective functioning of the government. The research has identified the loopholes in the existing legal framework and thereby would suggest mechanisms to stabilize the law related to the concepts.

METHODOLOGY

To achieve the said objectives the black letter approach has been adopted with the aid of primary sources such as international instruments forwarded by the UN, international and national statutes covering aspects of sustainable development, the constitution and judicial precedents which has applied the established laws with a view to recognize the law related to the two concepts. Secondary data has been collected through scholarly articles, text books which have elaborated the legal aspects of sustainable development. Working papers and review reports of public authorities of Sri Lanka have also been used to analyse the progress and mechanisms of attaining sustainable development in Sri Lanka. Through such analysis conclusions have been reached as to how Sri Lanka could facilitate means to establish rule of law with a view to achieve sustainable development thereby lead the country to national growth.

Rule of LAW

Rule of Law is a basic constitutional principle which states that every individual is subject to Law and all citizens are equal before Law. The principle enumerates that the government itself is subject to Law and cannot act arbitrarily in its own will. The concept was first enumerated Dicey whereby he provided three basic definitions to Rule of Law. Accordingly the principle establish that no man could be punished unless in accordance with the law in a formal court of law, no man is above the law and a person of whatever rank or status is subject to the ordinary course of law and that the English Constitution is mostly a court based constitution which has recognized the rights of private persons that any other written law.

Detaching from the initial interpretation many scholars developed the concept to include the absence of arbitrary power of the government, the supremacy of parliament, independence of the judiciary. Hence latter developments of Rule of Law have established an umbrella term which embeds long standing constitutional

principles. The United Nations Secretary-General defines rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publically promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, measures to ensure adherence to principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (UNSC Report 2004).

International Standards on sustainable development

The concept of sustainable development has been brought to light with the various economic developments across the globe and the recognition of the possible environmental threats of such developments. The World Commission on Environment and Development defines sustainable development as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Rio Declaration in the same manner recognizes the rights of states to exploit their resources in a manner that does not cause harm to other jurisdictions and recognizes that right to development must be enabled in an equitable manner to meet developmental and environmental needs of present and future generations. (Rio Declaration 1992). Through various other developments such as Agenda 21 which was specifically aimed at sustainable development by implementing developments goals for the 21st century and The Millennium Development Goals for 2015, the international standards on sustainable development has constantly been developed. As the law stands today Agenda 2030 has specified the sustainable development goals for all UN member states calling for a national and

integrated approach to achieve the 17 sustainable development goals which concerns many social and economic aspects.

LINK BETWEEN SUSTAINABLE DEVELOPMENT AND RULE OF LAW

Sustainable Development suggests integration between economic development, social development and environmental protection. It includes protecting natural resources, having equal access to resources, eradication of poverty and the protection of human rights. Establishment of Rule of Law on a national basis would ensure that the rights of equality of all citizens are protected in all aspects through the elimination of inequalities and disparities which would lead to sustainable development, in turn achieving national growth. The relationship between the two concepts were agreed on in The Declaration of the High-level Meeting on the Rule of Law which highlighted that “rule of law and development are strongly interrelated and mutually reinforcing, advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law”. Further Sustainable Development Goal 16 articulates the key role that governance and the rule of law play in promoting peaceful, just, and inclusive societies and in ensuring sustainable development (UNDP 2016).

Rule of Law is discussed in a multiplicity of aspects within the scope of sustainable development. Protection of the property rights of citizens, creation of business opportunities and elimination of income disparities would assist states in reducing poverty, achieving economic development. Equal access to justice, protection of human rights and equal access to public services being components of rule of law lead countries for social justice and development. Rule of Law enables the physical

safety of people along with satisfaction of their needs. Strengthening penal legislation and the criminal justice system as a whole alongside achieving transitional justice would enable sustainable development through establishing peace and stability. Rule of Law ensures accountability, fairness and reducing corruption. Arbitrary actions of public authorities are avoided through check and balances within the three organs of government. Protecting natural resources is integral to sustainable development. Rule of law guarantees that environmental rights and regulations, administrative protection of the environment are in line to sustainably protect the environment.

In this way rule of law becomes the centre point of sustainable development in ensuring equality of distribution of all resources, providing equal access to justice and eradication of poverty. States should work towards establishing rule of law through integrated policies and such would lead to economic and social development thereby achieving sustainable development.

BARRIERS ON ACHIEVING SUSTAINABLE DEVELOPMENT IN SRI LANKA

The Sri Lankan law on sustainable development was silent until the enactment of the Sustainable Development Act No 19 of 2017. Sri Lanka’s vision for sustainable development involves “Achieving sustained economic growth that is socially equitable and ecologically sound, with peace and stability” (National review report on the implementation of the sustainable development goals of Sri Lanka 2018). Though the act has been introduced in par with the introduction of the sustainable development goals of UN in 2015, the act does not contain explicit provisions on enabling sustainable development. Sustainable development in Sri Lanka mainly focuses on eradication of poverty, ensuring economic competitiveness, social development, good governance and ensuring a clean and healthy environment. Though Sri Lanka has been able to achieve the set goals to a certain extent problems exist in relation

depletion of the environment due to development projects, improper land usage due to increase in urban population, regional income disparities and poverty, fiscal disparities and the ineffectiveness of the delivery of public services. (National review report on the implementation of the sustainable development goals of Sri Lanka 2018)

It is seen that the absence of a proper legal framework, non-adherence to the existing administrative and legal regulations are the main barriers for achievement of sustainable development in Sri Lanka. The establishment of rule of law through a strong legislative and judicial framework would compel every stakeholder to comply with the standards of environmental regulations which would establish equality and reduce the damage caused to the environment. Rule of law thereby becomes a mechanism of achieving sustainable development through a system of regulation and justice. (Desai & Berg, 2013). It imposes restrictions on the use of power through fair and equal rules and focuses on the rights of poor and marginalized in seeking redress for grievances through legal and social institutions (UNDP 2016). Hence a greater role in enabling sustainable development falls on the government and other regulatory bodies to establish equality in access to justice and resources through transparent policies which will lead to intra generational and inter-generational equity part and parcel to sustainable development.

JUDICIAL ACTIVISM

The role of the judiciary in Sri Lanka has been minute in the arena of sustainable development. Citizens should be given equal access to justice enabling public interest litigation on the basis of the collective rights of the citizenry. In the judicial history of Sri Lanka public interest litigation has enabled citizens to raise their voice against unsustainable development activities of the government and private institutions subjecting such actions to judicial review. Public interest litigation allows citizens

to voice their concerns collectively on the basis of equality enabling rule of law and achieving sustainable development.

As noted in *Bulankulama and others vs. Secretary, Ministry of Industrial development and others* (2000) (SC Application No 884/99 (FR)), citizens should be allowed to forward applications on the breach of fundamental rights as the court should not only be concerned on who forwards the application rather on the fact that the matter is brought before court to ensure justice. The concept of sustainable development has been discussed in the case following the position that UN principles and conventions on sustainable development though forms a part of soft must be adhered by Sri Lanka being a member state of the UN either through express recognition or the adoption to the domestic law through superior courts in their decisions. Similarly in the case *Ravindra Gunawardena Kariyawasam vs Central Environment Authority* (2019) (SC Application No 141/2015) superior courts have established that the courts does not exhibit any hesitation in applying the Rio Deceleration in the domestic context to ensure that development projects are initiated in environmentally sustainable manners. The case *Watte Gedara Wijebanda v Conservator General of Forest and eight others* (2007) (SC Application No. 118/2004) has also elaborated that irrespective of the fact international instruments are nonbinding in character they form a greater part of the environmental protection law regime of Sri Lanka. Thus the role of judiciary in giving domestic recognition to international principles on environmental law is highlighted.

The importance of recognition of the concept was further understood in *Gabčíkovo-Nagymaros Project, Hungary v Slovakia* (1997) ICJ Rep 03, where it was discussed that new concepts have been developed within the scope of environmental law and they must be given due recognition not for the mere purpose of it but for that they attempt to reconcile the environment and development with respect to

human happiness and welfare. Further the courts should ensure equality in property ownership, gender equality and human rights empowerment so that equal opportunities are provided for business and occupation providing for economic development which would ultimately lead to sustainable development. Facilitating access to legal information and to institutions of the rule of law provides means for the poor to take advantage of economic opportunities and resist exploitation, particularly by making local institutions accessible (Golub, 2010). Thereon the need of judicial interference in unsustainable development projects would protect natural resources for the present a future generation with respect to international and domestic standards. Judicial decisions on environmental related issues must safeguard the health and safety of people, ensure viability of their occupations and protect the rights of future generations (Eppawala case).

The judiciary has a role to play in ensuring the effectiveness of the criminal justice system as a means to facilitate peace and security of the citizens. Analysis within this purview suggests that among the different determinants rule of law, the control of violence has exhibited the strongest connection to economic growth particularly in developing countries (Haggard and Tiede, 2011). Ensuring the security of the citizens is to be achieved both in the aspects of establishing peace by avoiding conflict and violence and the fulfilment of basic needs on the basis of equality. The judiciary should work towards avoiding corruption and arbitrary actions by public authorities. The exercise of executive power is subject to judicial review and the judiciary shall maintain its independence in deciding on matters that affect the rights of public. This mechanism is enabled through the system of checks and balances embedded in the concept of separation of powers part and parcel of rule of law. Thus judicial activism would enable equality of resource distribution, ensuring peace and stability and avoiding arbitrary use of power

paving its path to rule of law there achieving national growth in the long run.

MENDING THE LOOPHOLES

Though the role of legislation and judiciary in the process of achieving sustainable development is understood there are practical problems in its implementation. Even though the sustainable development act has been enacted in the year 2017 vagueness as to the achievement of sustainable development and the procedure for such achievement has remained a doubt. Thus the mere enactment of laws is not sufficient to lead the country towards sustainable development. The role of the government is paramount in providing incentives and other subsidiaries to the people with low income levels, providing for their basic human needs, reducing financial disparities to enable equality. Accordingly short term goals should be set guiding the procedure through which the long term goals could be achieved. Furthermore in such goal setting international standards must be respected and followed. Agenda 2030 has identified the need of establishing rule of law as paramount to the achievement of sustainable development, thereon these procedures must establish rule of law leading to national growth and achieving its ultimate goal 'leaving no one behind'. Hence an integrated national approach of establishing the law, ensuring social and economic development while preserving the natural resources is called for.

Policies for sustainable development should be framed to strengthen the laws on over exploitation of resources, formation of institutes to administrate the enforcement and practise of such laws and empowering people on their rights. Limits should be set on consumption and production so as to retain sustainability. Sri Lanka could take lessons from countries such as New Zealand, Mexico and Norway who have imposed such regulations with the aim of suitability. Further the resources in the country should be protected effectively through proper administrative

functioning, independent from political motive. Administrative regulations should be practised effectively to ensure that corporate bodies are given the jurisdiction to act against harmful effects to the environment. Organizations both and public and private should be established under government regulations and authority with the aim of functioning as independent institutions to afford a greater protection to the environment. Empowering citizens on their community rights would provide them the opportunity to voice their concerns and participate in decision making process. Thereon they will understand the role they play through a balance of rights and responsibilities towards the achievement of sustainable development.

As an independent judiciary the courts should always be led by the constitutional principles aimed at protecting the rights of the citizens and the environment. The shared responsibility in protecting the environment should be upheld in all circumstances. International standards and instruments on sustainable development should be expressly recognized by the judiciary through application in superior courts. Criminal sanctions should be imposed on environmental misconduct and public interest litigation should be enabled. Similarly jurisdiction should be given for civil authorities to take actions against unfavourable environment actions. Sri Lanka should initiate a proper mechanism which would guide the achievement of sustainable development goals by the year 2030 along with a proper monitoring and evaluation procedure. Such procedures would ensure that Sri Lanka stands in line with the UN regulations on environmental protection and sustainable development through the achievement of peace, stability and strong institutions (Sustainable Development Goals Goal 16)

It is evident that the government of Sri Lanka has a critical role to play in enacting proper laws, monitoring compliance to them and in administering justice in relation to the achievement of sustainable development. Respect upon the fundamental constitutional

principles would in itself lead the country towards equality and justice achieving rule of law which ensure an equal distribution of resources, peace, stability and environmental protection which would ultimately lead the country towards sustainable development thereon achieving national growth.

Conclusion

Sustainable development aims the satisfaction of the needs of the present generation without compromising the needs of the future generations. Though states aim towards sustainable development they are met with obstacles due to environment depletion, lack of social and economic development. Hence establishing rule of law would be the main mechanism through which countries could create an environment of equality, satisfaction of human rights and establish peace and stability. Rule of law would ensure that disparities in income distribution are eliminated, citizens are provided equal opportunities to exploit resources, peace and stability is provided and that their rights are protected while conserving the environment. Thereby rule of law is paramount as it respects the constitution and the laws of the country which are in fact aimed towards protecting the citizens and ensuring their welfare.

To establish rule of law in Sri Lanka the government must implement laws for environmental protection, ensure administrative authorities are in proper function taking actions against environmental malpractice and the judiciary works towards the establishment of rights of the people and the environment. Compliance to international standards would signal that Sri Lanka is on its way to the achieve the sustainable development goals by 2030. Hence it can be concluded that establishing rule of law is integral to sustainable development and Sri Lanka complying to international standards must work towards establishing rule of law through an integrated national approach with specified tasks, monitoring and evaluation so as to fulfil

the needs of the present generation and conserving its resources for the future in order to facilitate national growth and security in the long run.

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Author Biography



Thamasha Walgama is a final year undergraduate in General Sir John Kothelawela Defence University. She takes a keen interest in the areas of Constitutional Law, International Law and Administrative Law. This research deals with the concepts of Rule of Law and Sustainable Development with a view to archive National Growth in Sri Lanka.