

AN ANALYSIS OF CONSTRUCTION LAW AND DISASTER MANAGEMENT LAW RELATING TO SUSTAINABLE DEVELOPMENT IN SRI LANKA

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ABSTRACT

Construction Law may be defined as the law that regulates built environment in relation to construction activities. This law also deals with physical planning techniques and protection of natural environment. Law governing in built environment in Sri Lanka is largely based on legislation. Main physical planning legislations in Sri Lanka are Urban Development Authority (UDA) Law No. 41 of 1978, Town and Country Planning Ordinance No. 16 of 1946, Municipal Council Ordinance and Urban Council Ordinance of 1947, Pradeshiya Sabhas Act of 1987, and their amendments. Provisions of these legislation are controlling construction activities in their regions. National Environment Act of 1980 controls EIA and EPL relating to the construction industry. The Sri Lanka Parliament enacted two legislations after the tsunami namely Tsunami (Special Provisions) Act No. 16 of 2005 and Disaster Management Act No. 13 of 2005 for the rehabilitation activities. These two Acts have mentioned planning and recovery techniques and elements of disaster management law. In the post tsunami reconstruction work, the government has given high priority to rebuild human settlements. However there are some discrepancies in these legislation and are not accepted in sustainability concepts. Hence, the aim of this research is to compare existing Construction Law and Disaster Management Law relating to the construction industry in Sri Lanka and recommend improvements to the Construction Law practices in order to make sustainability concepts more effective. Through a literature review of recent court cases, this research has analysed the basic concepts and discrepancies of the above mentioned law in Sri Lanka.

Keywords: Planning Legislation, Environment, Disaster Management.

1. INTRODUCTION

Construction Law is part of Civil Law. At present, Construction Law is one of the main branches of Civil Law or Private Law. Construction Law may be defined as the law that regulates built environment in relation to construction activities. This law also deals with physical planning techniques and protection of natural environment. Law governing in built environment in Sri Lanka is largely based on legislation. This research compares environmental law and planning law with special reference to construction law and disaster planning law in Sri Lanka. The study further suggests improvements to the Development Law and Construction Law in order to make planning procedure more effective.

2. LEGISLATION PROVISIONS FOR CONSTRUCTION LAW

Environmental and Physical Planning Law is a sub division of the Construction Law and that law may be defined as the law that regulates natural resources in relation to human behaviour and this law deals with improvement and protection of natural and built environment. At present, there are different Environmental and Physical Planning Law in Sri Lankan legal system and it is stated in the Figure 1.

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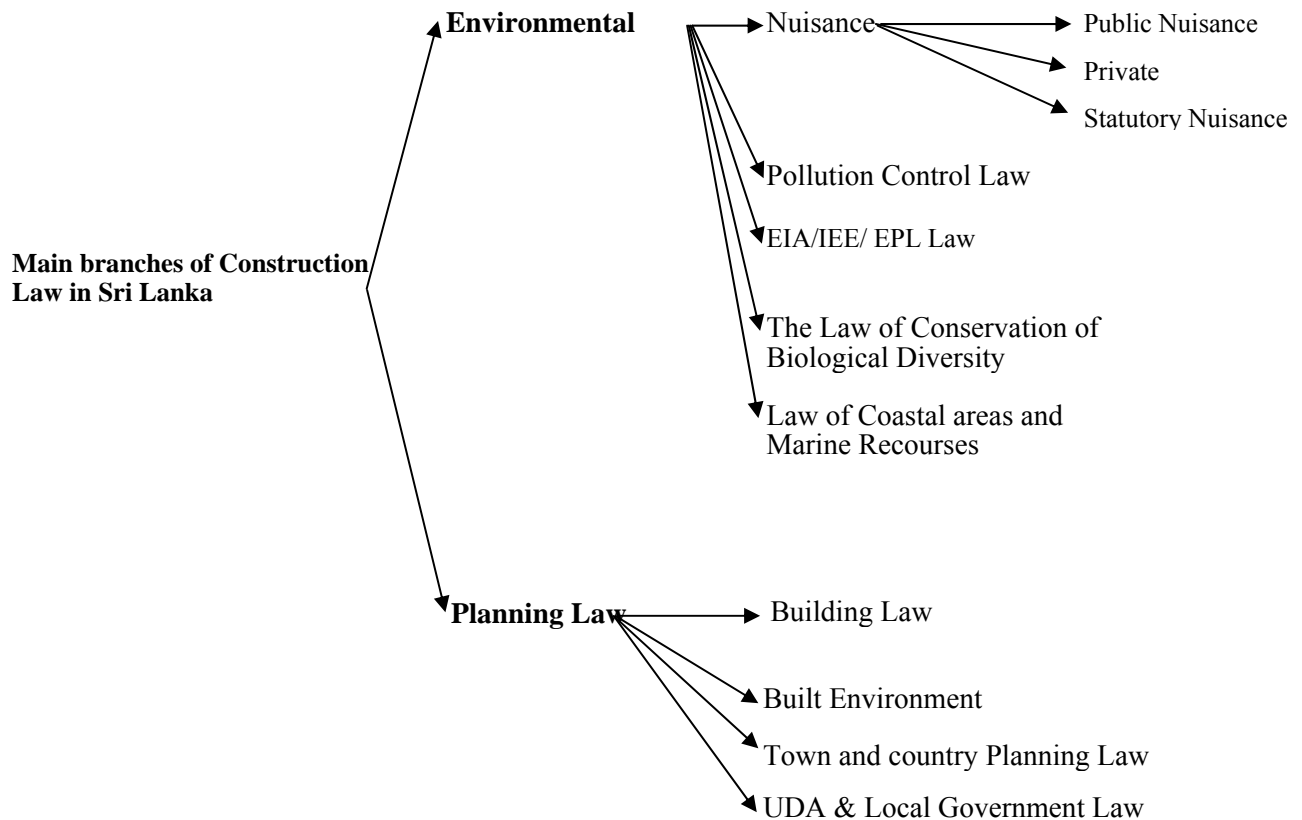


Figure 1: Main Branches of Environmental and Physical Planning Law in Sri Lanka

2.1. ENVIRONMENTAL LAW, PHYSICAL PLANNING LAW AND DISASTER MANAGEMENT LAW AS PARTS OF CONSTRUCTION LAW

The methods of economic development, which the mankind has followed, are also creating environmental problems through construction activities. Urbanisation and construction industry has affected the natural environment adversely. Sri Lanka's Constitution adopted in 1978 specially refers (Article 27) to the preservation of the environment. The laws governing the protection of environment and conservation in Sri Lanka are largely based on legislative enactments. Sri Lanka Parliament enacted National Environmental Act No. 47 of 1980 to the establishment of the Central Environmental Authority (CEA) in 1981 as the state agency responsible for the formulation and implementation of policies and strategies for the protection and management of environment in Sri Lanka. Also the Parliament enacted different legislation for protection of environment such as Fauna and Flora Protection Ordinance No. 02 of 1931, Forest Ordinance No. 16 of 1901, Coast Conservation Act etc. Towards the protection of environment, aspects of control of physical planning and built environment in the country have a considerable role to play.

There are many physical planning legislation in Sri Lanka such as *Housing and Town Improvement Ordinance No. 19 of 1915*, *Urban Development Authority (UDA) Law No. 41 of 1978*, *Town and Country Planning Ordinance No. 16 of 1946*, *Municipal Council Ordinance and Urban Council Ordinance, Pradeshiya Sabahas Act, etc.* *Housing and Town Improvement Ordinance No. 19 of 1915* is controlling physical planning matters and main objective of this Ordinance is to deal with the problem of insanitary conditions of urban overcrowding as well as to prevent such situation. *Urban Development Authority Law No. 41 of 1978* (UDA Law) marks a new era in the physical planning exercise in Sri Lanka and this law was in acted in 1978 due to inadequacies found in both *Housing and Town Improvement Ordinance No. 19 of 1915* and *Town and Country Planning Ordinance No. 16 of 1946* to deal with physical planning

problems of the urban areas of Sri Lanka. According to the preamble to the UDA law, the objective of the law is to promote planning of economic, social and physical development and its implementation in the urban areas declared under this law and control of environment. In order to realise these objectives, clearance of slums and shanties, coordination and control of development projects carried out by other governmental agencies, exercising of development controls to ensure conformity to development plans and planning regulations. UDA has introduced a new set of development regulations in areas under replacing the provisions of Housing and Town Improvement Ordinance.

UDA Regulations may be made by the Minister of Construction and Urban Development for the purpose of carrying out or giving effect to the principles and provisions of the UDA Law No. 41 of 1978 as amended by Act No. 4 of 1982 to regulate any physical planning projects or schemes prepared by any Government Agency or other persons in such areas or regulating the use of land and buildings in different zones, and imposition of conditions and restrictions in regard to several factors of building development or regulations regarding clear distances of buildings from electrical, telephone, telegraph, microwave and other lines or regulations in respect of unsafe buildings and prescribing standards of fitness of buildings (Item 4 (l) of Schedule of Amendment Act No. 4 of 1982) or regulations for attaining urban design objectives etc.

Sri Lanka is one of the countries that were hardest hit by the tsunami tidal waves that ravaged several countries in the Indian Ocean rim on December 26, 2004. The tsunami caused extensive damage and disruption to human life, livelihood, public and private property, economic infrastructure, buildings in Sri Lanka. The main objectives of the planning laws in the tsunami affected areas are to provide immediate to communities and local government authorities to speedy restart functions through protection of environment. The Sri Lanka Parliament has enacted special two Acts namely *Tsunami (Special Provisions) Act No. 16 of 2005* and *Disaster Management Act No. 13 of 2005* for path of rehabilitation. These two Acts specially mentioned planning and recovery techniques of disaster management law of Sri Lanka. The Government has been taken steps to shift from registering deeds to registering titles in tsunami damaged areas. The Registration of Titles Act complies with this task. Main objective of this is grant rights with absolute rights and maintain a better land management system and scientific utilisation of lands for any industry. Government of Sri Lanka implemented the disaster management plan for the development and support of rehabilitation of construction projects through these Acts. In the post tsunami reconstruction work, the government has given high priority to rebuild human settlement and shelters. Therefore, relevant these legislations are related to the rehabilitation and reconstruction strategies in tsunami affected areas. However, there are different loopholes in these legislation and sometimes courts were observed.

3. ENVIRONMENTAL LAW AS A PART OF CONSTRUCTION LAW

Environmental Law may be defined as the law that regulates natural resources in relation to human behaviour. The environmental law deals with improvement and protection of environment. This law is one of the instruments that enable the community and the country to achieve the objective of environmental protection. Environmental destruction and pollution have seriously threatened the human life, health and livelihood. While the scientifically and technological progress of men has invested him with immense power over nature, it has also resulted in the use of such power encroaching endlessly on nature.

3.1. CONSTITUTIONAL AND STATUTORY PROVISIONS

Sri Lanka's present Constitution specially refers to the preservation of the environment through the Article - 27 (14). It is stated as the State shall protect, preserve and improve the environment for the benefit of the community. The conservation of environment was for many decades vested with large number of state institutions and agencies and earlier there was no central legislation. Neither was there a central body to coordinate efforts to ensure that the laws and regulations were properly implemented. Up to 1980 environmental provisions were scattered over large number of separate statutes. More over in the 1980s, the issue of the environment became more and more prominent and rose higher in the national agenda. Recognising this lacuna and institutionalising the constitutional pledge to safeguard the environment, the government introduced a statute called National Environmental Act No. 47 of 1980. This Act led to the

establishment of the Central Environmental Authority (CEA) in 1981 as the premier state agency responsible for the formulation and implementation of policies and strategies for the protection and management of environment in Sri Lanka.

Recognising that the CEA lacked regulatory powers to act on environmental pollution, the National Environmental Act was amended in 1988. The amendment requires all project approving agencies to obtain an Environmental Impact Assessment (EIA) from the developer proposing a development activity. The EIA process is a useful tool in assessing the impact of development projects and activities. Environmental Impact Assessment (EIA) is a term used to define a document which assesses the environmental effects for proposed development projects or policies and evaluates alternatives to that project/policy that might be environmentally better. This concept originated in the United States where in 1970 National Environmental Policy Act (NEPA) required all major Federal activities significantly affecting the environment to have an EIA. The EIA serves as an information base on which important decisions about the development activity is taken. EIA has become a decision making tool throughout the world and multilateral banks and aid agencies now require it as part of project appraisal. The importance of the EIA lies also in the fact that an EIA can become the basis on which community participation is encouraged and information about the development project is made transparent. The procedure established provides for the submission of EIA's in respect of projects that are generally determined by the Minister of Environment. Once an EIA is submitted, the Act provides for a public inspection period with mandatory 30 day period for the receipt of public comments. A public hearing may be held where the public interest so demands and a decision to proceed with a project with or without conditions have to be arrived at thereafter.

Therefore EIA process is a useful tool in assessing the impact of development projects and activities. Further Antiquities Ordinance has been amended by Act No. 24 of 1998 to obtain an approval from the Department of Antiquities before any major project is launched by any developer. This process is known as *Archaeological Impact Assessment (AIA) Survey*. *Coast Conservation Act* is another two statutes with provisions for physical planning matters in coastal belt relating to the Construction industry.

4. PHYSICAL PLANNING LEGISLATION AS A PART OF CONSTRUCTION LAW

Towards the protection of environment, aspects of physical planning and built environment in the country have a considerable role to play. In this regard an account of some important statutes seeking to regulate physical planning matters in the country is useful. There is much important planning legislation in Sri Lanka. Planning is meant to create better place for people to live. Legal provisions are very essential to achieve the orderly development through planning measures. Planning and Environmental Laws provide legal power to carry out planned development in a sustainable manner. The Planning law in Sri Lanka was introduced by British in 1915 and in 1946 and later amendments were made by proceeding governments since independence.

PLANNING LAWS IN SRI LANKA

- Housing and Town Improvement Ordinance No. 19 of 1915
- Town and Country Planning Ordinance No. 13 of 1946
- Urban Development Authority Law No. 41 of 1978
 - Urban Development Authority Amendment Act No. 70 of 1979
 - Urban Development Projects Special Provisions Act No. 2 of 1980
 - Urban Development Authority Amendment Act No. 4 of 1982
 - Urban Development Authority Special Provisions Act No. 44 of 1984
 - Urban Development Authority Amendment Act No. 49 of 1987
 - Urban Development Authority Amendment Act No. 41 of 1988
- Town and Country Planning Amendment Act No. 49 of 2000

- Coastal Conservation Act No. 57 of 1981
- Board of Investment Act No. 23 of 1991
- Urban Council Ordinance No. 61 of 1939
- Municipal Council Ordinance No. 29 of 1947
- Pradeshiya Sabhas Act No. 15 of 1987
- Nuisance Ordinance No. 15 of 1862

The objective of this Housing and Town Improvement Ordinance No. 19 of 1915 is to deal with the problem of insanitary conditions of urban overcrowding as well as to prevent such situation. Towards this end, this Ordinance has introduced insanitary and environmental standards in urban areas and to improve the quality of the housing stock. Accordingly a set of building regulations are set out in the Schedule to the Ordinance. These regulations relate to controlling height, light, ventilation and accessibility. In addition, the Ordinance provides for the introduction of town improvement schemes, slum clearance schemes and street line schemes. Until the introduction of the Urban Development Authority Law (UDA) Law in 1978, this Ordinance together with Town and Country Planning Ordinance, 1946 were the main legal instruments with regulated the physical planning and development of urban areas in Sri Lanka. Today these two Ordinances are operation in areas which have not been declared under the UDA Law.

Urban Development Authority Law No. 41 of 1978 marks a new era in the physical planning exercise in Sri Lanka. This law was in acted in 1978 due to inadequacies found in both Housing and Town Improvement Ordinance No. 19 of 1915 and Town and Country Planning Ordinance No. 16 of 1946 to deal with physical planning problems of the urban areas of Sri Lanka. According to the preamble to the UDA law, the objective of the law is to promote planning of economic, social and physical development and its implementation in the urban areas declared under this law. In order to realise these objectives, the Urban Development Authority is vested with wide powers with regard to preparation and implementation of integrated plans for development, acquisition and disposal of property, clearance of slums and shanties, coordination and control of development projects carried out by other governmental agencies, exercising of development controls to ensure conformity to development plans and planning regulations. UDA has introduced a new set of development regulations in areas under replacing the provisions of housing and Town Improvement Ordinance.

4.1. TOWN AND COUNTRY PLANNING ORDINANCE NO. 13 OF 1946 AND ITS AMENDMENT

The Town and Country Planning Ordinance was introduced to regulate physical development in Sri Lanka.

Its purpose is mentioned in its preamble as “An Ordinance to authorise the making of schemes with respect to the planning and development of land in Ceylon to provide for the protection of natural amenities and the preservation of buildings and objects of interests or beauty, to facilitate the acquisition of land for the purpose of giving effect to such schemes”

Under this Ordinance, there shall be established a commission to be called the Central Planning Commission consisting of senior representatives from relevant authorities.

The duties of the Central Planning Commission are;

- To Advice the minister with regard to the declaration of development areas and to the necessity for the preparation of planning schemes in any such areas
- To advice planning authorities with regard to the preparation of surveys of urban and rural areas and of planning schemes, and to investigate defects or delays in the preparation or execution of such schemes
- To make recommendations to the minister as the commission may consider for the regulation of the development of land in any part of Ceylon, the creation of satellite towns and garden cities

- To make to the minister and to any planning authority such general or special recommendations as the commission may consider necessary with reference to the control of architectural design and of outdoor advertisements
- To consider and examine all draft planning schemes submitted to the commission under this Ordinance, and to tender advice to the minister with respect to the approval or modification of such schemes
- To formulate for the guidance of the minister and of planning authorities as a national plan or policy

Under Town and Country Planning Ordinance No. 13 of 1946, planning areas were categorised into three as follows;

- (1) Urban Development areas include Municipal Council areas, Urban Council Areas and declared Town Council Areas
- (2) Trunk Route Development areas include any area within a specified distance on either side of any principal thoroughfare
- (3) Regional Development Areas include each province in Sri Lanka as separate Regional Development Area

Town and Country Planning Ordinance No. 13 of 1946 was amended by Town and Country Planning Act No. 49 of 2000. According to the amendment the purpose of the law is as follows,

“An Ordinance to authorise the formulation and implementation of a national physical planning policy; the making and implementation of a national physical plan with the object of promoting and regulating integrated planning of economic, social, physical and environmental aspect of land in Sri Lanka; to provide for the protection of natural amenities, the conservation of natural environment, buildings of architectural and historic interest and places of natural beauty; to facilitate the acquisition of land for the purpose of giving effect to such plan.”

Under the Town and Country Planning Act No. 49 of 2000, The Central Planning Commission was amended as National Physical Planning Council. The Amendment Act provided powers to establish Inter-Ministerial Co-ordinating Committee and Technical Advisory Committee.

4.2. MUNICIPAL COUNCIL ORDINANCE NO. 29 OF 1947

Municipal Council Ordinance was introduced in Sri Lanka in 1947 in order to maintain the services provided to the Areas under its jurisdiction, such as water supply, storm water drainage system, sewerage system, road network, electricity, solid waste management etc. Later except the solid waste management service, the responsibility for all other services was given to various government institutions. Planning and Building Regulation also is maintained by Municipal Council in conjunction with UDA.

4.3. URBAN COUNCIL ORDINANCE NO. 61 OF 1939

Urban Council Ordinance was introduced in Sri Lanka in 1939 in order to maintain the services provided to the areas under its jurisdiction such as water supply, storm water drainage system, sewerage system, road network, electricity, solid waste management etc. Later except the solid waste management service, the responsibility for all other services was given to various government institutions. Planning and Building Regulation also were maintained by Urban Council in conjunction with UDA.

4.4. PRADESHIYA SABHA ACT NO. 15 OF 1987

Pradeshiya Sabha Act was enacted in 1987. An Act to provide for the establishment of Pradeshiya Sabhas with a view to provide greater opportunities for the people to participate effectively in decision making process relating to administrative and development activities at a local level; to specify the powers, functions and duties of such Sabhas.

4.5. UDA REGULATIONS

Regulations may be made by the Minister for the purpose of carrying out or giving effect to the principles and provisions of the UDA Law No. 41 of 1978 as amended by Act No. 4 of 1982. The above would normally comprise the making of Regulations on all matters stated or required to be prescribed or authorised under the UDA Law. It comprises the following in respect of authorised provisions;

- (1) To regulate any planning projects or schemes prepared by any Government Agency or other persons in such areas (Section 8 (r) of UDA Law)
- (2) The provision of regulating the use of land and buildings in different zones, and imposition of conditions and restrictions in regard to several factors of building development (Item 3 in Schedule of Amendment Act No. 4 of 1982)
- (3) Regulations regarding clear distances of buildings from electrical, telephone, telegraph, microwave and other lines (Item 4 (k) of the schedule of Amendment Act No. 4 of 1982)
- (4) Regulations in respect of unsafe buildings and prescribing standards of fitness of buildings (Item 4 (l) of Schedule of Amendment Act No. 4 of 1982)
- (5) Regulations for attaining urban design objectives (Item 5 of the Schedule of Amendment Act No. 4 of 1982)

In addition, regulations may also be made on several matters on which they are required to be prescribed. One of the latter is on “the levy of fees and service charges in respect of different categories of developments”. However, all of the above matters should relate to a Development Plan prepared and sanctioned for the development of the corresponding UDA declared area. On the other hand, since there were no Development plans prepared for the UDA declared areas in the immediate period after the establishment of the principal enactment (No. 41 of 1978), and of its amendment (No. 4 of 1982), the Minister at that time, acting under the generality of the powers conferred by Section 21, has published the, UDA Planning and Building Regulations 1986” in Gazette No. 392/9 of 1986.03.10. It specifically stated that the provisions of these regulations shall be applicable to every area for the time being declared by the Minister as a UDA Area. These regulations were approved by Parliament as required by Section 21 (3) of the law. In these circumstances, it needs to be verified whether the 1986 Regulations are valid for the UDA Declared areas for which development plans and the corresponding regulations have been approved, and gazetted. For example, the Colombo Municipal Council (M.C.) area is UDA declared area.

5. DISASTER MANAGEMENT LAWS IN SRI LANKA AS A PART OF CONSTRUCTION LAW

Sri Lanka is one of the countries that were hardest hit by the tsunami tidal waves that ravaged several countries in the Indian Ocean rim on December 26, 2004. Hence, Sri Lanka Government enacted new laws to better protection of property rights and disaster management planning matters for affected cities. The Sri Lanka Parliament has enacted special two Acts such as Tsunami (Special Provisions) Act No. 16 of 2005 and Disaster Management Act No. 13 of 2005 for path of rehabilitation. These two Acts specially mentioned planning and recovery techniques of disaster management of Sri Lanka. Those two Acts main objective is grant rights with absolute rights and maintain a better land management system and scientific utilisation of lands for any industry. The main objectives of the Disaster management Law are to provide immediate to communities and local government authorities to speedy restart functions Laws and regulations relating to the Tsunami Reconstruction are,

- Re-construction of economic infrastructure facilities in cities in Sri Lanka under the new planning methods
- Re-settlement of displaced families outside buffer zone with property law rights
- Provide disaster management development laws through new legislation
- Upgrading regional planning institutions and its laws
- New regulatory laws and institution arrangements for reconstruction work

Government of Sri Lanka implemented the disaster management plan for development and support of rehabilitation construction projects through this Acts. In the post tsunami reconstruction work, the government has given high priority to rebuild human settlement and shelters. Therefore, relevant this legislation is related to the rehabilitation and reconstruction strategies in tsunami affected areas. In the post tsunami reconstruction work, the government has given high priority to rebuild human settlement and shelters. Therefore, relevant this legislation is related to the rehabilitation and reconstruction strategies in tsunami affected areas. However there are various loopholes in these legislation and sometimes courts were observed.

6. NUISANCE LAW AND ITS RELATIONSHIP TO THE CONSTRUCTION LAW

Nuisance action is a common law tort action which is based on the premise that one should use one's property in such a manner so as not to injure the interests of others. This action was one to the earlier tools used for the purposes of environmental protection. There are three types of nuisance actions, namely private nuisance, public nuisance and statutory nuisance. As far as environmental related actions in nuisance are concerned, the most common actions would related to noise, pollution of the air, water ways, disposal of garbage, etc. As regards statutory nuisance, the *Nuisance Ordinance* provides that whosoever shall commit any of the offences specified in that Ordinance shall be guilty of an offence. Apart from this Ordinance, Municipal Councils, Urban Council Ordinance and Pradeshiya Sabha Act also provide for the prevention of nuisance.

A nuisance may be public or private. A public nuisance may also be a private nuisance and a tort, but to prevent multiplicity of actions a public nuisance is actionable as a tort only by one who has suffered particular damage over and above that suffered by the public at large. E.g.: obstructing a high way by the construction activity, keeping of dangerous premises near a highway etc. This is some unlawful act or omission endangering or interfering with the lives comfort, property, or common rights of the public. A public nuisance is also a crime for which the remedy is criminal proceedings brought by the Attorney-General. Private nuisance consists essentially of damage to the plaintiff arising from unlawful interference with his use of employment of land of which he is the owner or occupier. In this connection injuries to servitudes may amount to private nuisance as where the defendant obstructs a right of way, or interferes with the plaintiff's water supply, access of air light or support. In *Keangnam Enterprises Ltd. vs Abeysinghe and Others case (1992 SLLR 116)* Sri Lanka supreme courts developed the Environmental Law. In this case the Petitioner-Company had established a metal quarry, a metal crusher and a premix plant at a site taken on lease for developing and rehabilitating the Ambepussa - Dambulla - Anuradhapura road: The Informant-Respondents complained of a public nuisance created by the Petitioner-Company. The Magistrate granted an injunction restraining the operation of the quarry under section 104(1) of the Code and also entered a conditional order under section 98(1) of the Code for the removal of the public nuisance caused by the quarry.

7. CONCLUDING REMARKS

This literature review into recent court cases has established that Environmental Law is one of the instruments that enable the community and the country to achieve the objective of environmental protection. The laws governing the protection, conservation and the use of natural resources in Sri Lanka are largely based on legislative enactments and government introduced a statue called National Environmental Act No. 47 of 1980. This Act led to the establishment of the Central Environmental Authority (CEA) in 1981 as the state agency responsible for the formulation and implementation of policies and strategies for the protection of environment in Sri Lanka. The amendment requires all project approving agencies to obtain an Environmental Impact Assessment (EIA). The EIA process is a useful tool in assessing the impact of development projects and activities. Towards the protection of environment, aspects of physical planning and built environment in the country have a considerable role to play. There are many planning legislation in Sri Lanka. One such early legislation is Housing and Town Improvement Ordinance No. 19 of 1915. The objective of this Ordinance is to deal with the problem of insanitary conditions of urban overcrowding as well as to prevent such situation. Urban Development

Authority Law No. 41 of 1978 marks a new era in the physical planning exercise in Sri Lanka. Cost Conservation Act No. 57 of 1981 and the Board of Investment Act No. 04 of 1978 are another two statues with provisions of environmental protection and management. The nuisance action was one of the earlier tools used for the purposes of environmental protection. Despite all these current regulations for environmental protection, it is observed that improvements are needed to make sustainability concept more effective.

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