Overview of the Sri Lankan Environmental Legal Framework
Significant environmental problems in Sri Lanka

- Biodiversity loss
- Land degradation
- Pollution issues
- Urban issues
- Environmental Health
- Unsustainable use of natural resources
What is environmental law?

- Difficult to define
- Includes any branch of law which can be used to deal with an environmental issue/problem
  - Eg - constitutional law, human rights law, consumer protection law, administrative law, criminal law, land law, public health law, cultural heritage law
- Over the past few decades has evolved into a distinct discipline
- Now taught in every law school
- Has strong international dimension
- Strong public interest litigation aspect
History of environmental protection

- Concepts of biodiversity conservation ingrained in ancient cultural and religious beliefs
- Kings provided for protection of animals and forests and established sanctuaries, conserved natural resources including water
- Changed in British times to exploitation rather than conservation
**Development of modern environmental law in Sri Lanka**

- Began in the 1970s
- 1980 – National Environmental Act was passed
- Large body of statute law dealing directly or indirectly with environmental issues
- Supplemented by body of jurisprudence developed by courts over several decades.
Environmental law found in:

Constitution

Statutes

Judicial decisions
The Constitution

Only reference to environmental issues in the Constitution is found in the Chapter on Directive Principles of State Policy.

Article 27 (14) states that “[t]he State shall protect, preserve and improve the environment for the benefit of the community.”.

Article 28 which is entitled “Fundamental Duties” states that it is the duty of every person in Sri Lanka to, *inter alia*, protect nature and conserve its riches.

Not enforceable
Environmental Rights

- Missing in our Constitution
- No right to life
- No right to a clean and healthy environment
- Freedom of information
Examples of environmental provisions in other Constitutions

- **Benin (1990), Article 27**: Every person has the right to a healthy, satisfying and lasting environment and has the duty to defend it. The state shall watch over the protection of the environment.

- **Chad (1996), Article 47**: Every person has the right to a healthy environment.

- **Macedonia (1991), Article 43, Section 1**: Everyone has the right to a healthy environment to live in.
A significant body of jurisprudence has been developed on the basis of the Fundamental Rights in our Constitution:

- Eppawela case
- Galle Face Green case
- Article 12 – significantly interpreted
<table>
<thead>
<tr>
<th>SECTORAL LAWS</th>
<th>UMBRELLA LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pollution control</td>
<td>National Environmental Act</td>
</tr>
<tr>
<td>Wildlife protection</td>
<td></td>
</tr>
<tr>
<td>Agricultural resources and plant protection</td>
<td></td>
</tr>
<tr>
<td>Forests and Protected Areas</td>
<td></td>
</tr>
<tr>
<td>Fisheries, Marine issues and Coastal issues</td>
<td></td>
</tr>
<tr>
<td>Cultural and Natural Heritage</td>
<td></td>
</tr>
</tbody>
</table>
Provides an overall framework for environmental protection
Also known as framework laws
Now enacted in almost every country
To establish the Central Environmental Authority (CEA) with provisions for its powers, functions and duties;
To make provision for the protection, management and enhancement of the environment;
To make provision for the regulation, maintenance and control of the quality of the environment;
To make provision for the prevention, abatement and control of pollution;
And for matters connected or incidental to the above.
Administration of the Act

- Central Environmental Authority
- Environmental Council
- District Environmental Agencies
- Some functions also delegated to local authorities
Under this Part the CEA is required to formulate the policy and schemes with regard to the rational use and exploitation and management of the natural resources of the country. Such policies and schemes must be formulated in consultation with the Environmental Council.
Areas for Environmental Management

- Land use
- Natural Resources
- Fisheries
- Wildlife
- Forestry
- Soil Conservation
Found under Part IV A
Relates to the prevention of pollution
Environmental Pollution Licensing Scheme operates under this section
1. Part IV B
2. Also relates to pollution of the environment
3. The areas are:
   - Inland waters of Sri Lanka
   - Atmosphere
   - Soil
   - Noise pollution
Approval of Projects

- Found under Part IV C
- This section deals with Environmental Impact Assessment
General Provisions

- Empowers Minister to declare environmental protection areas
- CEA can delegate its powers
- Minister can make regulations to give effect to the NEA
Approval of Projects - EIA

- Prescribed Projects – list of projects requiring approval has been gazetted
- Project Approving Agencies – to approve projects has been gazetted
- Procedure for obtaining EIA clearance has been gazetted
HOW SUCCESSFUL?

Current issues?
Regulatory control of the environment means giving prior permission to pollute in a controlled manner. The volume of substances discharged into the environment is controlled by imposing conditions. Prior permission can be granted by way of licenses and permits.
Pollution control in the NEA
Pollution control in the NEA (cont)
License will be issued if CEA is satisfied that

- It will not be used to contravene the provisions of the NEA of regulations
- No irreversible hazard to man and environment or a nuisance will result from issuing the license
- Applicant has taken adequate steps to protect the environments
License now valid for 3 years instead of 1 year.

Those who violate the conditions of the license are now criminally liable. Earlier the license was only cancelled.

If a person carries on an activity without a license, the CEA may obtain a court order to close the factory or industry.

Other Changes

- 
- 
- CEA may obtain a court order to close the factory or industry.
CEA may cancel a license if:

1. Applicant has violated conditions
2. Environment has altered due to natural or other factors
3. Where the continued discharge of pollution would adversely affect beneficial use.

If license is refused, applicant may appeal to the Secretary, Ministry of Environment.
Prescribe standards and criteria for issuing a license. These standards are not conclusive and stricter ones may be applied. Where there are no standards for a particular activity, CEA may make a decision on the merits.
An authority issuing a license must act fairly. Hear neighborhood objections and conduct investigations. Investigate community complaints about violations. Give the EPL holder a reasonable opportunity to hear the case against him/her and defend themselves before canceling a license. Conditions imposed on the applicant must be reasonable.

Courts have held that:
Public nuisance action

- Under Section 98 a Magistrate can make a conditional order regarding a nuisance under certain circumstances

- HOW EFFECTIVE?
### Sectoral Laws

<table>
<thead>
<tr>
<th>DIRECT</th>
<th>INDIRECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Coast Conservation and Coastal Resource Management Act</td>
<td></td>
</tr>
<tr>
<td>- Forests Ordinance</td>
<td></td>
</tr>
<tr>
<td>- Fauna and Flora Protection Ordinance</td>
<td></td>
</tr>
<tr>
<td>- Fisheries and Aquatic Resources Act</td>
<td></td>
</tr>
<tr>
<td>- National Heritage Wilderness Areas Act</td>
<td></td>
</tr>
<tr>
<td>- Plant Protection Act</td>
<td></td>
</tr>
<tr>
<td>- State Lands Ordinance</td>
<td></td>
</tr>
<tr>
<td>- Flood Protection Ordinance</td>
<td></td>
</tr>
<tr>
<td>- Agrarian Development Act</td>
<td></td>
</tr>
<tr>
<td>- Mahaweli Authority of Sri Lanka Act</td>
<td></td>
</tr>
<tr>
<td>- Animal Diseases Act</td>
<td></td>
</tr>
</tbody>
</table>
Laws relating to biodiversity protection

- The Constitution
- State Lands Ordinance
- Forest Ordinance
- Fauna and Flora Protection Ordinance
- Soil Conservation Act
- Control of Pesticides Act
- Mines and Minerals Act
- Plant Protection Act
Old law – passed by the British
Around 80% of land in Sri Lanka is vested in the State.
These lands are administered under various statutes including the State Lands Ordinance.
The administering authority of this statute is the Land Commissioner
The Minister may declare that any State Land is constituted a State reservation for any one more of the following public purposes. These purposes include:

- the protection of the source, course or bed of any public stream;
- the protection of springs, tanks, reservoirs, lakes, ponds, lagoons, creeks, canals, aqueducts, channels (whether natural or artificial), paddy fields and land suitable for paddy cultivation;
- the protection of the foreshore;
- the prevention of the erosion of the soil;
- the preservation of water supplies.
The administration, control, custody and management of the foreshore are hereby declared to be vested in the State.” Section 58.

President authorised to carry out various public works along or out from the foreshore or in the sea bed adjacent to it. He/she may also lease any part of the foreshore or bed of the sea if he/she is satisfied that such lease will not substantially affect the rights of the public.
The Minister may declare any part of the foreshore as an area from or over which no sand, stone, coral or other substance shall be removed.

Coastal area now governed by the Coast Conservation and Coastal Resource Management Act of 2011, earlier Coast Conservation Act 1981
Rights over water bodies except for private lakes and streams is vested in the State.

the bed of a public lake or public stream is the property of the State.
Forest Ordinance

- First enacted in 1907 and amended several times.
- Long title - An Ordinance to consolidate and amend the law relating to the conservation, protection and management of forest and forest resources; for the control of felling and transport of timber and forest produce; and for matters connected therewith or incidental thereto.
The approach of the original Forest Ordinance was not conservation but rather exploitation of forests.

Original Ordinance made provisions for Reserved Forests and Village Forests.

Hardly any Village Forests exist.

1995 Amendment introduced Conservation Forests.
The Minister may by Order published in the Gazette declare that any specified area of state land or the whole or any specified part of any reserved forest which unique ecosystems, genetic resources or is the habitat of rare and endemic species of flora, fauna and micro organisms and of threatened species, or which needs to be preserved in order to achieve an ecological balance in the area by preventing salinisation or drying up of rivers, ensuring adequate rainfall, preventing landslides and fires hazardous to human life, shall from such date as may be specified in the Order be a conservation forest.
Fauna and Flora Protection Ordinance

- First passed in 1937
- Significant amendment by Act No. 49 of 1993
- Purpose is the declaration of protected areas and their management as well as the protection of species and in situ conservation.
- Uses a strategy of “command and control” and contains a list of acts which are prohibited and the penalties imposed for committing them.
- Addresses both species and ecosystem protection
Minister may also declare any area of land within Sri Lanka to be a Sanctuary and such land may be both State land or non State land.
Other provisions

- Amending Act of 1993 introduced environmental impact assessments to be carried out for any development work within a distance of one mile from the boundary of any National Reserve.
- Provisions relates to the protection of elephants and buffaloes. These animals are protected both within and outside National Reserves and Sanctuaries. The penalties for killing or taking elephants and buffaloes have been substantially enhanced under the Act of 1993.
Part III is entitled “Vertebrates and Invertebrates” and relates to the protection of all other fauna classified as mammals, reptiles, birds, amphibians, fish and invertebrates.

Negative listing for the protection of protected mammals, reptiles and fish.

Sections regulate the import and export of fauna into and out of Sri Lanka. These provisions take effect as if they were a part of the Customs Ordinance.

Part IV relates to “Flora” and contains provisions for the protection of plants species. Schedule V contains a positive listing of protected plants.
How effective is the law?

What changes are needed?
The Coast Conservation Act No. 57 of 1981
Objectives

- To make provision for a survey of the Coastal Zone and the preparation of Coastal Zone Management Plan
- To regulate and control development activities within the Coastal Zone
- To make provision for the formulation and execution of schemes of work for coast conservation within the Coastal Zone
- To make consequential amendments to certain written laws
- To provide for matters connected therewith or incidental thereto
Section 2 vests the administration, control, custody and management of the Coastal Zone in the Republic.

Section 3 creates the post of Director of Coast Conservation who shall be responsible for administering and implementing this Act, for formulating and executing schemes of work for coast conservation within the Coastal Zone, and for conducting research, in collaboration with other departments, agencies and institutions for the purpose of coast conservation.

Title changed to Director General of Coast Conservation and Coastal Resources Management (Act No. 49 of 2011).

Council composed of various State officials as well as three members appointed by the Minister. Of these latter three members, one shall be a member of the academic staff of a university in Sri Lanka, one would represent a voluntary organisation concerned with the coastal environment, and one would represent the fishing industry.
The functions of the Council

- To advise the Minister on all development activities proposed to be commenced in the Coastal Zone
- To review the Coastal Zone Management Plan (CZMP)
- To review the environmental impact assessments furnished under Section 14 and to make comments, if any, thereon to the Director
- To inform the Director of the need for schemes of work within the Coastal Zone whenever such need arises
- To advise the Minister or the Director on any other matter relating
Part II - Coastal Zone Management

- Director must have a survey to be made of the Coastal Zone and prepare a report based on the results of such survey.

- The Director must also submit to the Council a Coastal Zone Management Plan based on the results of the survey.

- Provision for public participation in drafting this Plan. Section 12 (3) provides that upon submission of the Plan to the Minister, he/she shall make it available for public inspection. The Minister may modify it having regard to any comments made.

- The Plan shall be revised every four years.
Part III - Permit Procedure

- relates to the requirement of environmental impacts assessments for any developmental activity within the Coastal Zone.

- Amending Act No. 64 of 1988 – Sections were included to address the issue of such activities as coral mining in the Coastal Zone which is causing severe damage to the area. Section 31A to 31C of the Act prohibit this activity. Section 31E prohibits the transport of sand and seashells.
Section 31D states that no person shall by reason of possession or use of any specific portion of the beach claim to have acquired titled to such portion of the beach as against the State. This section also states that the public shall have the right to use and enjoy any portion of the beach. The concept of seashore being public property has therefore been incorporated in this Act.
Beach parks and conservation areas – Act of 2011

- Where the Minister is of opinion that it is necessary for the preservation of the scenic beauty and the biodiversity of any area within the Coastal Zone to do so, declare by Order published in the Gazette, any area within the Coastal Zone to be a Beach Park.

- The Minister may by Order published in the Gazette, declare as a Conservation Area, any area in which special measures need to be taken for the protection of the coastal and aquatic eco-system.
Marine Pollution Prevention Act No. 35 of 2008
- Establishes the Marine Environmental Protection Authority, which shall be responsible for the administration of its provisions.
- The administration, management and control of the affairs of the Authority are vested in a Board of Directors.
- The Board consists of three members appointed by the Minister who, in his/her opinion have experience in shipping, port operations and marine pollution prevention. Four ex officio Directors represent the Ministries in charge of Environment, Foreign Affairs, Finance and Fisheries. The three others will be the Director of Merchant Shipping, the Commander of the Sri Lanka Navy and the General Manager of the Authority.
Functions of the Authority

- Generally related to the prevention, reduction, control and management of pollution arising out of ship based activity and shore based maritime related activity in the territorial waters of Sri Lanka or any other maritime zone, its foreshore and the coastal zone of Sri Lanka.

- Must also recommend adherence to all international Conventions and relevant Protocols dealing with marine pollution, which the Sri Lankan government has or may, ratify, accept, accede to, or approve. International obligations

- Also required to formulate and implement the National Oil Pollution Contingency Plan.
Powers of the Authority

- Required to effectively safeguard its area of jurisdiction from pollution from ship or shore based activity, and may conduct investigations and inquiries and institute legal action in relation to any pollution arising out of such activity.

- It is also required to oversee all sea transport of oil and bunkering operations that are carried out within its area of jurisdiction.
Has powers to enter upon land or into any premises including installations, to make surveys, investigations or examinations connected to or incidental to the exercise of any of its powers.

It may also board any ship within its areas of jurisdiction and visit any off shore installation in relation to the inspection of any apparatus or pipeline, in connection with or incidental to the discharge of its functions.

Every assistance shall be given to the Authority or a person authorised by it in carrying out these functions.
Where the Authority has reason to believe or is informed that a substantial quantity of oil or harmful substance or other pollutant has been discharged or has escaped or been dumped into the area within its jurisdiction, it may order the owner, operator, master or agent of any ships within such area to forthwith report its position to the Authority, or order the person in authority over any apparatus, pipeline, off shore installation or place on land, to take such steps as maybe necessary to control or contain such substance.

Powers to detain any ship, if he has reasonable cause to believe that any harmful substance has been discharged from such ship into the area within the jurisdiction of the Authority.

The authorised officer also has powers to arrest without a warrant any person who commits an offence under the Act and to produce that person before the relevant High Court.
Marine Environmental Council includes

- Director of Coast Conservation,
- Chairperson of the Central Environmental Authority, Chairperson of the Ceylon Petroleum Corporation,
- Directors General of Fisheries, Wildlife Conservation, and the Disaster Management Centre.
Two members of the academic staff of higher educational institutions who have specialised in the field of environmental protection or marine pollution,

a senior officer of the Ceylon Association of Ships Agents, and

two members of non-governmental organisations specialising in environmental protection
Functions of the Council

- To advise the Authority on all matters connected to the exercise and discharge of its powers and functions and on any other matter referred to it by the Authority.
Criminal liability for pollution

- If any oil, harmful substance or other pollutant is discharged or escapes into the area of jurisdiction of the Act from any ship, or from any apparatus used for transferring such substance to or from a ship, or from an off shore installation, or from a pipeline, or from any place on land, or as a result of any operation for the exploration of the seabed or subsoil, or the exploration of the natural resources thereof, then the person identified will be guilty of an offence and be liable on conviction to a fine of between four and fifteen million rupees.
Civil liability for polluting

- Where any act connected to maritime casualties or to the offences detailed in Section 26 results in pollution of the area within the jurisdiction of this Act, the relevant person shall be liable for any damage caused to such area, and for the costs of taking measures to prevent, reduce or remove such pollution from the area or from any interests related to it.

- ‘Interests related to such area’ include, marine, coastal, port or estuarine activities, including fisheries activities, the promotion and development of tourism and tourist attractions including beaches and coral reefs, the health of the coastal population and their well being, and the protection and conservation of living marine living resources and wildlife.
Mandatory Insurance

- Mandatory that the owner or operator of a ship carrying more than 2000 metric tonnes of oil in bulk as cargo, which enters Sri Lankan waters, must have insurance or other financial security, which is acceptable to the Authority.
Fisheries and Aquatic Resources Act No. 2 of 1996
Act to provide for the management, regulation, conservation and development of fisheries and aquatic resources in Sri Lanka.

Amending Act of 2013 also provides that it is also to give effect to Sri Lanka’s obligations under certain international and regional fisheries agreements.

strikes a balance between the concepts of conservation and sustainable use of fisheries resources.

Provisions in the Act relate to the harvesting of such resources while others deal with conservation and management.
- Creates the post of Director of Fisheries and Aquatic Resources who is responsible for the administration of the Act.
- Also creates the Fisheries and Aquatic Resources Advisory Council.
Role of the Council

- To advise the Minister on all matters relating to the management, regulation, conservation and development of fisheries and aquatic resources in Sri Lanka waters and such other matters.

- The Secretary to the Minister in charge of Fisheries shall cause a plan to be prepared from time to time for the management, regulation, conservation and development of fisheries and aquatic resources in Sri Lanka.
Regulation of fishing

- Parts II and III relate to licensing of fishing operations and registration of fishing boats.
- Licenses are valid for a period of one year and are subject to such terms and conditions as may be prescribed with regard to the fishing operation for which it is granted.
- License may be renewed if the Licensing Officer is satisfied that, *inter alia*, there is no threat to the sustainability of fish and other aquatic resources as a result of renewing the license.
Subject to the provisions of the Crown Lands Ordinance, the Minister may lease portions of State land or Sri Lanka waters as he may consider necessary in the interests of the national economy for the purpose of aquaculture.

This operation too is subject to a licensing procedure.

NOTE - such leasing will be subject to the EIA procedure of the National Environmental Act where relevant.
Part IX - “Offences and Penalties”

- Sets out the penalties for contravening or failing to comply with the provisions of the Act and the penalties for such offences.
Protection and Conservation

- Part IV - “Protection of fish and other aquatic resources”
- Part V - “Conservation”.
Part IV

- Prohibits any person from using or attempting to use any poisonous, explosive or stupefying substance or other noxious or harmful material or substance in Sri Lanka waters for the purpose of poisoning, killing, stunning or disabling any fish or other aquatic resources.

- Also prohibited to carry or have such materials or substances in one's possession. It is further prohibited to buy, sell, possess, transport or receive fish or other aquatic resources which have been taken in such manner.
Section 30 authorises the Minister to prohibit or regulate the export from or the import into, Sri Lanka of any species of fish including live fish or any eggs, roe or spawn or any products prepared from such fish, eggs, roe or spawn or other aquatic resources for a given period of time.

The provisions of the Customs Ordinance shall apply to this section.
Declaration of Fisheries Management Area and Fisheries Committee

- The Minister may designate prescribed areas of Sri Lanka waters or land adjacent thereto or both such waters and land as fisheries management areas for the purpose of this Act.

- Registered fishermen residing or engaged in fishing in each fisheries management area or art thereof or migrant fishermen may form themselves into a fisheries committee.

- The functions of the committee include formulating a fisheries programme for its area and implementing such programme. This provision, if effectively implemented, would help to involve stakeholders in the management and conservation of fisheries resources.
Open and closed seasons for fishing

- The Minster also empowered to declare a closed or open season for fishing in such areas and times as may be specified and for taking in such areas of such species of fish as may be specified.
- No person may fish in such areas or take such fish during a closed season.
Part V - “Conservation”

- Enables the Minister to declare any area of Sri Lanka waters or any land adjacent thereto or both such waters and land to be a fisheries reserve.

- May do so when he considers it necessary to afford special protection to aquatic resources in danger of extinction and to protect the natural breeding grounds and habitats of fish and aquatic resources with particular regard to coral and aquatic ecosystems; to promote regeneration of aquatic life in areas where such life has been depleted; to protect the aquatic medium; to promote scientific study and research in respect of such area; or to preserve and enhance the natural beauty of such area.

- Section 37 sets out the acts which are prohibited within such reserves.
Licensing of fishing operations in the high seas

No person shall engage in any prescribed fishing operations in the High Seas, except under the authority, and otherwise than in accordance with the terms and conditions, of a licence granted by the Director-General.
Conclusion

Judicial making

- Issues
- Constraints
- Laws delays
- Balancing functions of judiciary and executive
Role of the judiciary in upholding environmental law

- Administering environmental litigation
- Promoting compliance by enforcing the law
- Serving as guarantor of public participation rights
- Balancing environment and development considerations
- Influencing societal attitudes towards the environment and the concept of sustainable development
Through judgments, furthering the development of legal concepts in the area of sustainable development

Furthering the implementation of regional and global environmental accords where part of the body of domestic law

Serving as a check on executive inaction and overreaching in the environmental arena

Protecting the rights of both victims and accused