

Environmental Justice



The Third South Asia Chief Justices' Roundtable is to be held in Sri Lanka for the first time. As a sub division of SAARCLAW, this conference brings together the greatest legal minds in the region. Guests have been invited from around the world to contribute to the discussions on this year's theme, 'Environmental Justice', which is an important branch of the law, considering the rapid deterioration of the environment globally. The Chief Justices' Roundtable is set to make history as it will endeavour to bring forth the 'Colombo Declaration', which will be a significant and forward thinking legislature that will not only have a positive impact regionally, but globally as well. Chief Justice Mohan Pieris as the host of this eminent event, spoke on the various aspects that will be discussed at this high level forum.

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What is SAARCLAW?
The South Asian Association for Regional Corporation of Law, which is called SAARCLAW is an association of the legal communities of the SAARC countries- comprising of judges, lawyers, academics, law teachers, public officers and a host of other related persons, registered with the SAARC Secretariat in Kathmandu and awarded the status of a regional apex body of SAARC. It owes its origin to the desire of members of the legal fraternity to establish an association within SAARC with a view to disseminating information and to promote and understand the concerns and developments of the region. That is the core activity of SAARCLAW.

SAARCLAW was established in Colombo, interestingly, on October 24, 1991 when the then President of Sri Lanka inaugurated the association in the presence of a very large gathering. I was a very young lawyer at that time. In the ensuing 19 years, the affiliated country chapters have been established in Bangladesh, India, Bhutan, Nepal, Pakistan and the Maldives. Activities of the organisation have taken place in all these countries and every year we meet up to discuss the matters at hand.

What can you tell us about the SAARCLAW Conference and the SAARC Chief Justices' Roundtable?
The annual SAARC conferences have been acclaimed as affording an opportunity to the members for interaction, exchanging of ideas and for the forging of a spirit of solidarity amongst the legal community within the SAARC region. It has been the convention since 1995 to hold a conference of Chief Justices of the SAARC countries, concurrently with the annual SAARCLAW Conference. This feature has become institutionalised now and offers a forum for the exchange of thoughts and views of the Chief Justices of the member countries. Since the first SAARC Conference in 1991, the conference symposiums and seminars have been held almost every year in the SAARC region; in Colombo, Karachi, Islamabad, Lahore, Kathmandu, Male, New Delhi, Chandigarh, Jaipur, and in Bhutan. 12 SAARCLAW Conferences have been held in the region, where the 12th one was held last year along with the ninth Chief Justices' Conference in Thimphu, Bhutan.

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The main theme of the last conference in Bhutan was child protection and constitutional provisions. The Chief Justices of the region met in Thimphu and we discussed this issue and as a result the Thimphu declaration was born. In its more than 21 years of existence, the members of SAARCLAW have persistently worked towards the achievement of the objectives of bringing together the legal fraternity within the region so that we have closer cooperation between the legal communities of the countries of the SAARC region.

This year the Chief Justices' Roundtable will be held in Sri Lanka?
Yes, this year the conference will be held in Colombo on August 8 and 9. The Chief Justices of all the SAARC countries will be here. There will be judges from India, Bhutan, Nepal, the Maldives, Pakistan, Bangladesh and from Afghanistan-the latest member to join SAARC. In addition to these judges, we have also taken the opportunity to invite other judges outside of the SAARC region and other resource persons, so that the whole world will know what SAARCLAW is doing in this particular area of activity. This year we will focus on the environmental rule of law. The Asian Development Bank led an initiative in building capacity for environmental prosecution, environmental adjudication and dispute resolutions where the compliance and enforcement in Asia is anchored in the premise that environmental law is a branch of the Law, which has evolved mainly over the last three or four decades. As such this time we are going to discuss extensively on the environmental rule of law.

Environmental law has been a theme in the last few years where the United Nations Environmental Project and other agencies have focused on this very serious issue globally. In Colombo, we will be discussing this issue as it is in the formative stage and is undergoing a process of rapid development, inspired by a quantum leap in our understanding of global, regional and national environmental challenges. At this stage of its development, Environmental Law depends heavily on the judiciary for the direction it takes, because there are new situations that are presented to our Courts in the SAARC region-and perhaps even globally- with regard to the

environment which are often unprecedented. New scenarios are being presented to us every day, in terms of the environment, with each case having its own nuances, which are not often duplicated in other cases.

What are the challenges that will be discussed?
The environment in the modern context of sustainable development includes the physical social factors of the surroundings and the environment in which human beings live. This includes land, water, the atmosphere, climate, sound, odour, taste and biological factors of animals and plants as well as cultural values. Further the historical sights, monuments, and the aesthetics of the world we live in are also parts of the environment. Therefore this brings into attention the enormous challenges that we have, due to the width of the activities. We need a sharp focus to address the challenges of legislative regulation in all those areas and judicial interpretation of environmental management at the international and national levels.

We have seen that the law is a key instrument of social regulation. Without the law, society is bound to be in disarray and that would inevitably lead to chaos. We need to bring into harmony all human activity within a particular consistent framework,so that civil society can exist in some orderly fashion. This is achieved through the establishment of standards, norms, conduct and the creation of the required machinery for ensuring that such norms are effectively complied with. As such in the field of environmental management legislation-both national and international-have been extensively applied. Recent developments within and outside the United Nations, provides direction and guidance with regard to key components of the environmental rule of law, which we have been developing and talking about over the last two years in the context of sustainable development. These include the government and the people.

Environmental Laws Should Be Clear, That Is The Affected Stakeholders Should Have Access To An Independent Fair And Responsive Dispute Resolution Mechanism. You Have To Have Technocrats Looking At These Matters And Our Judges Must Have The Capacity And The Knowledge To Be Able To Apply The Laws Fairly And Even Handedly, So That A Sustainable Balance Can Be Maintained.

We say that the government and the people are accountable for environmental laws that are publicly promulgated, openly and transparently applied. This is very important. Secondly, that environmental laws should be clear, even handed, implementable, enforceable, and equally and fairly applied. However, there has to be a sustainable balance between the requirements of a nation and the environment. You cannot go one way or the other. We endeavour to balance these two interests, within a programme of development, which is sustainable.

We also say that the environmental laws should be clear, that is, the affected stakeholders should have access to an independent fair and responsive dispute resolution mechanism. You have to have technocrats looking at these matters and our judges must have the capacity and the knowledge to be able to apply the laws fairly and even handedly, so that a sustainable balance can be maintained. Further the environmental decision makers-both public and private-should be held accountable for their decisions. A judge should not have the freedom to do what he wills, but he has to have the freedom to do what requires to be done, in terms of the community and the economy, for the greater good of the nation and he will have to give the reasons for the decisions he has made.

The roles and the lines of authority for environmental protection should be clear, coordinated and designed to produce efficient and non duplicative programme delivery. That is to say that one does not burden the whole system by going overboard with overbearing norms for sustainability of the environment. Then we also say that graft and corruption in environmental programme delivery can obstruct environmental protection and mask results. Therefore it must be actively prevented. In other words, we cannot allow hidden agendas to be worked under the guise of protecting the environment. Political, economic or business agendas cannot be worked through this fine environmental policy. We have to be guarded against that.

Finally, the environmental laws and procedures must be consistent with international human rights, norms and standards. This is the framework within which we intend to focus and develop an environmental body of laws, which will be called the environmental rule of law. We talk about the rule of law all the time and this time we will be focusing on this particular aspect and that is the development of a body of laws in the context of sustaining the environment for the survival of the

planet itself.

Sri Lanka has very comprehensive legislation and we are near perfect in our environmental regulation. We can be proud of the fact that Sri Lanka has put in place a legal regime that lives up to global expectation.

The ways in which the judges will handle the new situation will be discussed and will shape the development of the relevant aspects of the environmental rule of law for the foreseeable future. At the end of the conference a Colombo Declaration and Memorandum of Understanding will be signed between the SAARC partners as to how we take this to the future.

Interestingly this whole conference draws strength from the various religious teachings of the great teachers, such as Lord Buddha, Prophet Muhammad and Christ who have all told us that the resources of the Earth belong to the Earth and that we are only trustees of those resources and that we should be very careful in handling such resources. When Arhat Mahinda was in the forest of Mihintale he called upon the King who was hunting, and reminded him that he should not be indulging in the devastation of flora and fauna and that the birds and the bees of the air have as an equal a right to live and move about in any part of the land as him. The land belonged to the people and all living beings and that the King was only a guardian. The wise King, thereafter, became a great proponent of the protection of the environment. That was perhaps the genesis of the environmental rule of law in Sri Lanka. Though we are talking about this 2,600 years later it has been in our religious teachings for centuries. This is the rational that the then Vice President of the International Court of Justice Judge C J Weeramantry in the famous decision between Hungary and Slovakia alluded to in the ICJ's decision in that case. There has to be a healthy symbiosis between all living beings on the planet and a careful appropriation of its resources particularly by human kind.

A Judge Should Not Have The Freedom To Do What He Wills, But He Has To Have The Freedom To Do What Requires To Be Done In Terms Of The Community And The Economy, For The Greater Good Of The Nation…

Can you talk to us about the programme and what it will entail?

The Chief Justice' Roundtable will be held at the John Exter Conference Hall at the Central Bank. Apart from the Supreme Court Judges in the SAARC region, we will have some very important personalities from around the world. We will have Justice Antonio Benjamin who is one of the frontline judges dealing with environmental matters. He is a Supreme Court Judge from Brazil. We have Lord Robert Carnwath who is a judge of the Supreme Court of England, another authority on the environment. Then we have Scott Fulton who is an advisor to the President of the United States on the environment. Chief Justice Zakaria from Malaysia, again, a great environmentalist. Supreme Court Judge Omar Shariff who is the Deputy Chief Justice of Egypt and Bakari Kanthe who was the former head of UNEP (United Nations Environmental Programme) will also participate at the conference. We further have the privilege of having Elizabeth Mrema the present Head of the UNEP who will deliver the key note address. And of course we will have, Mr Lal Kurukulasuriya, a jurist par excellance, who has played a substantial role in the UNEP and has generously made available his expertise to this Roundtable.

His Excellency The President will inaugurate the conference that will proceed over two days. I will also address the opening session, which will set the tone and the direction in which the conference will proceed. In the keynote address we expect Elizabeth Mrema to focus on the common issues, such as the sustainable management of drinking and irrigation water perhaps taking Sri Lanka's successful and indigenous water management as an example. Our historical and contemporary achievements in the field of hydraulics and irrigation has been one of our strengths. We use our water resources of our rivers for the generation of hydro power and agriculture very effectively. However, we have had our own set of problems due to environmental changes globally. We have nevertheless managed our water resources through a multiplicity of resources such as diversions and damming of rivers and channelling of our water resources through a network of canals and tanks. She will also touch on some of the specific challenges of the SAARC countries such as rapid urbanisation, the expansion of human settlements, large scale infrastructure and industrial development that we see both in our country and in the SAARC region. Elizabeth Mrema will also highlight the importance of approaching these issues through the lense of the environment, which will set the stage for the ensuing discussions at the Roundtable.

We Will Look At Issues Arising Out Of The Main Theme And Endeavour To Take Stock Of Where We Are On Environmental Justice. We Will Then Have

Technical Sessions On Very Tough Themes Where We Intend To Shock The Judiciary Into Action To Sensitise Them With Regard To The Very Urgent Need To Address These Issues Seriously And Be Focused Unlike In The Past.

The ADB has played an anchor role in supporting SAARCLAW and following the keynote address we will have Irum Ahsan, Project Leader and Counsel of ADB giving a brief presentation on ADB's role and the importance of strengthening environmental governance. In the afternoon of the first day the Chief Justices will speak briefly on their respective jurisdictions on what has been done to protect and promote the environment and how they have developed their own jurisprudence on this subject. This will be followed by a panel discussion.

The afternoon will be occupied in looking at issues arising out of the main theme and endeavour to take stock of where we are on environmental justice. We will then have technical sessions on very tough themes where we intend to shock the judiciary into action to sensitise them with regard to the very urgent need to address these issues seriously and be focused unlike in the past. We will also urge for a shared vision for the environment. Presently each country tends to do what they want, to fulfill the requirements of their country without thinking about the effect it may have on the region. For example, what happens in the Himalayas will also affect us. Small island nations such asMaldives have a very live issue of rising sea levels due to global warming. It is predicted that the Maldives will be reduced to an even smaller landmass in the years to come. We cannot be blind to what is happening on the basis that we are sovereign nations. That will be to adopt a very selfish posture. The objective is to agree on a system that can be commonly adopted where whatever action we take is in consultation with our neighbour. In other words develop the well known neighbour principal in the context of the environmental rule of law. The neighbour principle should be built into the environmental rule of law. We do not need another Bhopal. Through this principle, we will bind our countries to consult each other. In the same session we will have different presenters from India, Bhutan, Bangladesh, Nepal and the Maldives who will present papers along with our visitors. The first day of the sessions will come to an end with a focus on innovative measures by which we can take the subject of the environment forward in a meaningful way and also discuss the ways in which the region can share its resources and knowledge.

On the second day, we will focus on the environment and development. We will discuss some very interesting issues of the eco system, the services that will follow and are needed to sustain the eco system. The experts from the ADB will go into the aspects of provisioning of food and water, regulating and controlling the climate and diseases, supporting nutrient cycles and crop population, cross pollination of crops, the cultural aspects such as spiritual and recreational benefits and a proper assessment of the eco systems and services. The sessions will also look at green considerations in urban planning and development, which will be presented by a resource person from Pakistan. Urbanisation is perhaps one of the biggest challenges that is faced by developing nations. Colombo is seeing rapid expansion and the city limits are already 40 km away from the centre. Seven of the largest cities have about ten million people and you can see what urbanisation is actually doing. Presentations will be made about green urbanisation with Colombo taken as a good example where we can see new green areas, walking tracks, the renovation of old buildings and many more. We will also look at tourism and the environment.

We Cannot Be Blind To What Is Happening On The Basis That We Are Sovereign Nations. That Will Be To Adopt A Very Selfish Posture. The Objective Is To Agree On A System That Can Be Commonly Adopted Where Whatever Action We Take Is In Consultation With Our Neighbour. In Other Words Develop The Well Known Neighbour Principal In The Context Of The Environmental Rule Of Law.

What about conflict resolution?

That will be discussed at the end where we will deal with environmental adjudication. That is the mechanism by which we can adopt a quick and efficient dispute resolution mechanism when it comes to matters of environment. Can we leave it to ordinary Courts or do we need specialist Courts? We will need special instruments and mechanisms for compensation. How do we sustain the balance between the need for development and the need for the preservation of the environment? These are highly sensitive areas. Then we will also look at the question of whether the traditional methods of environmental dispute resolution mechanisms are good enough or whether we should devise something new, such as mediation. We will look at the challenge of how much we can afford to do in a region, which is still developing; can we remain green and still develop or if we remain green then whether the rest of the world should compensate us for remaining green? The balance is not easy to keep because development brings with

it a certain amount of pollution. How does one develop on the one hand and on the other hand remain green? Should there be some preferential compensatory mechanism extended to the greener parts of the planet so as to maintain the balance in the future? We all enjoy the fruits of industrialisation such as cars, trains, ships, planes and technology and other innovations that have revolutionised our style of living, but we know that industrialisation pollutes countries globally. These are the issues that will be discussed. Should the polluter pay to keep the so called global village environmentally clean?

Concluding thoughts.

We hope that the Colombo Declaration will take us through this whole year of activity, which will lead to the next meeting in another destination in the SAARC region. We firmly believe that this meeting will be of great importance to Sri Lanka-being an environmentally friendly country-and this could perhaps be the right place for the environmental rule of law to be structured and implemented. The entire Asian region will benefit greatly by this whole discussion.

SAARCLAW has focused on the Chief Justices, because they are the decision makers of their respective legal systems. This is the first time we are having the SAARC Chief Justices' Conference in Sri Lanka and so they are all looking forward to seeing the country in this post conflict era.

The delegations are quite large compared to the other years, which only manifests the concern of the SAARC countries to environmental preservation. The participation by the legal luminaries will surely strengthen the bilateral ties between our legal systems and in particular further strengthen, protect and promote the concept of the environmental rule of law.

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