

GENETIC CONSERVATION BY LEGISLATION

- Legal aspects relating to conservation

The Role of Law

In Sri Lanka, state legislation has played an important role in affording protection to plants and animals. Such legislation has been enacted from about the late 19th century.

A brief study of this legislation would be useful in understanding the objectives and limitations of the present legal framework.

These laws could be divided into national and international laws. National laws in turn may be studied under six heads:

1. Conservation of flora
2. Conservation of fauna
3. Conservation of coastal fauna
4. Conservation of crop genetic resources
5. Conservation of aquatic fauna and flora
6. Conservation of wetlands

1. Conservation of Flora Forest Law

One of the earliest pieces of legislation enacted in this country was the Forest Ordinance of 1885. It has undergone several amendments, latest one being the amendment of 1988.

It is the principal basis for forest law and provides for the different types of forests controlled by the Department of Forests and lands under the Department of Wild Life.

These are: (under the Department of Forests)

1. Reserved Forests
2. Proposed Reserve Forests
3. Village Forests
4. Other State Forests

(Under the Department of Wild Life)

1. Strict Natural Reserves
2. National Parks
3. Nature Reserves
4. Jungle corridors

The ordinance lays down the rules and regulations governing the maintenance and utilisation of these lands and the protection afforded to plant and animal life.

Plant Protection Ordinance No. 10 of 1924

This ordinance was enacted with the objective of preventing the introduction of weeds, pests and diseases injurious or destructive to plants to Sri Lanka. Implementation of the ordinance was entrusted to the Director of Agriculture.

Botanic Gardens Ordinance No. 31 of 1928

Provided for the management, administration and control of Botanic Gardens vested in the Director of Agriculture.

Felling of Trees (Control) Act No. 9 of 1951

This sought to prohibit (or control) the felling of specified trees (mainly intended to stop indiscriminate felling of specified trees e.g. Jak trees).

1. National Environmental Act No. 47 of 1980 (Amended by Act No. 56 of 1989)

The National Environmental Act requires the CEA to recommend to the Minister a system of rational exploitation and conservation of wildlife management and a system of rational exploitation of forest resources, regulation of the marketing of threatened forest resources, conservation of threatened species of flora and promoting a continuing effort on reforestation, industrial tree plantation, parks and wildlife management, multiple use forest, timber management and forest research etc. However, no such management policies have so far been formulated by the CEA.

2. Conservation of Coastal Fauna and Flora

The main piece of legislation relating to this field is the Coast Conservation Act No. 57 of 1971 as amended by No. 64 of 1988.

It required the director of Coast Conservation to make a survey of the Coastal Zone. Removal of coral was prohibited in 1988 and a plan for rational utilisation of resources was drawn up.

3. Conservation of Aquatic Fauna and Flora Natural Aquatic Resources and Development Agency Act No. 51 of 1981

Through this Act was established the Natural Aquatic Resources and Development Agency (NARA), the principal national institution in charge of aquatic resources.

Fisheries Ordinance No. 24 of 1940

This Act governs the use, control and protection of fishery resources in Sri Lanka.

This Act is the first enactment to adopt the preparation of an environmental impact assessment for development activities which is the best tool to assess what preventive measures should be taken before any damage to the environment is caused.

Fauna and Flora Protection Ordinance, Chank Fisheries Ordinance (1953) Whaling Ordinance (1936) and Pearl Fisheries Ordinance (1925) are some other pieces of legislation that provide for protection to animal and plant life.

3. Conservation of Crop Genetic Resources

There are three major Acts which were responsible for the setting up of institutions and services that play a vital role in the genetic conservation in Sri Lanka. These are:

- i. Agrarian Research and Training Institute Act No. 5 of 1972
- ii. Sri Lanka State Plantations Corporation Act No. 4 of 1958
- iii. Agrarian Services Act No. 54 of 1979

In addition to these, there are specific laws governing conservation of commercial plantations and also were instrumental in setting up research institutes.

4. Conservation of Wetlands

This is an area that has not received much attention. These wet lands were treated as waste lands that could be reclaimed and used at will.

However, their significance has now been realised and steps are being taken to study their role on a proper system.

International Regulations

Conservation of genetic resources and natural eco systems requires action at international level, for the simple reason that their impact is not limited within national boundaries. Therefore, important decisions regarding these matters have been arrived at through several international conventions. Some of them are briefly discussed here.

Rasmar Convention

This convention recognised the importance of wetlands and provided for exchange of information and takes steps to promote their conservation. However, Sri Lanka is not a signatory to this convention.

Plant Protection Convention of 1951

Provides for the establishment of official plant protection organisations by signatories and to take relevant action with that objective. Sri Lanka is one of the 83 signatories.

Convention for the Protection of the World Cultural and Natural Heritage

Parties to this convention have agreed to undertake the following:

1. adopt a general policy which aims to give the heritage a function in the life of community and to integrate their protection into comprehensive planning programmes;
2. to set up one or more services for the protection, conservation with an appropriate staff;

3. to take appropriate legal, scientific, technical, administrative and financial measures for the identification, protection, conservation, presentation and rehabilitation of this heritage;
4. to establish regional centres and encourage scientific research in this field.

Parties to the Convention have recognised that such heritage constitutes a world heritage whose protection is the duty of the international community as a whole and have undertaken not to take any deliberate measures which might damage directly or indirectly such heritage situated on the territory of other states parties to this Convention.

The World Heritage Natural sites fall into three groups. The first group comprises habitats of the great herds of large mammals; second group features wetlands and the third, Biosphere reserves. Sri Lanka has included the Sacred City of Anuradhapura, Ancient City of Polonnaruwa, the Ancient City of Sigiriya and Sinharaja forest in the World Heritage List. Out of these sites only the latter falls into the category of natural heritage.

Eighty five states have signed this Convention. Sri Lanka's National Heritage Wilderness Areas Act was enacted for the protection of such areas in Sri Lanka.

Bonn Convention

This Convention was adopted in Bonn in 1979 with the main aim of protecting the wild animal species that migrate across or outside national jurisdictional boundaries and so far about 40 states have signed/ratified/acceded to the Convention. The principles and the reasons behind the Convention are embodied in the Preamble which are as follows:

- (a) Wild animals in their innumerable forms are an irreplaceable part of the earth's natural system which must be conserved for the good of the mankind;
- (b) the value of wild animals from environmental, ecological, genetic, scientific, aesthetic, recreational cultural, educational, social and economic points of view;

- (c) that States are and must be the protectors of the migratory species of wild animals that live within or pass through their national jurisdictional boundaries;
- (d) that conservation and effective management of migratory species require the concerted action of all states within the national jurisdictional boundaries of which such species spend any part of their life cycle;

The signatories have accepted that they have to take action to avoid any migratory species becoming endangered and have agreed to promote research relating to such species. "Migratory species" has been defined as the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries.

Although Sri Lanka has signed this Convention it is yet to be ratified. Migratory birds are still being killed in Sri Lanka specially waders and wild ducks. Sri Lanka should ratify this Convention soon and entrust the Department of Wildlife Conservation to implement it.

Cites Conventions of 1973

This Convention seeks to put controls at the international level for the protection of wild fauna and flora which "in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and future generations."

So far more than 90 states have signed this Convention and Sri Lanka is a contracting party. The provisions of the Convention are implemented by the Department of Wildlife Conservation. One of the obstacles to the detection of endangered species being exported from Sri Lanka is the lack of trained personnel at Customs to detect them. In the recent past there was an instance where star tortoises were being exported from Sri Lanka.

Draft Articles on the Conservation of Biological Diversity

Mention must be made of the draft articles prepared by the IUCN to be included in a treaty proposed by the United Nations on the Conservation of Biological Diversity. These articles lay down general obligations of states, preparation of an inventory of biological diversity and conservation areas. A world list of areas of outstanding importance for the conservation of biological diversity is also to be drawn up and most importantly the preparation of an EIA in instances where any activity may result in significant damage to biological diversity.

Conclusion and Recommendations

Most of the laws, except perhaps the more recent enactments, relating to the conservation of species are outdated and need to be revised. Some of these are, the Forest Ordinance, the Fauna and Flora

Ordinance, Whaling Ordinance, Fisheries Ordinance. These must be amended to involve more public participation because the involvement of the public is absolutely essential to the proper implementation of any conservation law.

It follows from this proposition that in order for the public to be involved in the conservation process, they must have a sound understanding of the importance of conservation. For this end, public education and awareness creation is very important. Therefore, attention must be paid to this aspect as well.

Legislation for the protection of wetlands must be enacted and Sri Lanka should sign the Ramsar Convention on Wetlands soon. Sri Lanka should also ratify the Bonn Convention on migratory species and entrust the Department of Wildlife Conservation with the task of implementing it.