

The Role of Public Interest Litigation within the Fundamental Rights Jurisdiction as a Tool for Good Governance and Sustainable Development

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JUDGE OF THE SUPREME COURT



Environmental Foundation Limited v. Urban Development Authority of Sri Lanka and Others [(2009) 1 Sri.L.R. 123]


□ Article 14(1)(a) Constitution

□ Implicit right of a person to secure relevant information from a public authority
in respect of a matter that should be in the public domain

Constitution

Article 17

Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which **such person is entitled** under the provisions of this Chapter.



Public Interest Litigation

Wijesiri v. Siriwardena [1982] Sri.L.R. 171 at page 175:

“The result of a restrictive doctrine of standing, therefore, would be to encourage the government to break the law...”

Sriyani Silva v. OIC Payagala [2003] 1 Sri.L.R. 63 at page 76:

“[...] Article 17 recognises that every person is entitled to make an application under Article 126 in respect of the infringement of a fundamental right...But if he is put to death in order to prevent him - totally and permanently - from complaining, can it be that no one else can complain? For the reasons already stated, here, too, Article 126(2) must be interpreted expansively.”

Public Trust Doctrine

- ❑ Roman Law

- ❑ Protection of natural resources for sustainable use of present and future generations

- ❑ English Law

- ❑ Exercise of public power must be for furtherance of public purposes for which the power was given

- ❑ **Magill v. Porter [2001] U.K.H.L. 67**


- “It follows from the proposition that public powers are conferred as if upon trust, that those who exercise powers in a manner inconsistent with the public purpose for which the powers were conferred betray that trust and so misconduct themselves.”

Public Trust Doctrine

□ Article 3

- Sovereignty reposed in the People and is inalienable


□ Article 4

- Legislative power of the People exercised by Parliament and by the People
 - Executive power of the People exercised by the President
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Public Interest Litigation and Public Interest Doctrine

Bulankulama and Others v Secretary, Ministry of Industrial Development and Others [2000] 3 Sri.L.R. 243 at 258

“The petitioners, as individual citizens, have a Constitutional right given by Article 17 read with Articles 12 and 14 and Article 126 to be before this Court. They are not disqualified because it so happens that their rights are linked to the collective rights of the citizenry of Sri Lanka - rights they share with the people of Sri Lanka. Moreover, in the circumstances of the instant case, such collective rights provide the context in which the alleged infringement or imminent infringement of the petitioners’ fundamental rights ought to be considered.”




Public Interest Litigation and Public Interest Doctrine

Vasudeva Nanayakkara v Choksy and others (John Keells Case) [(2008) 1 Sri.L.R. 134 at page 141]:

“I would reject the objection raised by the contesting respondents which denies a public interest in the due execution of this Law and also denies a locus standi to the petitioner to vindicate such public interest by invoking the jurisdiction of this court in terms of Article 126(1) of the Constitution, as being misconceived and myopic.”

Public Interest Litigation and Public Interest Doctrine


Sugathapala Mendis and another v Chandrika Kumaratunga and others (Waters Edge Case) [(2008) 2 Sri.L.R. 339 at page 355]:

- *Petitioners to such litigation cannot be disqualified on the basis that their rights happen to be ones that extend to the collective citizenry of Sri Lanka. The very notion that the organs of government are expected to act in accordance with the best interests of the People of Sri Lanka, necessitates a determination that any one of the People of Sri Lanka may seek redress in instances where a violation is believed to have occurred. To hold otherwise would deprive the citizenry from seeking accountability of the institutions to which it has conferred great power and to allow injustice to be left unchecked solely because of technical shortcomings.*
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Public Interest, Trust and Good Governance

Sugathapala Mendis and another v Chandrika Kumaratunga and others (Waters Edge Case) [2008] 2 Sri LR 339 at page 354:

We recognize that this duty has to be upheld not only in the name of good governance but also for sustainable economic development of the nation and all of its People, especially the economically challenged, the disadvantaged and the marginalised.



Public Interest, Trust and Sustainable Development

Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others [2000] 3 Sri.L.R. 243 at page 279:

*“In my view, the human development paradigm needs to be placed within the context of our finite environment, so as to **ensure the future sustainability of the mineral resources and of the water and soil conservation ecosystems of the Eppawela region, and of the North Central Province and Sri Lanka in general. Due account must also be taken of our unrenowable cultural heritage. Decisions with regard to the nature and scale of activity require the most anxious consideration from the point of view of safeguarding the health and safety of the people, naturally, including the petitioners, ensuring the viability of their occupations, and protecting the rights of future generations of Sri Lankans.**”*

Public Interest, Trust and Sustainable Development

Ravindra Gunawardena Kariyawasam v. Central Environment Authority and 13 others [SCFR 141/2015, S.C.M. 4.4.2019] (“Chunnakkam Case”) at pages 49 – 50:

*“In the renowned “Mono Lake Case” [33 Cal. 419 at p.21], the Supreme Court of California stated “Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the **duty of the state to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust**”. This oft cited observation highlights the duty placed on the State and its agencies to protect the environment and the fact that this duty is vested in the State and its agencies as the trustees of the public...”*

