Integration of Sustainable Development Principles into South Asian Legal Systems: Transnational Insights into Laws and Judicial Decisions in Sri Lanka

（持続可能な開発原則の南アジア法制度への統合：スリランカの法と判例のトランスナショナルな考察）

DISSANAYAKE Dona Samarasinghe Champika Thushari Roshanie

Doctor of Laws

Graduate School of Environmental Studies, Nagoya University

（名古屋大学大学院環境学研究科　博士（法学））

2024

Table of Contents

List of Abbreviations ... iii

Abstract ... iv

Acknowledgments ... v

CHAPTER 1: Introduction ... *- 1 -*

1.1 Background and Overview ... - 1 -

Background ... - 1 -

Aim of This Thesis ... - 9 -

1.2 Relevant Scholarships and their Limitations ... - 10 -

Interaction Between SD and Law ... - 10 -

Interaction Between SD and the Judiciary ... - 18 -

1.3 Research Question, Academic Contributions, Research Design and Methods ... - 25 -

Research Question ... - 25 -

Academic Contributions ... - 27 -

Research Design: Case Studies ... - 29 -

Methods ... - 30 -

Structure of the Thesis ... - 32 -

CHAPTER 2: Theoretical Framework ... *- 32 -*

2.1 Integration of SD by Legislation ... - 35 -

Integration of SD into Laws ... - 35 -

Integration of SD into Institutional Mechanisms ... - 42 -

2.2 Integration of SD by Judiciary ... - 48 -

Transplanting SD through PIL ... - 49 -

Nexus Between SD and PIL ... - 57 -

CHAPTER 3: Integration of SD Principles through Legislation—The SD Act (2017) ... *- 65 -*

3.1 The Case Study: Sri Lankan SDA, Lessons from Canada’s FSDA ... *- 66 -*

The Sri Lankan SDA (2017) ... - 66 -

The Canadian FSDA ... - 69 -

Structural Similarities and Differences Between SDA and FSDA ... - 71 -

3.2 The Reality of the SDA: Divergent Processes in SD Policy and Strategy Formation - 74 -
Previous Implementation Mechanisms of SDGs (2015–2020) - 74 -
The Current SDG Implementation Mechanisms (After the year 2020) - 76 -
3.3 Positive and Negative Lessons from the SDA - 79 -
3.4 Conclusion - 87 -
CHAPTER 4: Integration of SD Principles via Judiciary—the Chunnakam Case (2019) *- 89 -*
4.1 Transplanting SD into Environmental PILs: Precedents for the *Chunnakam* case - 90 -
The *Chunnakam* case - 97 -
4.2 PIL Instigated by NGOs in South Asia - 102 -
4.3 Lessons from *Chunnakam* Case - 111 -
Legal Transplantation Integrating the SD - 111 -
Broadened PIL Approach Promoting the Integration of SD - 115 -
Lessons for Future Foreign Investments - 118 -
4.4 Conclusion - 122 -
CHAPTER 5: Conclusion *- 124 -*
5.1 Key Findings - 124 -
Integration of the SD by Legislature - 124 -
Integration of the SD by the Judiciary - 128 -
5.2 Limitations and Future Research Opportunities - 130 -
Research Limitations - 130 -
Future Research Opportunities - 132 -
Appendix 1 ***- 135 -***
Enacting Specific Legislation on Sustainable Development to Implement SDGs - 135 -
Appendix 2 *- 136 -*
Utilising Institutional Mechanisms Within Existing Legal Frameworks to Implement SDGs - 136 -
Bibliography *- 139 -*

List of Abbreviations

AG	Auditor General
BOI	Board of Investment
BOI–Law	Board of Investment of Sri Lanka Law No. 4 of 1978
CEA	Central Environmental Authority
CEB	Ceylon Electricity Board
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
EPL	Environmental Protection Licence
FSDA	Federal Sustainable Development Act
FSDS	Federal Sustainable Development Strategy
HLPF	High–Level Political Forum
ICJ	International Court of Justice
IEE	Initial Environmental Examination
IMF	International Monetary Fund
LKR	Sri Lankan Rupees
NEA	National Environment Act No. 47 of 1980
NGOs	Non–Governmental Organizations
NPC	Northern Power Company
NPSSD	National Policy and Strategy on Sustainable Development
NWSDB	National Water Supply and Drainage Board
PCs	Provincial Councils
PIL	Public Interest Litigation
PPP	Polluter Pays Principle
SD	Sustainable Development
SDA	Sustainable Development Act No. 19 of 2017
SDAC	Sustainable Development Advisory Council
SDC	Sustainable Development Council
SDGs	Sustainable Development Goals
SWML	Scheduled Waste Management Licence
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
USA	United States of America
VNR	Voluntary National Review
VPR	Voluntary Peoples Review
WCED	World Commission on Environment and Development

Abstract

The concept of sustainable development (SD) has evolved from a nonlegal framework to a legal framework and has gained scholarly attention for its integrated into the domestic environmental law. Despite its promise in South Asia, the SD integration into the Sri Lankan legislation and Public Interest Litigation (PIL) remains underexplored from a transnational perspective. The legislature may push SD integration forward through state mandates, while the judicial decisions may address its environmental issues, strengthen the legal institutions, and promote citizen engagement.

This research aims to refine the conceptualisation of cross–border SD integration through legislative frameworks and landmark PILs in South Asia, with a focus on Sri Lanka. The study seeks to offer new insights into the limited success of SD in Sri Lanka by focusing on law enforcement, institutional mechanisms, and the judiciary's reactive approach to environmental issues in PILs related to foreign development projects.

Using the case study research design, this study critically examines Sri Lanka's Sustainable Development Act (SDA) and a landmark PIL—the *Chunnakam* case. The first study evaluates the legislative integration of the Sustainable Development Goals (SDGs) through the SDA from a transnational perspective, drawing from the Canadian Federal Sustainable Development Act (FSDA) due to structural parallels, between the two despite different national contexts. Although many countries integrate the SD through their existing legal frameworks, Sri Lanka stands out with its legislation dedicated specifically to the SDGs. However, enforcement remains inconsistent because of procedural gaps, the absence of a multistakeholder approach, and weak government commitment.

The second study examines the judiciary's role in integrating the SD by adopting international law and foreign case decisions, focusing on the *Chunnakam* case through the lens of legal transplantation. Supported by the NGO, this case has established a new legal norm for holding private investors accountable for environmental pollution, thereby addressing the constitutional gap. It has adopted the Indian judgments and Principle 16 of the Rio Declaration—the Polluter Pays Principle (PPP)— evoking SD principles despite criticism of the transnational judiciary power in legal transplantation.

This study is the first to examine the transnational integration of the SD principles into the Sri Lankan legislative and judicial processes. The findings suggest that SDA requires more stringent procedures and more efficient multistakeholder mechanisms to meet its objectives. While the judiciary advances the SD implementation, the government must enforce the laws and monitor the investment projects to ensure compliance with the SD principles and environmental concerns, and to prevent economic setbacks and social and environmental harm.

Acknowledgments

This thesis would not have been possible without the invaluable guidance and support of my supervising professor, Ko Nomura, to whom I am deeply grateful for accepting me as his student. My sincere thanks to Associate Professor Yoko Masuzawa for her instrumental comments and guidance. I thankful to the professors at the GSES for their constructive comments related to my thesis, and the support of the Student Affairs staff, Ms. Miho Yamamoto and Ms. Misa Hayashi.

I extend my heartfelt thanks to the Governments of Japan and Sri Lanka for providing me with the opportunity to pursue a Doctoral program at Nagoya University. I also wish to express my deep appreciation to the Japan International Cooperation Agency (JICA) for their unwavering support throughout the JICA SDG Global Leaders Programme. Additionally, I would like to sincerely thank Ms. Ai Tachikawa, Director of the South Asia Division, and Ms. Kanako Cristovao, Program Coordinator, for their continued assistance and support.

My deepest gratitude goes to my family for their unwavering support and faith in me, especially my mother, who has offered her advice and encouragement despite the distance. Finally, I thank my Sri Lankan friends in Nagoya, whose support made my life in Japan much easier.

CHAPTER 1

Introduction

1.1 Background and overview

Background

The trajectory of sustainable development (SD) which emerged in many developing Asian countries has been derailed by widespread environmental degradation, largely driven by economic development plans that inadequately address environmental and social concerns. Despite the implementation of various strategies aimed at SD, they still will have minimal impact in the region, in those challenging times, aggravated by various economic constraints and mounting social pressure to improve the living standards and the infrastructure in the region.[1] In addition, environmental conservation and sustainable consumption of the limited natural resources have emerged as pressing global issues, whereas the so–termed technological and economic advancements have taken a backseat. These issues demand a reassessment and comprehensive review of the current approaches and innovative solutions to better align domestic strategies with SD.

A transformational development agenda was adopted on the 70th anniversary of the founding of the United Nations in September 2015, [2] titled 'Transforming our World: The 2030 Agenda for Sustainable Development' (hereafter, the 2030 Agenda). The 2030 Agenda includes 17 Sustainable Development Goals (SDGs) and 169 targets.[3] It emphasises that the SD principles

---

[1] Augusto Lopez–Claros, 'Challenges of Sustainable Development' (2012) 22 (1) 4 The Journal of Bahai Studies 25, 31; Joe Studwell, *How Asia Works: Success and Failure in the World's Most Dynamic Region* (Grove Press 2013) 5–6; Ehsan Javanmardi, Sifeng Liu, and Naiming Xie, 'Exploring the Challenges to Sustainable Development from the Perspective of Grey Systems Theory' (2023) 11 (70) Systems 2, 4; Dmitry N Ershov, 'Legal Framework for Sustainable Development and Current Global Challenges' (2023) 1 (1) Sustainable Social Development 1–12; Jeffrey D Sachs, *The Age of Sustainable Development* (Columbia University Press 2015); Asian Development Bank, *South Asia Conference on Environmental Justice Bhurban, 24–25 March 2012* (ADB 2013) 1–5.

[2] United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Resolution adopted by the General Assembly on 25 September 2015 during the United Nations Summit on Sustainable Development, New York, 25–27 September 2015, UN Doc. A/RES/70/1 (2015) [Transforming our World].

[3] ibid.

inherently include environmental protection, and the need to safeguard the planet and its natural resources.[4] In achieving the SD principles across the—economic, social, and environmental—dimensions, the states need to 'integrate' these three dimensions in a balanced manner.[5]

'[T]he practical implementation of the ambitious and integrated vision of the 2030 Agenda brings new challenges',[6] which involve exploring alternative mechanisms to strengthen the integrated approaches in domestic implementation. Biermann and others elaborated that it would involves a 'cross–cutting integration' of the three dimensions related to the 'issue–specific goals' to create a cohesive path for the SD.[7] Cross–cutting integration is essential, as unsystematic national approaches to the SDG integration weaken the coherence and effectiveness of the SD implementation at all levels. 'Transnational [insights] emerges as a series of contemplations about the form of legal regulation with regard to border–crossing transactions and fact patterns transgressing jurisdictional boundaries that involve a mixture of public and private actors and norms'.[8]

Until the 2030 Agenda, the concept of SD was primarily promoted at the international level within a nonlegal framework.[9] Realising the SDGs at the domestic level requires strong political

---

[4] ibid Preamble.

[5] ibid Declaration para 2.

[6] Therese Bennich, Nina Weitz, and Henrik Carlson, 'Scientific Approaches to SDG Interactions Analyses–The State of Play' in Anita Breuer and others (eds), *Governing the Interlinkages between the SDGs: Approaches, Opportunities and Challenges* (Routledge 2023) 15–29, 16.

[7] Frank Biermann and others, 'Global Goal Setting for Improving National Governance and Policy' in Norichika Kanie and Frank Biermann (eds), *Governing Through Goals: Sustainable Development Goals as Governance Innovation* (MIT Press 2017) 75–97, 89.

[8] Peer C Zumbansen, 'Transnational Law, Evolving'in Jan Smits (ed), *Encyclopedia of Comparative Law* (2nd edn, Edward Elgar 2012) 899–925, 899; see also, Roger Cotterrell, 'What is Transnational Law?'(2012) 37 (02) Law & Social Inquiry 500–524, 501–502; Alvina Hoffmann, 'The Transnational and the International: From Critique of Statism to Transversal Lines' (2021) 35(6) Cambridge Review of International Affairs 796–810, 798.

[9] For the historical development and core elements of the concept of SD, see, e.g., Jonathan L Charney, 'Compliance with International Soft Law' in Dinah Shelton (ed), *Commitment and Compliance: The Role of Non–binding Norms in the International Legal System* (OUP 2000) ch 4, 116; David Hunter, James Salzman, and Durwood Zaelke (eds), *International Environmental Law and Policy* (3rd edn, Foundation Press 2002) 171–78; Maria Lee, *EU Environmental Law, Governance and Decision–making* (2nd edn, Hart Publishing 2014) 57–80; Marie–Claire Cordonier Segger and Judge Christopher G Weeramantry (eds), *Sustainable Development Principles in the Decisions of International Courts and Tribunals 1992–2012* (Routledge 2017); Philippe Sands and Jacqueline Peel (eds), *Principles of International Environmental Law* (4th edn, CUP 2018) 217–29; Elizabeth Fisher, Bettina Lange, and Eloise Scotford (eds), *Environmental Law: Text, Cases, and Materials* (2nd edn, OUP 2018) 219–21; Jorge E

commitment and active integration of various actors, including citizens, NGOs, and businesses.[10] This emphasises the multistakeholder participation model rather than a top–down authoritative approach.

Departing from the nonlegal approach, a growing trend in South Asia shows that the SD implementation at a national level is increasingly shifting toward a legal framework that integrates international environmental law with indigenous legal norms.[11] This integration empowers states to employ legal strategies within their own sovereignty. In this context, the SD law sees environmental rights as part of human rights, intertwined with indigenous legal norms to protect the environment.[12] Consequently, governments are urged to take bold actions to address the domestic challenges, that require effective enforcement of environmental laws and an independent judiciary.[13]

Viñuales, 'Sustainable Development' in Lavanya Rajamani and Jacqueline Peel (eds), *Oxford Handbook of International Environmental Law* (2nd edn, OUP 2021) ch 17; Belen Olmos Giupponi (ed), *International Environmental Law Compliance in Context* (Routledge 2021) ch 1–3.

[10] Bennich, Weitz, and Carlson (n 6) 19. See also, Carina Costa de Oliveira, 'Sustainable Development Partnerships as a Bridge between International Commitments and their National Implementation' in Malgosia Fitzmaurice and others (eds), *Environmental Protection and Sustainable Development from Rio to Rio+20* (Brill 2014) 40–61; Zoe Young, 'NGOs and the Global Environmental Facility: Friendly Foes?' in Christopher Rootes (ed), *Environmental Movements: Local, National and Global* (Frank Cass 1999) 243–67; United Nations, *Stakeholder Engagement & the 2030 Agenda: A Practical Guide* (UN 2020).

[11] Sumudu Atapattu and Shyami Puvimanasinghe, 'Guidance from the Ground Up: Lessons from South Asia for Realizing the Sustainable Development Goals' in Wang Xigen (ed), *The Right to Development: Sustainable Development and the Practice of Good Governance* (Brill Nijhoff 2019) ch 9, 141–67, 143. See also, Ben Boer, 'The Rise of Environmental Law in the Asian Region' (1998) 32 University of Richmond Law Review 1503–53; Alan Khee–Jin Tan, 'Environmental Laws and Institutions in Southeast Asia: A Review of Recent Developments' (2004) 8 Singapore Year Book of International Law and Contributors 177–92; Tim Stephens, 'Environmental Litigation by Asia Pacific States at The International Court of Justice' (2021) 21 Melbourne Journal of International Law 1–23.

[12] Atapattu and Puvimanasinghe ibid; Zhang Aining, 'On the Realization of the Right to Development under the Context of Environmental Rights' in Xigen (ed), (n 11) ch 5, 75–93; Li Hongbo, 'The Development and the Environment: The Conflict and Balance in the View of Human Rights Law. Perspective and Reflection Based on China' in Xigen (ed), (n 11) ch 7, 105–16; He Miao, 'Legal Research on Carbon Emission Rights from the Perspective of a Right to Development' in Xigen (ed), (n 11) ch 8, 117–40.

[13] Brian J Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (2014) 26 (3) Journal of Environmental Law 365–93 [Preston 2014].

Environmental legal frameworks have evolved into the 'right to a healthy environment' through substantive and procedural rights.[14] These rights encompass substantive elements such as the right to 'clean air, a safe climate, healthy ecosystems, and biodiversity, safe and sufficient water, sustainable food, and non–toxic environments'.[15] Many constitutions now establish environmental rights as the fundamental principle of SD. This trend is shown, within the text of over 80% of the UN member state constitutions, which incorporated environmental rights, 'establishing binding duties on governments'.[16] Some states, including those in South Asia, have amended their constitutions to include environmental laws or enacted new environmental laws, recognising the crucial role of law in achieving SD.[17]

In procedural environmental rights, the South Asian courts have significantly advanced the SD implementation by broadening the legal provisions through Public Interest Litigation (PIL). PIL serves as a key mechanism in South Asian courts to craft 'innovative solutions, direct policy changes, catalyse law–making', hold government institutions and officials accountable, and enforce orders in the public interest, particularly addressing governmental gaps in environmental issues.[18] These rulings complement the state actions and enhance the legal framework for SD in the region.[19] International law and foreign judgments have become the basis for the public trust

[14] Preston, 'The Nature, Content and Realisation of the Right to a Clean, Healthy and Sustainable Environment' (2024) 36(2) Journal of Environmental Law 159–85, 162–69 [Preston 2024].

[15] ibid 165.

[16] ibid 160. See also, James R May and Erin Dalay (eds), *Global Environmental Constitutionalism* (CUP 2015) 24–25; Louis J Kotzé and Erin Daly, 'A Cartography of Environmental Human Rights' in Viñuales (eds), *The Oxford Handbook of Comparative Environmental Law* (OUP 2019) ch 46, 1044; Ole W Pedersen, 'Environmental Law and Constitutional and Public Law' in Emma Lees and Jorge E Viñuales (eds), (n 16) ch 47, 1078.

[17] Preston 2024 (n 14) ibid; Kotzé and Daly ibid.

[18] Lavanya Rajamani, 'Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness, and Sustainability' (2007) 19 (3) Journal of Environmental Law 293–321, 294–95. See also, Zachary Holladay, 'Public Interest Litigation in India as a Paradigm for Developing Nations' (2012) 19(2) 9 Indiana Journal of Global Studies 555–73; Shibani Ghosh, 'India, Bangladesh, and Pakistan' in Rajamani and Peel (eds), (n 9) 1081; The PIL mechanism was introduced by Indian Judge Bhagwati in the late 1970s.

[19] See (n 11); May and Dalay (n 16) 31–33, 87–102. For the role of Asian courts, see Po Jen Yap, *Courts and Democracies in Asia* (CUP 2017) 1,13. See also, Björn Dressel (ed), *The Judicialization of Politics in Asia* (Routledge 2012); Marek Prityi and others, 'Locating Environmental Law Functions among Legislative, Judicial, and Implementation Bodies' in Kirk W Junker (ed), *Environmental Law Across Cultures* (Routledge 2019) 159–76; See also, Christina Voigt and Zen Makuch (eds), *Courts and the Environment* (Edward Elgar 2022).

doctrine in these proceedings,[20] holding states accountable for managing the natural resources on behalf of their citizens, even more so in the face of environmental challenges from economic development.

Because the '[E]nvironmental problems are not only interdisciplinary they are interjurisdictional',[21] South Asian courts adopt international law and consider judicial decisions from similar jurisdictions, to integrate the SD concept, when the issue is beyond the scope of national laws. The process by which the legal systems learn from one another and adopt provisions from other jurisdictions is called 'legal transplantation'.[22] The theory of legal transplantation serves as an instrumental mechanism to understand the transposition of laws within the states. It is commonly defined as 'the adoption into the national legal system by one state … of a rule originating in a foreign state'.[23]

Various researchers have explored the phenomenon of legal transplantation, its evolving concept, and the mechanisms it operates through.[24] The influence of one state's law on another state's law in legal transplantation is based on both comparative law and political science disciplines, a sub–branch within both, and is chracterised by normative aspirations throughout its

---

[20] See (n 11). Its origins can be traced back to Sri Lanka: Weeramantry, *Tread Lightly on the Earth: Religion, the Environment, and the Human Future: A Report for the World Future Council* (Stamford Lake 2009) 126; and Roman history: Prityi and others (n 19) 45. Over time, the public trust doctrine has evolved into a cornerstone of environmental law, serving as a powerful tool in PIL for promoting SD and protecting the collective interests of society in preserving natural heritage, Prityi and others (n 19) 45–48.

[21] Preston 2024 (n 14) 161.

[22] The theory of legal transplantation was introduced by Alan Watson in 1974: See Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, The University of Georgia Press 1993).

[23] Jean–Frédéric Morin and Edward Richard Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58 International Studies Quarterly 781–92, 782. George Mousourakis, 'Comparative Law, Legal Transplants and Legal Change' in *Comparative Law and Legal Traditions Historical and Contemporary Perspectives* (Springer Nature 2019) 169–96, 178.

[24] Morin and Gold ibid; Edward M Wise, 'The Transplant of Legal Patterns' (1990) 38 The American Journal of Comparative Law 1–22; JWF Allison, 'A Method for Transplants' in *A Continental Distinction in the Common Law: A Historical and Comparative Perspective on English Public Law* (OUP 2000) 13; Jonathan M Miller, 'A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process' (2003) 51(4) The American Journal of Comparative Law 839–86, 842; Margit Cohn, 'Legal Transplants: A Theoretical Framework and Case Study from Public Law' in Mathias Seims and Po Jen Yap (eds), *The Cambridge Handbook of Comparative Law* (CUP 2024) 426–52; See more details, (n 25) to (n 30).

development.[25] This study uses established terminology to explore courts' legal transplantation, referring to the jurisdiction from which the transplanted legal rule originates as the 'donor' and the jurisdiction where it is transplanted as the 'recipient.'[26]

Legal transplantation has evolved significantly from its initial 'pervasiveness' approach dating back to the 'Roman times' to address the diverse legal development needs of contemporary states.[27] First, it may be introduced by the legislatures, courts, and administrative bodies,[28] and serves as a tool for technical assistance and legal reform across Asia.[29] Second, legal transplantation occurs when a state adopts international treaties, which result in domestic law being increasingly shaped by international law.[30]

In the discussion on policy diffusion in political science, it is argued that 'national policymakers' integrate cross–border 'ideas' (laws or policies) to address 'particular problem'[s].[31] Rose categorised five levels of transplantation elaborating 'alternative ways of drawing a lesson:

---

[25] John Bell, 'Legal Research and the Distinctiveness of Comparative Law: Introduction: Legal Research as a Normative Social Science' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) ch 9, 156–57.

[26] Setsuo Miyazawa, 'Legal Transplants in Contemporary Asia: Foreword' 2021 (8) 2 Asian Journal of Law and Society 348–50, 348.

[27] Cohn (n 24) 426, 428–29.

[28] Mousourakis (n 23) 180. See also, Cohn ibid 436: (Case law and 'soft' non–state norms are types of adoption in legal transplantation); Tay–Sheng Wang, 'The Influence of Japanese Law on Taiwan Law in John O Haley and Toshiko Takenaka (eds), *Legal Innovations in Asia: Judicial Law making and the Influence of Comparative Law* (Edward Elgar 2014) 233–42; Silvia Ferreri and Larry A DiMatteo, 'Terminology Matters: Dangers of Superficial Transplantation' (2019) 37 (35) Boston University International Law Journal 35–85, 59.

[29] Mousourakis (n 23); Wise (n 24); Chen Lie, 'Contextualizing Legal Transplant: China and Hong Kong' in Pier Giuseppe Monateri (ed), *Methods of Comparative Law* (Edward Elgar 2012)192–212; George Mousourakis, 'Legal transplants and legal development: A Jurisprudential and Comparative Law Approach' 2013 (54)3 Acta Juridica Hungarica 219–36; Jakko Husa, 'Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law' (2018) 6(2) The Chinese Journal of Comparative Law 129; Michele Graziadei, 'Comparative Law, Transplants, and Receptions' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019) 443–58, 443–44; Kurania Toha, 'The Influence of US and Japanese Laws Upon Indonesian Law' in Reimann and Zimmermann (eds), (n 29) 273–90.

[30] John Gillespie, 'Towards A Discursive Analysis of Legal Transfers into Developing East Asia International (2008) 40 Law and Politics 657–721, 663.

[31] Richard Rose, *Lesson–Drawing in Public Policy: A Guide to Learning Across Time and Space* (Chatham House Publishers 1993) 28–29.

'copying, adaptation, making a hybrid, synthesis and inspiration'.[32] Adaptation is described as 'adjusting' a 'program already in effect in another jurisdiction' to fit the 'contextual differences', rather than a simple one–to–one 'copying' method.[33] Essentially, Cohn explained that the result of the legal transplantation for the recipient state is adaptation, as it is not feasible to transplant the rule exactly as it is.[34]

In addition, the research on legal transfers is strongly influenced by socio–legal theories that vies law as an integral component of a broader social system.[35] Although many comparative legal studies aim harmonize rather than unify the laws,[36] this research is conducted within the realm of the social research disciplines, (which is described later) and its primary focus is analysing the influence of legal transplantation on environmental litigation, to glean transnational insights. Recent studies have used legal transplantation to examine the impact of specific donor legislation, policies, norms and institutional practices from political or sociological perspectives.[37]

Simultaneously, environmental litigation embody a 'shared transboundary perspective' recognised as transnational environmental law.[38] This perspective acknowledges that environmental issues often transcend national borders, which necessitates cooperation and mutual understanding among nations. By adopting foreign laws through legal transplantation, domestic environmental litigation addresses the local concerns where recognising the global environmental interconnectedness. This reinforces the evolving nature of transnational environmental law, which promotes collaboration, exchange of knowledge, and collective action across borders.

---

[32] ibid 30–32 (Copying refers to enacting an intact program as it is; Making a hybrid combines elements from programs in two different places; Synthesis involves combining only familiar elements; Inspiration uses intellectual stimulation to develop a novel program).

[33] ibid. See also, David Nelken, 'Towards a Sociology of Legal Adaptation' in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing 2001) 7–54, 17.

[34] Cohn (n 24) 428.

[35] Gillespie (n 30) 666; Nelken (n 33).

[36] Gillespie ibid.

[37] ibid; Miller (n 24).

[38] Veerle Heyvaert and Leslie–Anne Duvic–Paoli (eds), 'The Meanings of Transnational Environmental Law' in *Research Handbook on Transnational Environmental Law* (Edward Elgar 2020) 7, 8. See also, James Cameron and Ross Ramsay, 'Transnational Environmental Disputes' (1996) 1 (1, 2) Asia Pacific Journal of Environmental Law 5–24.

Courts' transplantation 'lead[s] to the introduction of better solutions in the adopting system' and harmonises the two systems, which result in transnational insights.[39] The environmental judicial decisions made by domestic courts have significantly impacted, beyond their jurisdictions, what is known as 'transnational environmental litigation'. What this thesis refers as 'transnational environmental litigation' is domestic environmental litigation that has some 'transnational' aspects. A classic meaning of 'transnational environmental litigation' is scenario in which the defendants or plaintiffs are from outside the jurisdiction of the court.[40] In addition when litigation garners significant national and international attention by 'raising public awareness', it can be classified as transnational litigation.[41]

Another 'transnational' aspect of litigation that this thesis examine is linked instances when the courts apply international environmental principles or refer to foreign judgments when resolving domestic environmental disputes over foreign investment projects.[42] With such transnational environmental litigation, the national judiciaries fill the gaps in the domestic environmental law rulings against various institutional defects. It is understandable that when constitutional or legislative reforms are protracted, the judiciary must fill legal voids referring to cross–broader jurisdictional resources. The greatest benefit of court's legal transplantation is the creation of new legal norms to fill the domestic legal void.

---

[39] Cohn (n 24) 432–33.

[40] Jacqueline Peel and Jolene Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 (4) The American Journal of International Law 679–726, 696. See also, Robert V Percival, 'Transnational Litigation: What Can We Learn from *Chevron–Ecuador*?' in Heyvaert and Duvic–Paoli (eds), (n 38) 318–39.

[41] Peel and Lin ibid. While this study focuses on climate litigation, the same perspective can be applied to other forms of environmental litigation. See also, Guillaume Futhazar, Sandrine Maljean–Dubois, and Jona Razzaque (eds), *Biodiversity Litigation* (OUP 2022) 1–32 (Biodiversity litigation also falls under the transnational environmental litigation).

[42] Scholars demonstrated the transfer of domestic laws and regulations to other states in the transnational realm. See, Cameron and Ramsay (n 38) 5–24; Craig Scott, "Transnational Law" as Proto–Concept: Three Conceptions' (2009) 10(6) German Law Journal 859–76; Ralf Michaels, 'American Law (United States)' in Jan M Smits (ed), *Elgar Encyclopaedia of Comparative Law* (2nd edn, Edward Elgar 2014) 75–87, 82–83.

Aim of this Thesis

This thesis aims to refine the conceptualisation of the cross–border integration of the SD concept by the legislature and judiciary in Sri Lanka— where the SD challenges are most acute due to environmental harms and economic setbacks. This study examines the judiciary's reactive stance in the PIL—a common form of litigation on foreign development projects in South Asia—particularly in India, Pakistan, and Bangladesh, with a specific emphasis on Sri Lanka.[43] This study seeks to provide new insights into the limited progress of SD in Sri Lanka, by focusing on law enforcement and institutional mechanisms. While cross–border integration and legal transplantation provide transnational insights, this thesis uses cross–border integration to analyse the legislative integration of SD principles and legal transplantation to examine their judicial integration, both contributing to the domestic legal framework.

The research follows a two–step approach. First, it evaluates the legislature's integration of the SD through laws and their implementation. Second, it explores the judiciary's role by analysing landmark PIL cases, and the adoption of the international laws, and judicial rulings through legal transplantation, which offer transnational insights. This study emphasises the importance of efficient institutional mechanisms to implement the SD interventions and achieve the SDGs,[44] and emphasises the collective approach which involves governments, society, businesses, and NGOs.

This study research examines the critical role of NGOs in representing marginalised communities and supporting PIL cases.[45] The South Asian courts, particularly through PIL, intervene when governments fail to enforce laws, that uphold environmental protection and citizen rights with the help of NGOs as petitioners. This study highlights the process though which courts adopt international laws, foreign judgments, and integrate them into domestic frameworks through legal transplantation, thereby making PIL central to transnational environmental litigation.

---

[43] CM Abraham, 'The Indian Judiciary and the Development of Environmental Law' (1991) 11(1) South Asia Research 61–69; Rajamani (n 18) 294–95; Holladay (n 18); Ghosh (n 18).

[44] United Nations Development Programme, *Institutional and Coordination Mechanisms: Guidance Note on Facilitating Integration and Coherence for SDGs Implementation* (2017) 7 [Institutional and Coordination Mechanisms].

[45] See (n 41); J Michael Angstadt, 'Can Domestic Environmental Courts Implement International Environmental Law? A Framework for Institutional Analysis' (2023) 12 (2) Transnational Environmental Law 318–42, 319.

This study represents a novel research endeavor because it focuses on the Sri Lankan Sustainable Development Act 2017 (SDA)—an exceptional case for enacting specific legislation on the 2030 Agenda and because it focuses on the cross–border integration of SD. Notably, no scholar has examined the Sri Lankan judiciary's role in PIL integrates the SD concept into domestic environmental legal systems through the lens of legal transplantation. This study evaluates whether these efforts are sufficient to address the SD challenge and balance economic development in Sri Lanka.

1.2 Relevant Scholarships and their Limitations

This section outlines the limitations of current scholarship on the two focal subjects: the cross–border integration of SD principles into national legal systems through legislation and judicial decisions. This section emphasises the importance of embedding the SD principles in the national legal systems to address states' multifaceted environmental, social, and economic challenges.

Interaction Between SD and Law

'[T]he concept of sustainable development is one of those forward–looking legal concepts on which the future of the human family very heavily depends'.[46] The international SD principles significantly influence state legislative processes, and prompt their cross–border integration with the environmental, social, and economic aspects of the domestic laws. The SD has been adopted into the domestic law by legislatures and judiciaries in many countries, and has been influencing their decision–making.[47]

Constitutions, laws, statutes, regulations, and policies are key tools for integrating SD principles and ensuring accountability among governments, individuals, and society. However, this integration varies by country and is not always consistent across all levels of government,

---

[46] Weeramantry, 'Achieving Sustainable Justice through International Law' in Segger and Weeramantry (eds), (n 9) 109–124, 117.

[47] Jonathan Verschuuren, 'The Principle of Sustainable Development as a Legal norm' in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (2nd edn, Edward Elgar 2022) 228–51, 244.

including national bodies and local governments. The interaction between SD and law has evolved over the past five decades and is closely linked to international environmental law.

The concept of SD emerged in international law as a nonlegal concept, shaping the understanding of environmental responsibilities in terms of economic prospects. The term 'sustainable development' did not yet exist at the time of the 'United Nations Conference on the Human Environment' (1972), which led to the 'Declaration of the United Nations Conference on the Human Environment' (Stockholm Declaration).[48] Thus, the Stockholm Declaration did not explicitly articulate the concept of SD. However, it is regarded as the foundational basis for SD, which influence the legal principles and lays the groundwork for subsequent discussions[49], because several principles outlined in the declaration implicitly address the interplay between environmental conservation and economic advancement, setting the stage for ongoing debates on SD.[50]

Subsequently, the concept expanded to become the most quoted definition in the report of the World Commission on Environment and Development (WECD), the *Brundtland Report, Our*

---

[48] United Nations, *Declaration of the United Nations Conference on the Human Environment, Report of the United Nations Conference on the Human Environment*, Stockholm, 5–16 June 1972, UN Doc. A/CONF. 48/14, ch 1, 3–5 [Stockholm Declaration]. Furthermore, the establishment of the United Nations Environment Programme (UNEP) in 1974 and the appointment of environment ministers increased developing countries' involvement in international environmental issues.

The 1989 Hague Declaration also was a milestone, urging political leaders to establish institutional authority and domestic regulations for climate change: see, Iris Borowy, *Defining Sustainable Development for Our Common Future. A History of the World Commission on Environment and Development (Brundtland Commission)* (Routledge 2014) 36; Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harward University Press 2010) 29–30 [Bodansky 2010]; United Nations, *The Hauge Declaration on the Environment*, Hague, 11 March 1989, UN Doc. A/44/340–E/1989/120.

[49] Atapattu and Puvimanasinghe (n 11) 143. See also, Bodansky, 'Implementation of International Environmental Law' (2011) 54 *Japanese Year Book of International Law* 62–96, 73 [Bodansky 2011]; Sachs (n 1) 4; Sam Adelman, 'The Sustainable Development Goals, Anthropocentrism, and Neoliberalism' in Duncan French and Louis Kotzé (eds), *Sustainable Development Goals: Law, Theory, and Implementation* (Edward Elgar 2018) 15–40, 21; Weeramantry (n 46) 112.

[50] Atapattu and Puvimanasinghe (n 11) (Referring to Principle 4– 'balance economic development with environmental protection', Principles 13, 14 integrated development planning while protecting the environment); Sands and Peel (n 9) 227–28 (Principle 4, 13). See also, Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (3rd edn, OUP 2009) 117, (Principle 4).

Common Future (1987).[51] '[S]ustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.[52] Despite the criticisms of this definition due to its vagueness,[53] it was adopted into domestic laws.

Principles 3, 4, and 5 of the 1992 Rio Declaration on Environment and Development (Rio Declaration)[54] further outlined the balance between environmental protection, economic growth, and social equality. The first discussion on the social development component was conducted in 1995 by the 'Copenhagen Declaration on Social Development'.[55] Later, at the 2002 'World Summit on Sustainable Development', the Johannesburg Declaration combined three elements of SD: economic growth, social inclusion, and environmental protection.[56] The concept has since evolved, culminating in the 2030 Agenda and SDGs in 2015 recognised the need to consider 'three dimensions—economic, social, and environmental—in a balanced and integrated manner.'[57] All

---

[51] World Commission on Environment and Development (WCED), established by the UN General Assembly in 1983. See, World Commission on Environment and Development, *Our Common Future* (OUP 1987) [WCED].

[52] ibid 43.

[53] Atapattu and Puvimanasinghe (n 11) 143 (It is a 'vague' concept.); Hunter, Salzman, and Zaelke (eds), (n 9) 175 ('satisfaction of human needs and aspiration is the major objective of development' that 'endanger nature systems' in developing countries support of life on earth'.); ibid 180 ('While the WCED focused on environmental and development as two faces of the same coin, subsequent debates have been on the basis that environmental (protection) is something related to the North and sustainable development to the South.'); Adelman (n 49) 25. ('Seeking to maximise acceptance of the concept, the WCED provided capitalism with a conceptual basis an ethical/normative justification for the commodification and monetisation of nature'.); John C Dernbach and Federico Cheever, 'Sustainable Development and Its Discontents' (2015) 4 (2) Transnational Environmental Law 247, 267–86 (It's 'too boring' 'too vague' and 'too late' to address development).

[54] United Nations, *Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development*, Rio de Janeiro, Brazil, 3–14 June 1992, UN Doc. A/CONF151/26/Res.1(Vol 1), Annex 1 [Rio Declaration]; Agenda 21 incorporates a chapter dedicated to international agreements and mechanisms as essential tools for implementing various aspects of SD. It emphasises systemic analysis to reveal the connections between SD and social values, culture, justice, the economy, and the environment. See United Nations, *United Nations Conference on Environment and Development, Agenda 21: Programme of Action for Sustainable Development*, 3–14 June 1992, Rio de Janeiro, Brazil, UN Doc. A/CONF151/26/Rev.1, ch 39.

[55] United Nations, *Copenhagen Declaration on Social Development, Report of the World Summit for Social Development,* Copenhagen, 6–12 March 1995, UN Doc. A/CONF166/9, ch I, Resolution 1, Annex I. See also, Atapattu and Puvimanasinghe (n 11) 145.

[56] United Nations, *Report of the World Summit on Sustainable Development*, Johannesburg, South Africa, 26 August –4 September 2002, UN Doc. A/CONF199/20, ch I, Resolution 1, Annex I para 5.

[57] Transforming Our World (n 2) Declaration para 2.

the international SD instruments to date have been in nonlegal form, fostering voluntary commitments from states and encouraging compliance through persuasion and cooperation rather than authoritative enforcement.

With the provisions outlined in international law and their applications nationally and internationally, the concept of SD has undergone significant evolution, which has resulted in the emergence of a new branch of international law known as 'international sustainable development law'.[58] This field has garnered attention from researchers in international environmental law because it provides an overarching framework for international environmental law.[59] The branches of the SD legal framework, have expanded including new areas such as low–carbon regulation, renewable energy, and 'green intellectual property'.[60]

In contrast, Weeramantry J criticised the 'narrow concept of individual rights' in international SD law, arguing that it leads to the 'immediate exploitation' of natural resources in developing countries.[61] He contended that this approach failed to achieve true SD in these countries. Additionally, the integration of the SD concept into customary international law has been pointed out as an alternative to address gaps in international law, with many states recognising customary international law as a legitimate source of law.[62]

Over the past 30 years, numerous scholars have reiterated the SD perspective, emphasising 'goal–setting' as a recurring characteristic of the concept, which was also stressed by the 2030 Agenda, and as essential element of government strategy.[63] This nonlegal approach often hampered the objectives and priorities of the national SD movements due to the challenges in

---

[58] Atapattu and Puvimanasinghe (n 11) 141; Weeramantry (n 46) 118: ('Sustainable development is a part of international law').

[59] Atapattu, 'International Environmental Law and Soft Law: A New Direction or a Contradiction?' in Cecilia M Bailliet (ed), *Non–State Actors, Soft Law, and Protective Regimes: From the Margins* (CUP 2012) ch10, 200–226, 209 (referring to Hunter, Salzman, and Zaelke (eds), (n 9) 171).

[60] Ershov (n 1) 3–4.

[61] Weeramantry (n 46) 116.

[62] ibid; Ershov (n 1).

[63] Norichika Kanie and others, 'Introduction: Global Governance through Goal Setting' in Kanie and Biermann (eds), (n 7) 1–27; Oran R Young, 'Conceptualization: Goal Setting as a Strategy for Earth System Governance' in Kanie and Biermann (eds), (n 7) 32–51. See also, Gary P Latham and Edwin A Locke, 'Self–Regulation Through Goal Setting' (1991) 50 (2) Organizational Behavior and Human Decision Processes 212–47.

institutional capacities. Tarlock, observed, '[L]aw can give the concept of [SD] legitimacy, but only an institutional infrastructure can actually implement the idea by applying it to specific resource choices'.[64] Implementing SD categorically needs 'governance institutions, representative bodies, laws that assign the rights and conditions for the resource use, and institutions designed to produce substantive policy changes'.[65] Consequently, the adoption of SD at the national level has been substantially influenced by these deliberations on legal methodologies, which emphasise that governmental bodies and courts can effectively advance the environmental dimensions of SD within the decision–making processes.[66]

The shortcomings of international environmental law within domestic integration, rather than limitations in domestic institutional capacities, have been widely debated. Over the past 50 years, despite the expansion of the international environmental law and the SD concepts since the 1970s, effective enforcement mechanisms have remained insufficient. Although over more than thousand multilateral and bilateral environmental treaties have been signed, few tribunals or judicial bodies have been established for compliance.[67] Even when such mechanisms exist, they are often underutilised, revealing a significant gap in addressing the global environmental challenges.[68] This has led many states to explore various legislative approaches to SD as alternative to nonlegal goal–setting strategies. These issues highlight the need for states to adopt national legal strategies for SD.

---

[64] A Dan Tarlock, 'Ideas Without Institutions: The Paradox of Sustainable Development' (2001) 35 Indian Journal of Global Legal Studies 35–49, 40.

[65] ibid 39. Scholars have generally echoed Tarlock's concern about SD: John C Dernbach, 'Targets, Timetables and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development' (2002) 27(1) William and Mary Environmental Law and Policy Review 79–136, 108 [Dernbach 2002].

[66] Verschuuren, 'Sustainable Development and the Nature of Environmental Legal Principles' (2006) 9 (1) Potchefstroom Electronic Law Journal 4 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=899537> accessed 12 January 2024; Rakhyun E Kim, 'The Nexus between International Law and the Sustainable Development Goals' (2016) 25 (1) RECIEL 2; Norichika Kanie and Frank Biermann, 'Conclusion: Key Challenges for Global Governance through Goals' in Kanie and Biermann (eds), (n 7) 296. See also, Elizabeth Fisher, 'Environmental Law as "Hot" Law' (2013) 25 (3) Journal of Environmental Law 347–58, 348.

[67] Joanna Miller Smallwood, 'Introduction' in *Implementing International Environmental Law and Policy an Interactive Approach to Environmental Regulation* (Routledge 2024) 1; Kotzé and Daly (n 16) 1049.

[68] Smallwood ibid.

Weeramantry J emphasised that 'the international environmental pillar of sustainable development is… in crisis', struggling to meet the economic development needs of developing countries.[69] Some debates indicate that the failure of the international environmental law in developing countries, including those of South Asia, stems from the international organisations drafting of the environmental laws unilaterally without considering the indigenous practices endemic to those countries.[70] Smallwood emphasised the weak integrative nature of the international environmental law:

> International environmental law and policy are rarely binding, lack clear goals and targets that can be monitored and measured, and there is a general lack of transparency of progress towards goals and targets and weak accountability mechanisms, all of which impede implementation and compliance.[71]

These debates emphasise the governments' accountability to integrate SD into national law, and blending it with indigenous norms, while working together with current international SD efforts,[72] thereby enhancing society's moral and civic obligation to align with state policies. This

[69] Weeramantry (n 46) 111.

[70] Atapattu and Carmen G Gonzalez, 'The North–South Divide in International Environmental Law: Framing the Issues' in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (CUP 2015) 1–20, 5,6; Usha Natarajan, 'Environmental Justice in the Global South' in Sumudu A Atapattu, Carmen G Gonzalez and Sara L Seck (eds), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (CUP 2021) 12–13; Louis J Kotzé, 'Human Rights, the Environment, and the Global South' in Atapattu, Gonzalez and Seck (eds), (n 68) 180–81; Matthias Petel, 'The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature' 2024 (13)1 Transnational Environmental Law 12, 18; Preston 2024 (n 14) 161 states that international environmental law, which excluded indigenous norms in developing countries, is 'fundamentally anthropocentric', 'fostering vast environmental damage'. See also, Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?' (1999) 93 (3) American Journal of International Law 596–624, 599 [Bodansky 1999].

[71] Smallwood (n 67) 3, 4. Additionally, the limited enforcement capabilities of international organisations cannot infringe upon a state's sovereignty: see, Bodansky 1999 ibid; Sands, 'Enforcing Environmental Security: The Challenges of Compliance with International Obligations' (1993) 46 (2) Journal of International Affairs 367, 375.

[72] ibid; Deborah McGregor, Steven Whitaker, and Mahisha Sritharan 'Indigenous Environmental Justice and Sustainability' (2020) 43 Current Opinion in Environmental Sustainability 35–40; Sanchita Bansal and others, 'Indigenous Communities and Sustainable Development: A Review and Research Agenda' (2023) 43(4) Global Business and Organizational Excellence 1–23.

legal framework creates a legitimate expectation for citizens; if SD policies are not enforced, citizens can seek redress in court. This mechanism enables courts to address legal gaps to identify noncompliance, helping states resolve issues while responding to societal claims.

The integration of the environmental dimension into the SDGs[73] and the connection between the SDGs, human rights aspects of climate change, and viable options for domestic legal integration have been identified.[74] In this approach, the challenge of SD is to achieve a balance in the interrelationships[75] among the three dimensions, which often highlight the environmental dimension in economic development. Thus, althoug South Asian scholarship has emphasised this common approach,[76] the integration of SD into legislation with transnational insights has received less attention.

Although many countries have enacted national environmental laws, only a few have specifically enacted SD laws and later integrated the SDGs. Some countries in South Asia have upgraded their constitutions with regard to the environmental rights related to SD.[77] Sri Lanka is the only South Asian nation that enacted a new law in 2017 to integrate the SDGs into its legal framework. No scholar has examined the integration of the SDGs through the Sri Lankan new law—SDA, which marks the keystone in the country's efforts to achieve the SDGs with a new institutional mechanism.

---

[73] Riccardo Pavoni and Dario Piselli. 'The Sustainable Development Goals and International Environmental Law: Normative Value and Challenges for Implementation' (2016) 13 Veredas Do Direito 13–60. See also, Lisa–Maria Glass and Jens Newig, 'Governance for Achieving the Sustainable Development Goals: How Important are Participation, Policy Coherence, Reflexivity, Adaptation and Democratic Institutions?' (2019) 2 Earth System Governance 1–14, 11–12.

[74] Ladan M Tawfiq, 'Achieving Sustainable Development Goals Through Effective Domestic Laws and Policies on Environment and Climate Change' (2018) 48(1) Environmental Policy and Law 42–63.

[75] Virginie Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23 (2) European Journal of International Law 377–400.

[76] See (n 11), (n 18); Kokila Konasinghe, 'The Role of the Judiciary in Promoting Sustainable Development in Sri Lanka' (2021) 3(1) International Journal of Governance and Public Policy Analysis 1–18.

[77] Constitution of India (1950) art 21 [Constitution of India], and Bangladesh Constitution art 32 recognises the right to life. Especially, art 18A of the Bangladesh Constitution recognises the state's duty to protect and improve forests, a rare provision of the state to protect and improve forests, in Asian constitutions. This has led to enacting various laws and policies to protect forest resources. See, Shawkat Alam and Najnin Begum, 'An Assessment of the Legal and Policy Framework for Participatory Forest Governance in Bangladesh' (2023) 26 (1) Asia Pacific Journal of Environmental Law 33–61.

The role of NGOs is important in integrating the international environmental law with state administration levels, including the national focal bodies, local governments, and society. In addition, NGOs play a crucial role in national and international forums, particularly in South Asia by addressing the transparency gaps related to the achievement of the SDG targets.[78] Their actions contribute to the integration of SD for multilevel environmental governance, and reinforce the national integration of the SD laws, as they are implemented through the formal legal and policy frameworks in the states with clear enforcement mandates.[79] Also, social awareness and including the SD problems in the education system and local curriculums considering legally binding concerns is much attended.[80]

Although South Asia has its own indigenous SD norms, integrating those with the international environmental law is essential to implement SD on the domestic ground and strengthen the cooperation among different states with similar agendas. Research on indigenous environmental justice within the SD context emphasises the importance of blending these practices with domestic legal strategies.[81] States must incorporate SD into existing legal frameworks by harmonising indigenous norms with international environmental law. This integration plays an important role in shaping legislative approaches, as SD principles have been increasingly embedded in national constitutions and laws, either explicitly or through procedural frameworks.

It has been noted that in Sri Lanka, the environmental law norms have been heavily influenced by Western legal frameworks, often overlooking indigenous SD norms[82] in the

---

[78] See (n 11), (n 18); Smallwood (n 67) 203.

[79] Smallwood ibid 204, 205. See also, Bodansky 2010 (n 48).

[80] A Płonka and others, 'The Idea of Sustainable Development and the Possibilities of Its Interpretation and Implementation' (2022) 15(5394) Energies 1, 4–6.

[81] Bansal and others (n 72); William C Clarke, 'Learning from the Past: Traditional Knowledge and Sustainable Development' (1990) 2 (2) The Contemporary Pacific 233; John C Dernbach, Patricia E Salkin, and Donald A Brown, 'Sustainability as a Means of Improving Environmental Justice' (2012) 19 (1) Journal of Sustainability and Environmental Law 2; Chen–Yu Yu, 'Application of Sustainable Development in Indigenous People's Revival: The History of an Indigenous Tribe's Struggle in Taiwan' (2018) 10 (9) 3259 Sustainability 1; Ryo Kohsaka and Marie Rogel, 'Traditional and Local Knowledge for Sustainable Development: Empowering the Indigenous and Local Communities of the World' in Walter Leal Filho and others (eds), *Encyclopedia of the UN Sustainable Development Goals Partnerships for the Goals* (Springer 2019) 1–12; *Global Sustainable Development Report 2019—The Future is Now: Science for Achieving Sustainable Developmen*t (UN 2019) 120.

[82] Weeramantry, (n 20): (Buddhism adopts an eco–centric view emphasising the interconnectedness of all beings within nature); Borowy (n 48) 24 cited British Economist Ernst F Schumacher, 'Small is Beautiful' (1973). Unlike

postcolonial era. This issue is visible in the unsustainable development practices and in the weak administrative and institutional mechanisms of environmental management.[83] These scholarly articles highlight the importance of the SD principles in integrating the environmental law and policy, ensuring their enforcement and compliance. Therefore, the problem must be addressed from the ethical and legal perspectives, as neglecting that crucial aspect would render the law ineffective and merely an opportunity for perpetuating harmful and unsustainable development.

Interaction Between the SD and Judiciary

The interaction between the SD and judiciary comprises three key aspects. First, the judiciary plays an advisory role, especially the Supreme Court, as a primarily constitutional obligation. The judicial interpretation of treaties, bills, and laws related to SD by the Supreme Court occurs when the state seeks advisory opinions to clarify and elaborate on the existing or forthcoming legislation. This ensures effective integration of the SD principles into the domestic legal systems. Through these interpretations, the courts may expand or restrict the scope of such laws, and influence influence how these laws are applied to SD in various domestic contexts.

Second, by enforcing environmental laws and regulations through their decisions, the courts ensure compliance with environmental standards and hold violators accountable. The judiciary's role is often identified as an alternative catalyst for SD,[84] particularly when the state fails to enforce laws and SD practices. Through their reactive rulings, the courts interpret and apply laws on environmental protection, social justice, and economic development, thus charting the course of sustainable progress. This enforcement mechanism is critical in deterring nonompliance and ensuring that public and private entities adhere to the SD objectives. Generally, environmental issues related to public and private nuisance, such as land disputes, forest encroachment, and mining concerns, heard in the lower courts often proceed to the higher courts on appeals.

---

in Sri Lanka, India and Bangladesh have integrated traditional dispute settlement mechanisms into the court system as a result of the nationalism that developed in response to colonialism: Yeh and Chang (eds), (n 184) 52–53.

[83] Adelman (n 49); Kotzé (n 70). See also, Atapattu and Gonzalez (n 70); McGregor, Whitaker, and Sritharan (n 72).

[84] Fisher, Lange, and Scotford (eds), (n 9) 219–21; Atapattu and Puvimanasinghe (n 11); Pederson (n 16); Yap (n 19); Dressel (ed), (n 19); Prityi and others (n 19).

Third, Supreme Courts often utilise PILs filed under direct or indirect constitutional environmental rights as an instrumental mechanism, for promoting SD in South Asian courts.[85] Because the Supreme Court rulings are final and conclusive, the PILs play a crucial role in safeguarding the rights of individuals and communities affected by environmental issues. The court addresses grievances, provides remedies for violations of environmental laws, issues compelling orders to responsible government authorities, and ensures compensation for affected people.

The focus of this thesis is related to the third aspect, the judiciary's lawmaking power, with regard to PIL, which has the capacity to reshape the existing environmental legal norms and create new ones in support of SD. That includes addressing and filling domestic legal voids by adopting foreign legal norms through international law and foreign judgments, a process often referred to as legal transplantation. While states typically follow the statutory lawmaking procedures when enacting new laws, courts may introduce new legal norms through court decisions, a concept known as 'judge-made law,' which holds precedent in common law countries.[86] Foreign experience may serve as an example of how a particular rule is applied in practice, turning it into an empirical argument for the court.[87]

PIL provides a platform for civil society to advocate for access to environmental justice and directly influence the enforcement of the law through the highest court. The review of the PILs brought by citizens, NGOs, and other stakeholders, highlights environmental issues and pushes for stronger SD measures. The South Asian courts are perceived as independent entities, as governments' interference with court decisions is minimal,[88] whereas in many jurisdictions, courts are recognised as innovative players in upholding citizens' rights and environmental protection,[89]

---

[85] See (n 11) and (n 18).

[86] Mousourakis (n 23) 180; May and Dalay (n 16) 20–23.

[87] Jan M Smits, 'Comparative Law and its Influence on National Legal Systems' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (OUP 2006) 514–38, 526.

[88] Yap (n 19) 2–3; Christoph Antons, 'What is "Asian Law" —Asia in Law, the Humanities and Social Sciences' in Christoph Antons (ed), *Routledge Handbook of Asian Law* (Routledge 2017) 9: (A 'self–managed' Asian court system has emerged due to the intervention of party leadership in court functions).

[89] For the role of courts in the environment globally, see, Voigt and Makuch (eds), (n 19); Sands and Peel (eds), (n 9) ch 5, 12; Prityi and others (n 19) 159–76; Ludwig Krämer (ed), *Enforcement of Environmental Law* (Edward Elgar

Environmental protection and citizen's rights in PIL are central to the NGOs' advocacy. Their role as claimants in the South Asian environmental PIL is widely recognised for their safeguarding of the communities' environmental rights.[90] This research on the intersection of the SD (and SDGs) environmental rights, and international environmental law has established the foundations for examining the relationship between SD and the judiciary. The NGOs' framing of human rights within the SD context addressing many environmental issues emphasises their social influence.[91] The integration of human rights and international environmental law on SD into domestic legal frameworks has facilitated a shift toward green governance in some countries. This integration is often bolstered by rulings from superior courts, and is frequently triggered by issues raised by NGOs.

Through the PIL, the judiciary scrutinises the actions of government agencies and other bodies to ensure compliance with the provision of SD laws and policies. This oversight helps maintain the balance between development and environmental protection. These lawsuits mostly focus on protecting the rights to clean air, water, and a healthy environment, ensuring that SD benefits are distributed equally. The judiciary may invalidate government actions that are inconsistent with the SD principles, ensuring that public policies align with the sustainability goals.

Although the existing scholarship has examined the recent trends in the South Asian PIL and found that the judiciary in promoting SD for most part,[92] there remains a noticeable gap in the

---

2016); Tracy D Hester, 'Green Statutory Interpretation by Environmental Courts and Tribunals' (2017) 29 Environmental Law and Management 1–5.

[90] Sands and Peel (n 9) 149 (NGOs with a genuine interest are allowed to enforce environmental legislation through courts.); Prityi and others (n 19) 45–58; Aleksandra Cavosky, 'Transnational Environmental Regulation and Evolving Approaches to Compliance' in Heyvaert and Duvic–Paoli (n 36) 124.

[91] Philippe Cullet, 'Definition of an Environmental Right in a Human Rights Context', (1995)13 Netherlands Quarterly of Human Rights 25; Alan Boyle, 'Human Rights and the Environment: Where Next? (2012) 23(3) The European Journal of International Law 613–42; John H Knox, 'Human Rights, Environmental Protection, and The Sustainable Development Goals' (2015) 24 (3) Washington International Law Journal 517–36; Diane F Frey and Gillian MacNaughton, 'A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development Agenda' (2016) 6 (2) SAGE open <https://journals.sagepub.com/doi/epub/10.1177/2158244016649580> accessed 20 October 2023; Karin Arts, 'Inclusive Sustainable Development: A Human Rights Perspective' (2017) 24 Current Opinion in Environmental Sustainability 58–62.

[92] Atapattu and Puvimanasinghe (n 11); Weeramantry, 'Introduction Chapter—Judges and Environmental Law' in Dinah Shelton and Alexandre Kiss (eds), *Judicial handbook on Environmental Law* (United Nations Environment Programme 2005); Puvimanasinghe, 'Towards a Jurisprudence of Sustainable Development in South Asia:

research as to the impact of legal transplantation on advancing SD in South Asia. Specifically, no study has explored the judiciary's approach to achieving SD in Sri Lanka through the lens of legal transplantation in PIL, or how its efforts to offer transnational insights. Understanding this dynamics is crucial to identify the effective mechanisms for strengthen the environmental laws.

Moreover, domestic courts' PIL decisions related to SD may have transnational impact, and influence the international environmental litigation, thus contributing to the global discourse on SD. Decisions made in one jurisdiction may set precedents or be used in persuasions in other jurisdictions, which will promote harmonisation of the SD principles globally. These judicial decisions contribute to the body of the case law on SD, and create precedents that guide future actions and policies. This evolving jurisprudence shapes how SD is understood and implemented. As courts address new and emerging issues, their rulings may adapt to the SD principles in changing environmental and social conditions.

The significance of legal transplantation in South Asian courts lies in adapting their legal systems to foster progress in the cross–border integration of the SD concepts through 'voluntary adoption', which 'occurs in the absence of a duty to even consider a transplant'.[93] Instead of the legislature's 'top–down' approach to adopting laws, individual actions in applying the legal transplantation are considered more effective,[94] as evidenced by the judge's role in litigation. The judiciary's approach is further elaborated as a 'good–faith transplantation'[95] which draws from

---

Litigation in the Public Interest' (2009)10 Sustainable Development Law & Policy 44–48 [Puvimanasinghe 2009]; Camena Guneratne, 'Using Constitutional Provisions to Advance Environmental Justice — Some Reflections on Sri Lanka' (2015) 11 Law Environment and Development Journal 1; Atapattu, 'The Emergence of Sustainable Development Jurisprudence in South Asia' in Segger and Weeramantry (eds), (n 9) 669–76 [Atapattu 2017]; Puvimanasinghe, 'The Role of Public Interest Litigation in Realizing Environmental Justice in South Asia—Select Cases as Guidance in Implementing Agenda 2030' in Atapattu, Gonzalez and Seck (eds), (n 70) ch 9, 145–49 [Puvimanasinghe 2021]; KAAN Thilakarathna, 'The Role of The Judiciary in Recognizing and Implementing International Law: A Comparative Analysis with Special Reference to Sri Lanka' (2021) 7 (2) Journal of Liberty and International Affairs 128.

[93] Cohn (n 24) 431; Jörg Fedtke, 'Legal Transplants' in Jan M Smits (ed), *Elgar Encyclopedia of Comparative Law* (Edward Elgar 2006) ch 39, 434–37, 436 ('…no obligation for legislators or judges who use foreign law to disclose the intellectual ownership of a legal idea').

[94] Cohn (n 24) 429.

[95] Miller (n 24).

'well–recognised'[96] sources such as international law and similar jurisdictions. Otherwise, such transplantation could result in unforeseen outcomes, impacts, and issues regarding their regulatory and procedural functions when the new law was to be implemented in the recipient country's social and legal environments.[97]

By adopting the SD principles andconsulting foreign case decisions, these rulings establish critical transnational precedents, drive regulatory reforms, and ensure accountability related to unsustainable practices. Transnational environmental litigation amplifies domestic proceedings and advances SD across borders, highlighting the interconnectedness of environmental challenges and the need for cross–border cooperation. Integration of foreign laws by the South Asian courts enhances domestic litigation and advances legal systems without legislative intervention, a favored approach to addressing environmental issues.

The legality of transposed laws or concepts is based on constitutional frameworks, legislation, legal principles, and doctrines,[98] with the judiciary expanding the legal scope by creating new laws when the issues fall beyond the current boundaries. Mostly PILs are brought before the courts under the existing fundamental rights provisions included in the state's constitutions. The constitutions and laws play a crucial role in delineating the judiciary's mandate to address SD issues through legal interpretation. This role becomes particularly pronounced in addressing the legal and procedural enforcement issues related economic, social, and environmental protection concerns of the population.

The common law practice of case law precedent (doctrine of precedent—stare decisis) is a significant strength that allows for contemporary legal transplantation by the courts.[99] Scholars underscored the judiciary's potential to catalyse SD through the precedents in the legal interpretation, adjudication, and enforcement of environmental laws.[100] Such judicial decisions set

---

[96] Cohn (n 24) 433.

[97] Gillespie (n 30) 665.

[98] ibid 663.

[99] Basil S Markesinis and Jörg Fedtke, *Engaging with Foreign Law* (1st edn, Hart Publishing 2009) ch 9, 305–6.

[100] Mousourakis (n 23) 'Assessing the Potential of Comparative Law in Expanding Legal Frontiers' 26–27; Prityi and others (n 19); Yap (n 19); See (n 11).

binding precedents, hold governments and corporations accountable for unsustainable practices, and safeguard the rights of vulnerable communities.

Integrating international environmental laws and the SD into domestic legal frameworks increases public awareness of environmental issues. Pobedinsky and others advocated amending legislation, adopting managerial decisions, and enhancing judicial oversight to ensure citizen compliance with international environmental law.[101] Their approach addresses gaps in environmental regulation at the national, regional, and international levels. It emphasises the need to protect citizens' fundamental environmental rights by raising their awareness of environmental issues.

The judiciary's legal transplantation is identified as a need when the recipient country, is facing a challenge, and seeks effective and adaptable solutions from other countries. This is justified in two ways, neglecting the claim of the nondemocratic approach. First, the legal transplantation mechanism, sometimes called 'lesson–drawing' by Morin and Gold, parallels the judiciary's approach.[102] Smith showed that the content of foreign law can serve as a normative argument for adopting specific solutions.[103] In these cases, foreign law directly influences the recipient's law, because successful solutions in other countries motivate similar adoption. This process occurs when the recipient country seeks effective, adaptable solutions to its issue–specific challenges.

Second, scholarship offers a rationale for the judiciary's voluntary transplantation of SD principles to address domestic legal issues. Fedtke, demonstrated that '[I]n an increasingly globalized environment, legal transplants through judicial activity are expected to become more common, despite concerns about …the potentially weaker democratic legitimacy of the judiciary compared to the national legislature'.[104] A legal transplant is more 'likely to succeed in its new environment' if it is chosen and implemented voluntarily, rather than under 'external pressure',

---

[101] Vyacheslav Pobedinsky, Roza Yerezhepkyzy, and Viktor Shestak, 'Improving Environmental Legislation in Central Asia: Current Trends and Features of Cooperation with the European Union' (2020) 29 European Energy and Environmental Law Review 39–48.

[102] Morin and Gold (n 23) 782.

[103] Smits (n 87). See also, Paul Edward Geller, 'Legal Transplants in International Copyright: Some Problems of Method' (1994) 199 (13) Pacific Basin Law Journal 199–230, 203–05.

[104] Fedtke (n 93) 437.

and when adopting the ‘idea’ rather than copying the text. [105] Case law from similar jurisdictions represents just a ‘level’ of transplantation of the laws into the domestic legal system, even it offers a wider ‘range of solutions for legal disputes’. [106]

This is particularly evident in many South Asian courts, where judges often voluntarily apply international environmental principles such as the polluter–pays principle (PPP), the precautionary principle, SD, and the doctrine of public trust in PIL to address domestic legal gaps.[107] It is worth noting its significant role of, the PPP, as it has been integrated into Asian domestic legal systems in many South Asian countries. The PPP, as articulated in Principle 16 of the Rio Declaration, emphasises the internalisation of environmental costs and has been successfully transplanted into many domestic legal frameworks through legislation or judicial interpretation.[108]

A notable illustration of the adaptation of the PPP can be found in India, where international environmental principles and other precautionary principles have been integrated into the domestic law related to PIL.[109] The judicial invocation of the law led the Indian government to enact specific legislation on the PPP, granting it statutory recognition through the National Green Tribunal Act of 2010. Despite the existence of specific legislation on the PPP, the Sri Lankan judiciary has drawn inspiration from the Indian judiciary and the Rio Declaration to adopt the PPP, thereby creating new legal norms in PIL, which is one of the focuses of this thesis. Although South Asian courts engage in transplantation related to specific environmental issues, the adoption of foreign laws tends to occur within a more focused scope. However, there is a significant literature gap on the transplantation of the narrowly focused legal ‘doctrines’.[110]

[105] ibid 436.

[106] Fedtke (n 93) 434–36. See also, Markesinis and Fedtke (n 99).

[107] Rajamani (n 18); Ghosh (n 18); Holladay (n 18).

[108] Sroyon Mukherjee, ‘How Much Should the Polluter Pay? Indian Courts and the Valuation of Environmental Damage’ (2023) 35 (3) Journal of Environmental Law 331–51 (The first international instrument to explicitly reference the PPP was the 1972 Organisation for Economic Cooperation and Development (OECD) Council Recommendations on Guiding Principles Concerning the International Economic Aspects of Environmental Policies).

[109] ibid.

[110] Cohn (n 24) 437.

However, what remains unexplored is how the judiciary chooses its strategies to integrate SD into PIL (supported by NGOs) within the national environmental laws, particularly within the framework of legal transplantation. This study examines the role of NGOs in domestic PIL as they advocate on behalf of the affected communities, and enable them to obtain access to courts. Additionally, this engagement is presumed to raise awareness about the new rules and principles within society at large, and advocate for the acceptance of the new rules, further supporting the efforts of the judiciary in promoting SD in Asian developing countries.

1.3 Research Question, Academic Contributions, Research Design and Methods

Research Question

The primary research question guiding the investigation and discussion of this thesis is as follows:

How effectively has SD been integrated into the Sri Lankan legal system?

The research question explores the cross–border integration of the SD principles into domestic legislative and judicial mechanisms as SD has emerged through international policy discussions. Countries have adopted SD by enacting laws, regulations, and policies and in judicial decisions reflecting cross–broader integration. There is a notable gap in the scholarship on the cross–border integration of SD into Sri Lanka's legal system by both the legislature and the judiciary, incorporating transnational insights.

To address this question, the study explores Sri Lanka's legal and judicial landscape, focusing on the legislative framework, enforcement mechanisms for SD, environmental laws and policies, and the judiciary's role in integrating SD through the adoption of international law and foreign case rulings in PIL, often driven by NGOs. The study fills this gap by engaging in debates on the cross–border integration of legal ideas, including legal transplantation theory, to demonstrate how international laws and foreign judgments shape SD in Sri Lanka's environmental legal frameworks. Additionally, this study examines the institutional frameworks supporting SD in Sri Lanka, identifies the gaps and proposes improvements for the implementation of SD.. The primary research question can be divided into two sub–questions:

i. *How has the legislative approach in Sri Lanka integrated SD?* (Chapter 3)

Only a few countries, including Korea, Malta, and Canada, enacted SD laws before the adoption of the 2030 Agenda and later amended them to incorporate the SDGs.[111] In 2017, Sri Lanka provided a rare example by enacting the Sustainable Development Act (SDA) specifically to implement the 2030 Agenda.[112]

Chapter 3 addresses this sub–question by analysing the implementation of the newly promulgated SDA, highlighting its strengths and procedural weaknesses. The study also compared with Canada's Federal Sustainable Development Act of 2008 (FSDA), as research revealed structural similarities between the SDA and FSDA. Additionally, it examines institutional mechanisms and national policies aligned with the 2030 Agenda using the established theoretical framework.

ii. *How has the judicial approach in Sri Lanka integrated SD?* (Chapter 4)

Given the judiciary's pivotal role in shaping environmental laws conducive to SD, Chapter 4, addresses this sub–question by examining a landmark judicial ruling on the groundwater pollution of a thermal power plant by a foreign investment company, *Ravindra Gunawardena Kariyawasam v Central Environment Authority and Others* (2019) [113] (hereafter, *Chunnakam* case)

---

[111] Republic of Korea and Malta enacted their Sustainable Development Acts in 2007 and 2012, respectively, and amended them in 2015 and 2019 to integrate the SDGs. Korea's Act was repealed by Framework Act on Sustainable Development 2022 No. 18708 of 04 January 2022 establishing Council for SD. Korea further enacted the Framework Act on Low Carbon and Green Growth in 2010 (amended in 2021). Both Acts address SD measures.

In 2019, Canada amended the Federal Sustainable Development Act (SC 2008 c 33) through 'An Act to amend the Federal Sustainable Development Act' (SC 2019 c 2) to align with the 2030 Agenda and SDGs [FSDA]. See (n 273) and Appendix 1 for more details.

[112] Sustainable Development Act No 19 of 2017 (3 October 2017) [SDA].

[113] [2015] SCFR 141, decision 04 April 2019 [*Chunnakam* case]. See case analysis, Kusal Amarasinghe, 'Right to be Free from Degradation of the Environment in Sri Lanka: A Review of *Chunnakam* Power Station Case' (2022) 1 South Asian Journal of Environmental Law and Policy 95–98 <https://drive.google.com/file/d/1mNcXi35Wv_SFHH9sbNAvsCjUQbUNg9pT/view> accessed 22 June 2024. The case continued to attract global attention due to its significant impact on the community's water resources: Anne–Marie Trevelyan, 'Written Answers — Foreign, Commonwealth and Development Office Sri Lanka: Power Stations' (Minister of State. Foreign, Commonwealth and Development Office 19 March 2024) < https://www.teamtrevelyan.co.uk/parliament?page=19> accessed 06 October 2024.

which has implications for cross–border integration. The case is a PIL supported by the NGOs. The analysis reveals how the case established new legal norms promoting SD through legal transplantation by incorporating principles from international environmental law and foreign judicial decisions, significantly advancing transnational environmental litigation. Investigates the concept of legal transplantation, analysing how international laws and foreign judicial decisions are integrated into Sri Lankan law, focusing on the challenges and successes of this process. This study focuses specifically on how PIL has been used in Sri Lanka to promote SD and enforce environmental rights.

Academic Contributions

The research presented in this thesis contributes to the literature in two key ways. First through an analysis of the Sri Lankan SDA and the Canadian FSDA, this study reviews the interrelationships between the SDG and laws. It particularly focuses on examining the relationship of SDG integration between SDA and FSDA. This analysis transcends exploration by presenting pragmatic academic views on the domestic legal and institutional framework governing SDG strategies, derived from an examination of Canada's implementation processes. These insights enhance the study's significance, making it a crucial resource for academia and researchers in the realm of SD.

The research also exemplifies the relationship between SDGs and domestic institutional mechanisms and improves the current understanding of how they are integrated within the domestic settings. The national SDG strategy development and implementation procedure in the FSDA and SDA are examined focusing on the positives and limitations of the institutional mechanisms. By analysing the Sri Lankan SDG policies and institutional mechanisms that diverge from the SDA, this research evaluates the national implementation issues in developing countries, highlighting challenges and opportunities in integrating SDGs and offering valuable academic insights.

By dissecting the legal structures, policy initiatives, and institutional architecture, this study sheds light on the challenges and triumphs that emerge from those divergent contexts. This study examines several issues such as inadequate funding, subpar policy structures, and socio–political intricacies that impede progress. Recognising these hurdles is paramount to refine tactics, promote more effective approaches, and foster the inclusion of SD in all processes. This

examination offers valuable academic insights and expands our understanding of the complexities involved in the integration of the SDGs.

Second, the study contributes to the legal transplantation literature by analysing how the South Asian courts involved to promote SD principles in environmental PIL by adopting foreign laws and integrating them with indigenous norms. The analysis of the Sri Lankan *Chunnakam* case, a PIL, examines how the judge–made law impacts the enforcement of environmental laws within the institutions. It also addresses society's concerns about environmental issues related to investment development projects. The theory of legal transplantation was employed in the *Chunnakam* case to examine the integration of international environmental law and foreign judicial decisions filling domestic legal voids. By analysing those transnational insights, the study deepens the understanding of how litigation becomes a reactive practice and why states struggle to address persistent environmental issues.

The study highlights that the state is the primary actor responsible for integrating economic development into environmental sustainability, and it seeks to encourage states to formally adopt international environmental law norms. Additionally, by examining the judicial trends in South Asia, focusing on Sri Lanka, where NGOs prominently represent PIL, this research clarifies the role of the judiciary in addressing the environmental problems arising from development projects. This highlights how the judiciary integrates SD into its strategic methods to create environmental legal norms, and promote the enforcement of laws within institutions, without requiring any legislative amendments.

No case study has yet comprehensively linked the academic and practical aspects by analysing the cross–border integration of the SD concept into the Sri Lanka's SDA, and focusing on legal gaps in the Act and the *Chunnakam* case within the context of legal transplantation. This study contributes to the literature by showing how judicial legal transplantation may address domestic legal voids and promote SD. Overall, the thesis provides insights into how the SD laws should be redefined in the South Asian developing countries, particularly in light of the challenges to the 2030 Agenda. It also evaluates the benefits and limitations of legal transplantation, enhancing the understanding of the law–and SD interplay and offers valuable insights for the academic community.

Research Design: Case Studies

Both research endeavors employed a qualitative single case study design to effectively address the two sub–questions. The decision to employ the case study research design was influenced by the criteria outlined in Yin's seminal work. Given that both research questions are 'how' questions, and the author lacks control over the cases, with the literature review indicating a contemporary phenomenon, the case study is the most suitable approach.[114] According to Yin, that type of study is an empirical investigation into the contemporary phenomenon of the legislative and judiciary approach to SD in Sri Lanka within its 'real–world setting'.[115] More focus on Yin's 'critical test of a significant theory' is applied to identify the study type as a 'critical single case study design'.[116] The two selected cases are critical, and essential for testing the theoretical propositions.

To address the initial sub–research question—how the Sri Lankan legislature integrated SD into laws—the study identified the legislation related to SD that has gained credibility through its provisions and procedures in a few countries. In this case, the theoretical proposition of legislative integration into SD is established; however, examples of SD laws integrating SD are rare. Only a few countries, such as Korea, Malta, and Canada, enacted SD laws before the 2030 Agenda and later amended them to integrate the SDGs. The Sri Lankan SDA is a rare example of legislation enacted to implement the 2030 Agenda and shares structural similarities with the Canadian FSDA. Therefore, this single case of the SDA— the specific law enacted in 2017, stipulates substantial procedure and a new institutional mechanism to implement the 2030 Agenda and SDG is a critical case. A critical single case study design is sufficient to establish the Sri Lankan legislative integration into SD.

The same rationale from Yin's perspective is applied in the second case study, utilising the same critical single–case study approach. Similarly, in addressing the second sub–research question—how the Sri Lankan judiciary integrated SD into PIL, the literature survey revealed a few comparable judiciaries that have established credible standing on SD through their reactive decisions, thereby creating new legal norms to fill the domestic legal voids with insights from

---

[114] Robert K Yin, *Case Study Research and Applications: Design and Methods* (6th edn, SAGE Publications 2018) ch 1, 2–4, 9.

[115] ibid 16.

[116] ibid 50–51.

transnational perspectives. In this context, the theoretical proposition of judicial SD integration has been established, but instances of decisions creating new legal norms and filling domestic voids with transnational insights are rare. For example, the Indian and Sri Lankan PIL approaches offer rare examples of how the judiciary integrated the SD concept into judge–made law, thereby creating new legal norms when the state fails to ensure sustainable practices and enforce laws.

Therefore, the *Chunnakam* case (2019), a PIL concluded following the country's adoption of the 2030 Agenda and SDGs in 2015, influenced by the Indian judiciary which created new legal norms, that filled a domestic legal void on SD, is a critical case. Furthermore, in this PIL, supported by an NGO, the judiciary charged a foreign investor for environmental damages by applying the new legal norm. A critical single case study design is sufficient to examine how the judiciary reactively integrates SD through PIL, and address the state's failures in promoting SD and filling domestic legal voids.

Methods

Primary legal sources—including constitutions, laws, regulations, statutes, and judicial decisions—were utilised in this study. These documents have the force of law. Additionally, secondary legal sources were examined, including scholarly articles, books, UN reports, international environmental agreements, legislative histories, policy documents, government publications, Hansards (parliamentary debates), and media reports.

The examination was conducted on the constitutional provisions and SD–related laws of several countries, as well as relevant legislation from Canada and Sri Lanka, alongside the 2030 Agenda. Additionally, UN documents such as progress reports on SDGs, Voluntary National Reviews (VNRs) submitted to the UN High–Level Political Forum (HLPF), commentary reports of HLPF, and SDG policies were scrutinised. Although many documents were available digitally from various Sri Lankan government websites, these proved insufficient. Therefore, additional policy documents, decisions of the Cabinet of Ministers' institutional circulars, and reports were requested from the SDC. Newspaper interviews and news articles were also utilised to supplement the available data.

The first sub–research question was analysed through qualitative documentary analysis. This involved examining the SDG policies across 57 UN countries by examining UN reports, HLPF reports, VNRs, respective SDG policy documents, and SD–related laws to identify the

trends in national SDG integration. These findings were analysed, with the respective Sri Lankan documents and constitution, scholarly articles, judiciary reports, and precedent judgments. The SDA examined with the constitutional environmental provisions, existing environmental laws, policy documents, institutional reports, circulars, and sub–national statutes to differentiate theirlegislative approach from the pre–existing environmental laws and identify the significance of their work.

The SD legislation of Canada, Malta, and Korea were reviewed including subsequent amendments in their laws to align with the 2030 Agenda and SDGs. Each of these SD laws was then reviewed against those of the Sri Lankan SDA. When the study identified the structural similarity of the Sri Lankan SDA to the Canadian FSDA, both sets of laws were reviewed for potential SDG integration, procedures, and institutional mechanisms in both countries. The Canadian Constitution Act, FSDS reports, and other relevant Canadian legislation were also examined to determine Canada's motivation to legislate the SD concept. Similarly, Sri Lanka's context has been studied through parliamentary Hansards, judicial precedents, and scholarly articles.

To address the second research question, the author analysed the *Chunnakam* case, along with the judicial precedents, laws, and policies cited in them. Also, examined relevant precedents dating back to 2000, starting with the *Eppawela* case,[117] which marked the Sri Lankan judiciary's initial recognition of SD. The role of the NGOs in the South Asian PILs was also examined with a special focus on India, to identify trends in transnational environmental litigation and the emergence of new legal norms integrating SD.

Although the Indian and Sri Lankan judiciaries have integrated international environmental principles, the most frequently cited international legal instruments have been examined, ranging from the 1972 Stockholm Declaration to the 2030 Agenda. These insights offered context for understanding the judiciary's influence on environmental issues and its evolution in instances where the state failed to enforce environmental laws. These findings were compared against the *Chunnakam* case and related precedents to assess how the judiciary integrated SD by adopting

---

[117] See (n 334).

international environmental law and foreign judgments through legal transplantation to create new SD legal norms when domestic provisions fell short.

Structure of the Thesis

The thesis is organised into five chapters, divided into four main parts: introduction, literature review, examination of the 2030 Agenda and SDGs integration with the Sri Lankan SDA, and evaluation of the judiciary's integration of SD. The remainder of this thesis is arranged as follows.

The first and second chapters address preliminary matters. The first chapter introduces the significance of the thesis subject matter and establishes the conceptual framework by outlining the research questions, methodology, and research contributions. The second chapter examines into the theoretical context of SD, legislative and judiciary integration from an international environmental law perspective, and legal transplantation by the judiciary. The research analyses in Chapters 3 and 4 are guided by the literature review presented in Chapter 2.

Chapter 3, which is the primary research focus of this thesis, examines the Sri Lankan legislative integration of SD with a single case study, the SDA, and its procedures. The study examines the complexities of Sri Lanka's implementation of the SDGs and examines its approach to the new law. This chapter compares Sri Lanka's SDA with Canada's FSDA, highlighting their similarities and differences in the SDG integration. Additionally, it examines the state's institutional framework for the implementation of SDGs and addresses critical challenges during process, examining the impact of the COVID–19 pandemic on the 2030 Agenda.

Chapter 4 examines the judiciary's role, in the second focus of the thesis research, analysing the *Chunnakam* case (2019) as a significant Sri Lankan PIL, petitioned by an NGO, that involved a foreign investment project. In the *Chunnakam* case court accused the investor of groundwater pollution from a thermal power plant. The case illustrates how the judiciary contributed to the development of the domestic legal system while integrating SD, particularly through legal transplantation. Furthermore, this chapter examines PILs instigated by NGOs in South Asia that support the legal transplantation of SD. The analysis focused on three aspects: legal transplantation integrating the SD: broadened PIL approach promoting SD: and the impact on foreign investments.

Chapter 5 concludes the thesis by synthesising the key research findings and providing academic insights to enhance the integration of SD. This chapter briefs how the Sri Lankan legislature and judiciary have leveraged cross–broader integration to reinforce the SD, adopting international SD law and foreign judicial decisions. Finally, it discusses the limitations of the research and suggests future research directions to address these limitations.

CHAPTER 2

Theoretical Framework

This chapter includes two sections, that focus on the theoretical foundation essential to both research questions. It elucidates the concepts and frameworks of legislative and judiciary integration of SD that underpin the analyses in subsequent chapters. The first section begins by exploring the national integration of SD into legislative approaches, shedding light on the intricate relationship between states and their legal systems. It demonstrates how the environmental legal frameworks in various countries support SD. Additionally, this section illustrates how the UN member countries have integrated the SDGs into their legal frameworks and institutional mechanisms, using specific examples.

The second section focuses on the judiciary's role in integrating SD into their domestic legal systems through PIL, which contributes to transnational environmental litigation. It begins with an examination of legal transplantation delineating the role of courts in PIL, followed by, some insights into the judiciary's adoption of SD through international environmental law and foreign judicial decisions within PIL. This analysis lays the foundation for the research on both the interpretation of the law and the expanding role of PIL, particularly supported by the NGOs in South Asia, with a special emphasis on India due to its significant influence on the Sri Lankan judiciary.

2.1 Integration of SD by Legislation

The national integration of international environmental law generally involves legislative, administrative, and judicial components.[118] The legislature and courts possess the 'legitimacy' to integrate international law through legislation and judicial decisions.[119] Legislators adopt treaties and soft laws and modify domestic laws. Administrative authorities enforce these laws, implementing all the necessary policies through their institutional infrastructure. The judiciary's role, (detailed in the next section) is distinct; it sometimes aids the legislature in adopting international law and, at other times, creates new legal norms by acting against the government in PIL on environmental issues.

The SDGs need to be integrated into domestic laws and institutions for effective implementation, as the 2030 Agenda places responsibility on national governments to enhance human well–being in the short and long term. As a nonlegal concept in the international law, SD is not only an abstract idea but is also codified into the law, providing states with a framework for the creation, modification, and enforcement of laws, as well as the development of institutional arrangements.[120] Transitioning from nonlegal SD principles to statutory legal forms is considered more effective than relying on nonbinding voluntary measures for environmental conservation and SD in South Asia.

Integration of SD into Laws

The national legal mechanisms of SD encompass a range of instruments, including constitutions, statutes, and other forms of public and private law. Although the international norms on SD are nonbinding, they yet still possess legal relevance.[121] Integration to the national level typically

---

[118] Catherine Redgwell, 'National Implementation' in Daniel Bodansky, Jutta Brunnée, and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (1st edn, OUP 2008) 929. See also, Bodansky 1999 (n 70) 601–605; Bodansky 2011 (n 49) 73.

[119] Bodansky 1999 ibid 601.

[120] Dernbach and Cheever (n 53) 251.

[121] Jon Birger Skjærseth, Olav Schram Stokke, and Jørgen Wettestad, 'Soft Law, Hard Law, and Effective Implementation of International Environmental Norms' (2006) 6 (3) Global Environmental Politics 104–120, 104. See also for more details, Shelton, 'Soft Law' in David Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009); Gregory Shaffer and Marka A Pollack, 'Hard and Soft Law' in Jeffrey L Dunoff and Marka A

considers both the enactment of a law and nonbinding instruments.[122] Within the state's legal framework, SD may manifest in various ways, including recognition of the environmental rights in constitutions and laws, regulatory controls, policymaking, and the establishment of various doctrines such as the public trust doctrine.

The relationship between constitutional environmental rights and SD is vital, because these rights provide a legal framework to support environmental protection and sustainability. By recognising the right to a healthy environment, constitutions require the governments to safeguard natural resources, and empower citizens to hold the state accountable for environmental harm. This legal foundation ensures that natural resources are preserved for future generations while addressing present needs. Additionally, constitutional environmental rights foster public participation in development–related environmental concerns, enabling communities to influence decision–making. This participatory approach is crucial for SD, encouraging collaboration to address environmental challenges and promote responsible resource management.

The legislative approach of governments involves the cross–broader integration of SD within the legal framework and emphasizes the development agendas that foster collaboration between the government and society. Explicit legal provisions for SD are being increasingly integrated into the constitutions[123] and legislation worldwide, which reflect the global acknowledgment that environmental preservation is a universal challenge, irrespective of the state's economic and social levels of development. The legislature plays a central role in ensuring SD, which reflects its core state responsibility for both the short and long term. Preston noted that the state bears 'the obligation to protect' environmental rights and 'the obligation to fulfil' these rights by using 'legislative, administrative, financial' measures.[124] Within the 2030 Agenda, political endorsement and intervention are crucial for integrating the SDGs, as they promote justice,

---

Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2012); Sylvia Karlsson–Vinkhuyzen, 'Global Regulation Through a Diversity of Norms: Comparing Hard and Soft Law' in David Levi–Faur (ed), *Handbook on the Politics of Regulation* (Edward Elgar 2013); Andrew T Guzman and Timothy Meyer, 'Soft Law' in Eugene Kontorovich and Francesco Parisi (eds), *Economic Analysis of International Law* (Edward Elgar 2016) ch 5, 123–54.

[122] David G Victor, Kal Raustiala and Eugene B Skolnikoff (eds), '*The Implementation and Effectiveness of International Environmental Commitments* (MIT press 1998) 4.

[123] See e.g. (n 248) and (n 249).

[124] Preston 2024 (n 14) 171.

equality, nondiscriminatory decision–making, and uphold the rule of law[125]—all intertwined with the legal and institutional frameworks.

In dualist countries like India and Sri Lanka, where international treaties are not automatically incorporated into domestic law upon ratification, domestic laws must be enacted or amended to align with these treaties.[126] This process involves translating treaty obligations into specific legal provisions enforceable within the country's legal system. It requires coordination between the legislative body, executive agencies, and the judiciary to harmonise the domestic legal framework with international obligations, thereby fulfilling commitments under international law. However, countries may not always enact or revise domestic laws promptly to implement international agreements.[127]

Dernbach demonstrated the SD is difficult to achieve without a legal foundations, a critical issue that requires more attention to be addressed at the national level.[128] The foundation of the SD is 'integrated decision–making' seamlessly linking environmental considerations with the economic planning.[129] More specifically, Ross argued that 'legislation is needed' because 'legislation can make a significant and beneficial difference in how SD strategies are developed, implemented, and reviewed'.[130] Similarly, Allott emphasises the importance of law to enhance sustainability of the society by making laws in the past, applying them in the present, and shaping the future through them.[131] Laws offer the most straightforward pathway for translating the SD into actionable law and policy tools.

---

[125] Transforming our World (n 2) Declaration para 8.

[126] Sands and Peel (n 9) 147.

[127] Bodansky 2011 (n 49) 73.

[128] Dernbach, 'Navigating the U.S. Transition to Sustainability: Matching National Governance Challenges with Appropriate Legal Tools' (2008) 44 Tulsa Law Review 93–120 [Dernbach 2008].

[129]Dernbach, 'Achieving Sustainable Development: The Centrality and Multiple Facets of Integrated Decisionmaking' (2003) 10(1) Indiana Journal of Global Legal Studies 247–85, 248 [Dernbach 2003].

[130] Andrea Ross, 'It's Time to Get Serious – Why Legislation is Needed to Make Sustainable Development a Reality in the UK' (2010) 2 Sustainability 1101–127, 1101, 1110.

[131] Philip Allott, 'The Concept of International Law' (1991)10 European Journal of International Law 31–50, 32.

Effective implementation of international environmental law poses a fundamental challenge for states grappling with the imperative of economic development.[132] As nations strive for economic growth and improved living standards, they often face tensions between their development goals and environmental preservation. Balancing these priorities requires integrating environmental sustainability into economic policies. Beacuse SD consistently operates within the economic policy framework, often linking the environmental criteria, it '…is legally defined as developmental policy which does not harm the environment'.[133]

SD has been referred to in various national and subnational laws: although it may just have a symbolic meaning in legislation, it has appeared 'as duties, objectives, and procedural requirements' in some statutes.[134] Ross suggested that 'if a provision is to be more than simply symbolic, then ideally there should be some statutory (often formal) means to monitor and review compliance…'[135] It is common in South Asia to enact national environmental laws that indirectly address the SD concerns through diverse mechanisms like state tariffs, environmental license fees, permit fees, and emission test charges, aimed at financing environmental conservation efforts. The evolving environmental law is crucial for South Asia, as it empowers citizens to protect and preserve their national resources.[136] Its successful implementation relies on political support, the 'domestic capacity', and government engagement with law and policymaking mechanisms across all levels.[137]

---

[132] Smallwood (n 67) 'The 1992 UN Convention on Biological Diversity and Common Challenges to Implementation' 1–62, 53. This is observed in the SDGs as well. See, Bennich, Weitz, and Carlson (n 6), Barral (n 75); Rodrigo Goyannes Gusmão Caiado and others, 'A Literature–Based Review on Potentials and Constraints in the Implementation of the Sustainable Development Goals' (2018) 198 Journal of Cleaner Production 1276–88.

[133] Michael Decleris, The Law of Sustainable Development: General principles: A Report Produced for the European Commission (European Communities 2000) 46–47.

[134] Ross, 'Why Legislate for Sustainable Development? An Examination of Sustainable Development Provisions in UK and Scottish Statutes' (2008) 20 (1) Journal of Environmental Law 35–68, 35, 66. See also for examples of integrating SD in national legislation: Daniel Barstow Magraw and Lisa D Hawke, 'Sustainable Development' in Bodansky, Brunnée, and Hey (eds), (n 118) 627.

[135] Ross, ibid 68.

[136] Atapattu, 'The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North–South Divide' Shawkat Alam and others (eds), *International Environmental Law and Global South* (CUP 2015) 74–108, 74.

[137] Bodansky 2011 (n 49) 70; Smallwood (n 67) 170.

In some European countries, SD has become a pervasive concept that bridges the gap between economic and environmental considerations, alongside general environmental legislation and regulations. Several countries have demonstrated how to integrate SD into their environmental laws, which would drive modern economic development and offer valuable lessons for South Asia. For instance, Croatia's Environmental Protection Act (2007) and the Environment Basic Law (19/2014) in Portugal, promote SD by implementing appropriate environmental management measures. Responding to evolving trends, several countries have amended their existing SD laws. Belgium, for example, amended the Act of 5 May 1997, which established the federal policy on SD and institutional mechanisms, in 2010 to extend its long–term strategic vision. Similarly, Cyprus enacted Law 106/2022, which specifies sustainability criteria and reduces greenhouse gas emissions. The concept of SD is not new to US laws. It has been incorporated into the context of public land management since 2006.[138]

Particularly focusing on commercial activities, European countries enacted certain laws including the 'legitimized economic sanctions', which necessitate the formulation of 'climate transition plans' in their national regulations.[139] Violations of these regulations are met with sanctions, encouraging businesses to adopt sustainable practices. Similarly in Russia, economic sanctions on commercial businesses are perceived positively, fostering sustainability efforts, with amendments to laws originally enacted in 2012 being extended to 2030, thereby reinforcing the dedication to sustainable practices.[140]

Moreover, the transition from voluntary–based Corporate Social Responsibility (CSR), in which companies engage in social and environmental initiatives at their discretion, to mandatory legal standards has triggered a notable reaction among businesses in developing countries.[141] This shift has compelled companies to prioritise social and environmental considerations as integral

---

[138] National Park Service Organic Act 6 U.S.C. § 1 (2006) cited in Jerrold A Long, 'Sustainability Starts Locally: Untying the Hands of Local Governments to Create Sustainable Communities' (2010) 10 Wyoming Law Review 1–34, 8; Clean Air Act (1963) 42 USC § 7401 (a) 1, also reflects the notion of the SD.

[139] Ershov (n 1) 4.

[140] ibid 7, 9.

[141] Preston 2014 (n 14).

components of their operations, which has led to their heightened awareness of the impact of their activities on society and the environment.

In the realm of energy development, Germany enacted dedicated legislation: the Renewable Energy Sources Act (2008)[142] which promotes renewable energy sources, mitigates greenhouse gas emissions, and advances SD. Additionally, as of January 1, 2024, the implementation of the new German heating law, the Building Energy Act (GEG), mandates that all heating systems installed in new buildings must be powered by at least 65% by the renewable energy sources. The trend in powerful EU countries, along with EU regulations and public demand for renewable energy sources, motivates other states to enact renewable energy legislation.[143] It is noteworthy that none of the European countries mentioned have enacted specific legislation solely for SD. Instead, they have integrated SD into national environmental or commercial laws where necessary.

The relationship between the SDGs and the law is examined in various ways.[144] One question often addressed is the SDGs' legal status and its normative impact. To date, no major international instrument addressing SD, including the 2030 Agenda and the SDGs, exists in a binding form. The integration of the SDGs into domestic contexts is closely linked to legal frameworks.

Goal 16 has strong 'interlinkages' with other goals, serving as a 'political–institutional precondition,' particularly crucial for achieving economic development and poverty reduction.[145] Goal 16, which seeks to '…provide access to justice for all and build effective, accountable, and inclusive institutions at all levels,' inherently demands a robust legal infrastructure when other approaches fall short. Specifically, Section 16.3 highlights the importance of promoting the rule of law to 'ensure equal access to justice for all,' a goal firmly anchored in the legal domain.

---

[142] See Appendix 2.

[143] Sacha Kathuriya, 'Economic Choices Enabled by Environmental Law' in Junker (ed), (n 19) 177–200, 198.

[144] Kim (n 66); Fisher (n 66); Verschuuren (n 66); French and Kotzé (eds), (n 49); Werner Scoltz and Michelle Barnard, 'The Environment and the Sustainable Development Goals: "We are on Road to Nowhere"' in French and Kotzé (eds), (n 49) ch 10; Jonas Ebbesson and Ellen Hey (eds), *The Cambridge Handbook on the Sustainable Development Goals and International Law* (CUP 2022).

[145] Cameron Allen and others, 'The Role of Good Governance in Reducing Poverty and Inequality' in Anita Breuer and others (eds), (n 6) 30. See also, Biermann and others (n 7) 89 (Goal 16 is 'an integrated Goal').

Additionally, Section 16.6 calls on states to ‘develop effective, accountable, and transparent institutions at all levels,’ stressing the necessity of building the legal foundations for institutional mechanisms. Furthermore, Section 16. b requires states to ‘promote and enforce nondiscriminatory laws and policies for sustainable development’.

Currently, states have adopted different legal strategies to integrate the SDGs.[146] A few UN member countries: the Republic of Korea, Malta, and Canada have enacted specific SD laws (Appendix 1). The Republic of Korea and Malta amended their SD Acts to implement the SDGs. In 2019, the Government of Canada amended the FSDA to align with the SDGs. This is a rare example of the implementation of SD when Sri Lanka enacted new legislation in 2017, exclusively to implement the 2030 Agenda—SDA

Among these four countries, the Republic of Korea’s Constitution stands out by recognising SD in Article 2 and the enforceable right to a healthy environment in Article 35. Despite enacting the SDA in 2007, Korea faced a ‘bottleneck period’ from 2008 to 2015, where SD was narrowly interpreted as environmental conservation, rather than as a central development goal.[147] Subsequent laws redefined SD as the ‘harmonized growth of economy and environment,’ seen by some as a regression.[148] This lack of comprehensive understanding led to confusion and setbacks, particularly regarding the laws related to green growth that overshadowed SDA.

Caiado and others illustrated that the mechanism to implement the SDGs is intricate, given their broad coverage of the intangible development areas, which poses challenges to monitoring and evaluation.[149] Urgent action is urged to ‘rescue the SDGs’ and achieve significant progress by

---

[146] Institutional and Coordination Mechanisms (n 44); See also, Anita Breuer, Julia Leininger, and Daniele Malerba, ‘Governance Mechanisms for Coherent and Effective Implementation of the 2030 Agenda—A Cross–National Comparison of Government SDG Bodies’ in Anita Breuer and others (eds), (n 6) 59–67.

[147] Kyung Ryul Park and Young Shil Park, ‘Addressing Institutional Challenges in Sustainable Development Goals Implementation: Lessons from the Republic of Korea’ (2024) 32 Sustainable Development 1354–369, 1363.

[148] ibid. See for more details (n 111) and Appendix 1.

[149] Caiado and others (n 132). See also, Cameron Allen, Graciela Metternicht, and Thomas Wiedmann, ‘Prioritising SDG Targets: Assessing Baselines, Gaps and Interlinkages’ (2019) 14 Sustainability Science 42. See also, Haroon A Khan, *Globalization and the Challenges of Public Administration: Governance, Human Resources Management, Leadership, Ethics, E–Governance and Sustainability in the 21st Century* (1st edn, Springer 2018) 21; Ershov (n 1).

2030.[150] Korea overcame these challenges by moving from a single–ministry model for SD to a multistakeholder approach, involving various levels of government, civil society, and other stakeholders.[151] This shift toward an inclusive approach to SD, emphasises the need for an SD law that integrates all institutions to ensure effective enforcement.

A subsequent UN initiative reaffirmed the 2030 Agenda by adopting a resolution that recognised 'The human right to a clean, healthy, and sustainable environment.'[152] This represents a significant advancement in the legislative efforts, as it establishes SD as a fundamental right. Preston examined the resolution and highlighted the efforts of many states that have incorporated the 'right to a clean, healthy, and sustainable environment' into their 'national constitutions, legislation, laws, or policies.'[153] Preston further elaborated that the right to a healthy environment may be subdivided into six categories: the right to— 'clean air, a safe climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and a nontoxic environment.[154] This categorisation showcases the rapid development of the legal approach to the concept of SD as the 'right to sustainable development'. The right to a healthy environment is also recognised by SDG 16, which underscores that this right should be accessible and enjoyed by both present and future generations.

Integration of SD into Institutional Mechanisms

The most common approach among the states is to integrate SD into the existing institutional mechanisms with all the necessary redesigns under national legal frameworks through the high–level political leadership such as the inter–ministerial committees.[155] This is something may be predicted because the implementation of the SDGs is voluntary; states are not required to enact

---

[150] Prajal Pradhan, 'A Threefold Approach to Rescue the 2030 Agenda from Failing' (2023) 10 (7) National Science Review 1–3. See also, United Nations, *The Sustainable Development Goals Report 2022* (UN 2022) 3.

[151] Park and Park (n 147) 1355.

[152] United Nations, *The Human Right to a Clean, Healthy and Sustainable Environment*, 28 July 2022 UN Doc. A/RES/76/300, 1–3.

[153] Preston 2024 (n 14) 165.

[154] ibid.

[155] Institutional and Coordination Mechanisms (n 44) 11.

new laws or amend the existing laws to implement the SDGs.[156] The countries promoted using one central unit, the 'National Councils on Sustainable Development', to coordinate the stakeholders in their efforts to integrate and monitor the SD strategies.[157]

Countries that follow this strategy have no specific laws on SD, even though they may have environmental laws related to SD in various forms, such as symbolic meanings or legal requirements. These countries constitute only a portion of the UN member states, yet demonstrate some institutional mechanisms that operate within their existing legal frameworks (Appendix 2). For instance, Germany and Indonesia adopted their existing institutional mechanisms, whereas other countries established new ones to implement their SDGs with high–level political leadership. Notably, Belgium and Thailand have explicit constitutional provisions for SD, but they solely rely on their institutional mechanisms to implement the SDGs without enacting specific laws.

A question arises: Why have so few UN members enacted specific legislation for SD? Dernbach expalined that achieving SD without a legal framework is challenging; however, establishing the appropriate legal foundations for SD at the national level has not received sufficient attention.[158] We can imagine that using the existing institutional frameworks to implement the SDG agenda gears the nation for a fast achievement of their goals and that legislative actions through parliamentary procedures are time–consuming in any legal system. Although the 2030 Agenda is nonbinding, meaning there is no subsequent ratification process, and governments are not obligated by law to formally integrate the goals into their national legal frameworks. At the same time, international law may remain nonbinding at the international level but become binding in its internal forms as state practice.[159]

---

[156] Transforming our World (n 2) paras 72, 74. See also, Godwell Nhamo and Vuyo Mjimba, 'Scaling Up SDGs Implementation: Down the Road to Fast Approaching 2030' in Godwell Nhamo, Gbadebo OA Odularu and Vuyo Mjimba (eds), *Scaling up SDGs Implementation—Emerging Cases from State, Development and Private Sectors* (Springer 2020) 3–19, 9–13.

[157] Institutional and Coordination Mechanisms (n 44) 7: At the 1992 Earth Summit in Rio de Janeiro, UN member countries adopted SD as an overarching goal and agreed to formulate their own 'National Sustainable Development Strategies' integrating the economic, social, and environmental aspects.

[158] Dernbach 2008 (n 128) 94.

[159] Shelton (n 121) 17; Birnie, Boyle, and Redgwell (n 50) 127.

An alternative explanation is that under the 2030 Agenda and SDGs, states are required to submit VNR to the HLPF, adhering to the UN oversight mechanism.[160] This process allows UN member countries to evaluate the current progress made in achieving the SDGs. Because the VNR process is voluntary, some states may not perceive a need to enact national SD legislation, as the UN's follow–up and review mechanisms are in place. Thus, it is not surprising that only a few countries have amended or enacted specific legislation for the 2030 Agenda.

The VNR process is praised as 'robust, effective, participatory, transparent, and integrated'—therefore some states may not feel the necessity to enact national SD legislation.[161] Conversely, Smallwood argued that the legal approach may facilitate the implementation of the 2030 Agenda, given the unsatisfactory outcomes achieved thus far through the UN oversaw mechanism.

> The SDG voluntary review process is designed to be 'robust, transparent, and participatory'. The reporting and review system, as it stands, is limited in developing a practice of legality, as the system is voluntary, reports lack uniformity, and member States are not clear on how reviews should be organised or the methods used… Revisiting and reinforcing international environmental obligations is key to achieve interactive *environmental and SD* law yet often difficult to achieve *SDGs* due to the need for global consensus to agree compliance and accountability mechanisms.[162]

Even before the emergence of SDGs, the literature on SD has already pointed out the importance of creating institutional mechanisms. Ross underscored the importance of institutional mechanisms for SDG implementation.[163] Furthermore, we can recall Tarlock's observation that

[160] Transforming our World (n 2) paras 79, 84: The UN updates guidelines and sets a deadline for the final VNR report and presentation. Countries are expected to share the key findings, including best practices, challenges, and areas requiring support and advice, see, United Nations, Department of Economic and Social Affairs, *Handbook for the Preparation of Voluntary National Reviews: 2024 Edition* (UN 2024).

[161] Nhamo and Mjimba (n 156) 9–10.

[162] Smallwood (n 67) 203 (emphasis added).

[163] Ross (n 130) 1101, 1110.

'Law can give the concept of SD legitimacy…' [164] Scholars generally echo Tarlock's concern about SD as 'ideas without institutions'.[165]

After the adoption of the 2030 Agenda, it is even more important that 'institutional and legal frameworks embody the integrated, cross–cutting nature of the 2030 Agenda at all levels of government'.[166] Similarly, many SDG review reports have been issued by the UN. Several reports have noted that institutional infrastructure plays a decisive role in its implementation. For example, the 2018 UN World Public Sector Report highlights that a national–level institutional framework is essential for achieving the SDGs.[167]

Simultaneously, the SDGs transitions from purely political commitments to legally significant obligations when aligned with established norms of international law. In essence, there exists the potential for genuine 'cross–fertilization', where a global legal framework and global environmental policy mutually reinforce each other.[168] The expansion of the SDGs encompasses a significantly broader range of issues, revealing additional challenges to the process. Consequently, it is crucial to assess whether the SDGs can indeed facilitate long–term SD through domestic legal implementation.

Because nonbinding instruments such as SDGs and domestic law related to SD involve the same institutional mechanisms within a state, it is important to briefly discuss the significance of nonbinding instruments.[169] First, states may opt for normative forms because of domestic political opposition, capacity constraints, uncertainty about measurability, or disagreement with the

---

[164] Tarlock (n 64).

[165] Dernbach 2002 (n 65) 108.

[166] Pytrik Dieuwke Oosterhof, *Localizing the Sustainable Development Goals to Accelerate Implementation of the 2030 Agenda for Sustainable Development: The Current State of Play of Sustainable Development Goal Localization in Asia and the Pacific* (ADB 2018, 33) 10.

[167] United Nations, *Working Together: Integration, Institutions, and the Sustainable Development Goals: World Public Sector Report* (UN Department of Economic and Social Affairs, ST/ESA/PAD/SER.E/200, 2018) iv.

[168] Otto Spijkers, 'The Cross–fertilization between the Sustainable Development Goals and International Water Law' (2016) 25 (1) Review of European Comparative and International Environmental Law 39–49.

[169] See discussions on national integration of non–binding norms: Hunter, Salzman, and Zaelke (n 9) ch 7; Bodansky, Brunnée, and Hey (eds), (n 118) chaps. 42,43,45**;** Bodansky 2010 (n 48) ch 11; Birnie, Boyle, and Redgwell (n 50) ch 4; Smallwood (n 67) 'Compliance and Accountability for International Environmental Law and Policy' ch 5; Shelton, 'Introduction: Law, Non–Law and the Problem of "Soft Law"' in Shelton (ed), (n 9) 13–17, 5; Sands and others (eds), *Principles of International Environmental Law* (3rd edn, OUP 2015) ch 5: citing, Sands (n 71).

proposed norms.[170] Normative forms are suitable for 'incorporating country–specific actions,' better accommodating the subject matter than traditional legally binding instruments[171] influence state, institutional, and social behavior setting social standards.[172]

Second, states may prefer nonbinding instruments as they offer more flexibility, lower the costs, and procedural efficiency compared to making hard laws.[173] During negotiations, there is no need to produce legal evidence, which verification and review processes typically require.[174] Nonbinding instruments offer dispute settlement mechanisms for transboundary environmental issues, providing an alternative to court actions.[175] Laws operate more independently with less political intervention and are subject to judicial control only. States may prefer a nonlegal approach to avoid judicial oversight and sanctions. Implementing environmental–related binding norms, contributes to the development of laws[176] and enhances compliance by shaping the behavior of target groups.

Criticism of nonbinding instruments has pushed states to adopt laws to implement SD. The primary criticism is that the national implementation is 'extraordinarily complex,' with no uniform patterns to apply international commitments.[177] SD is a complex system interconnecting multisectoral economic, social, and environmental issues, which makes it for implementation using a single approach[178]. Another criticism is the tendency to prioritise economic development over environmental concerns. Scholars argue that international environmental law often

---

[170] Shelton (n 121) 11.

[171] Alexandre Kiss, 'Commentary and Conclusions' in Shelton (ed), (n 9) 238.

[172] Bodansky 2011 (n 49) 89; Smallwood (n 67) 4.

[173] Skjærseth, Stokke, and Wettestad (n 121) 118.

[174] ibid.

[175] Charney (n 9); Giupponi (n 9).

[176] Skjærseth, Stokke, and Wettestad (n 121) 105; Segger and Weeramantry (eds), (n 9) 105.

[177] Charney (n 9) 3; Ashwina Mahanti and David Manuel–Navarrete, 'From Sustainable Development to Governance for Sustainability' in Michael Redclift and Delyse Springett (eds), *Routledge International Handbook of Sustainable Development* (Routledge 2015) 419.

[178] Sachs (n 1) 7, 8.

legitimises environmental harm and weakens SD efforts, increasing negative social and environmental impacts from trade and investment agreements in developing countries.[179]

International legal scholars view the law and nonbinding norms spectrum as a continuum. Despite criticism of the SD concept's vagueness, SD has matured 'into an umbrella term encompassing both substantive and procedural' components principally on 'international legal instruments' for SD.[180] Some treaty texts, though classified as laws, are often vague, while non–binding instruments can have strong normative impacts. Despite being non–binding, such soft norms represent international commitments, exemplified by the 1992 Rio Declaration.[181] Thus, the 2030 Agenda and the SDGs were introduced as nonbinding instruments for national legal frameworks. SDG 16, as an integrative goal, aims to establish the rule of law within states, emphasising the legislative foundation of SD.

The theoretical foundations in this section is used to analyse the case study in Chapter 3. The integration of SD into Sri Lanka's newly enacted SDA is a key example of lawmaking with a dedicated institutional mechanism. Constitutional and legislative provisions are essential for embedding the nonlegal SD concept into the national legal systems. Chapter 3 examines the integration of SDGs in Sri Lanka's SDA and Canada's FSDA. The structural similarities between these laws are discussed. Next, it examines how Sri Lanka's SDG implementation in the institutional mechanism diverged from the SDA. Finally, it analyses the reasons for the legal gaps using the insights from the FSDA.

---

[179] Kotzé (n 70); Adelman (n 49); Marie–Claire Cordonier Segger, 'Policy and "Soft Law" Rationales for Addressing Social and Environmental Concerns in Trade and Investment Treaties' in *Crafting Trade and Investment Accords for Sustainable Development: Athena's Treaties* (OUP 2021) ch 9, 98; James Harrison, 'Significant International Environmental Law Developments: 2021–22' (2022) 34 (3) Journal of Environmental Law 499–515.

[180] Atapattu (n 92) 651.

[181] Alan Boyle, 'Soft Law' in Rajamani and Peel (eds), (n 9) 420.

2.2 Integration of SD by Judiciary

Judicial integration of SD occurs through three key avenues. The first is the Supreme Court's constitutional obligation to provide advisory opinions on legislation. Courts assist the government in adopting international treaties and agreements by interpreting draft bills referred to them, ensuring legislative alignment with constitutional principles. This process may require the legislature to seek court opinion before passing laws to prevent constitutional inconsistencies.

Second, once constitutions, statutes, and regulations are enacted, the courts interpret them in reactive cases to ensure environmental compliance. This interpretative function is crucial, as courts consider case law precedents and contemporarily develop SD. Because enacted laws often do not address all the legal issues, especially in the still evolving field of environmental matters and SD, the courts clarify their meanings in specific cases. Environmental issues heard in lower courts, such as land disputes, forest encroachment, and mining concerns, often proceed to higher courts on appeal. For instance, in Sri Lanka, public and private nuisances, typically handled by lower courts (mostly Magistrate Courts), may result in penalties, fines, or compensation under relevant sectoral laws.[182]

Third, the Supreme Court's interpretative role addresses environmental issues under the constitutional provisions of direct or indirect environmental rights, raised by individuals or NGOs through PIL. These cases target government entities for failing to enforce certain laws and address institutional deficiencies, thus violating citizens' social, environmental, and economic rights. Courts interpret domestic laws, compel authorities to fulfil their statutory duties, and order compensation for environmental damages. The Supreme Court's rulings are final, conclusive, and binding, with no opportunity for appeal.

This thesis examines the prominent and intriguing role of the courts, which is related to the third role mentioned above, specifically their innovative lawmaking function in PILs which is

---

[182] Sectoral laws cover subjects such as pollution control, wildlife protection, agricultural resources, plant protection, forests, and protected areas, fisheries, marine and coastal issues, and cultural and natural heritage (e.g., Fauna and Flora Protection Ordinance 1937, The Coast Conservation Act No. 57 of 1981). NEA serves as the umbrella law, providing an overarching framework for environmental protection. For public nuisances, NEA, s 98 empowers a Magistrate to issue a conditional order to address a nuisance under specific circumstances. See for the list of sectoral laws: Rashid Hasan (ed), *Handbook on National Environmental Legislation and Institutions in South Asia* (South Asia Cooperation For Environment Programme 2002) xxxi–ii < http://www.sacep.org/pdf/Reports-Technical/2002-UNEP-SACEP-Law-Handbook-for-South-Asia.pdf> accessed 30 September 2024.

often initiated by NGOs against environmental harms caused by foreign development projects. When the existing laws do not cover such legal issues, judges adopt international environmental laws and case laws from similar jurisdictions to justify their decisions through legal transplantation. This process creates judge–made laws by interpreting existing laws to fill legal voids. The judiciary's interpretation of SD in lawsuits has translated it into a 'more concrete legal principle', which is now widely practiced.[183]

Transplanting SD through PIL

The judiciary plays a prominent role in legal transplantation, particularly in expanding environmental litigation in Asia including South Asia through adopting foreign legal principles.[184] Although the legislatures typically lead legal transplantation during the transitional phases of the development of the domestic legal systems because of colonisation, [185] and globalisation across Asia[186] and South Asia,[187] courts often handle legal transplantation integrating SD through environmental PIL related to development projects and public concerns.

---

183 Verschuuren (n 47) 243.

184 Jiunn–rong Yeh and Wen–Chen Chang (eds), *Asian Courts in Context* (CUP 2015) 7–8.

185 Throughout the British colonial period, a multitude of laws were enacted to govern various aspects such as civil and criminal procedures, contracts, the sale of goods, partnerships, and succession in India and Sri Lanka, see Graziadei (n 29) 452; Jean–Louis Halpérin, 'Western Legal Transplants and India' (2010) 2 (1) Jindal Global Law Review 14–40. Colonial rule was the main driver of legal transplantation in Asia, especially in former British and European colonies, see Mousourakis (n 23) and Allison (n 24); Antons (n 88) 4 (Countries like Japan and Thailand, which were never colonised, voluntarily adopted Western laws).

186 Ido Baum, 'Legal Transplants v. Transnational Law: Lessons From the Israeli Adoption of Public Factors in Forum Non Conveniens' (2015) 40 (2) Brooklyn Journal of International Law 358–406; Giulia Terranova, 'The Transplant of Trusts in Different Legal Jurisdictions: The Example of China' (2020) 2 (3) Global Jurist 1–12; Hasyim Sofyan Lahilote, 'Legal Transplant in the Substance of the Authority of Religious Courts in Indonesia' (2020) 93 Journal of Law, Policy and Globalization 135–42; Matthew S Erie and Do Hai Ha, 'Law and Development Minus Legal Transplants: The Example of China in Vietnam' (2021) 8 (2) Asian Journal of Law and Society 372–401; LE Thi Kim Oanh, 'Adjustment of Domestic Legal Formants as a Solution for Implementing Transplanted Law in Vietnam: A Case of the Principle of Changed Circumstances' (2023) 299 J Stage 19–43; Graziadei (n 29) 453 (extensive legal transplantation through legislation was pivotal in Japan's evolution in the latter half of the nineteenth century as it embraced Western influence).

187 Gillespie (n 30) 662.

Two clarifications are helpful on this point. First, this study focuses on the legal norms transposed through PIL, highlighting the innovative role of the South Asian courts. These courts have developed alternative methods to traditional legal transplantation (by the legislature) by adopting judicial decisions to integrate SD legal norms from similar jurisdictions, and international environmental law. The innovative role of the Sri Lankan courts, which have advanced SD through legal transplantation a few decades before the legislative enactment of the SDA in 2017.

More than two decades ago, in 2000, in the landmark *Eppawela* case (detailed in Chapter 4), the Supreme Court adopted principles from the Rio Declaration and the Stockholm Declaration, integrating nonbinding international environmental norms into binding law to integrate SD. The decision referenced similar cases from India and other countries, emphasising the government's responsibility for managing natural resources. In *Sugathapala Mendis and another v Chandrika Kumaratunge and Others* (2008),[188] the Supreme Court for first time reinterpreted the President's constitutional immunity, asserting that public purpose takes precedence over unlimited executive power in utilising the land for development. Citing the *Eppawela* case, the court underscored that public power must be exercised for the people's benefit, long–term SD, and following the Rule of Law, highlighting the significance of wetlands in environmental conservation, drawing on several Indian precedents.[189]

Second, this study differentiates the concept of legal transplantation from common cross–citations in judgments between the courts of different jurisdictions. The judicial exchange of ideas is generally encouraged, and reference to foreign judgments in courts boosts domestic environmental law. However, there remains a question of how 'transplanting' a law differs from the terminology—citation, reference, applying—used to describe the cross–citation of foreign judgments. Cross–citations do not constitute transplantation unless they create a new legal norm domestically.[190] While the existing literature may treat the citation of a foreign judgment as a 'reference,' this study postulates that it only falls under legal transplantation when it creates new

---

[188] [2008] 2 SRI. LR 339 also known as *Waters Edge* case SCFR 352/07.

[189] ibid 355, 361, 363, 387.

[190] Asif Efrat, 'Introduction' in *Intolerant Justice: Conflict and Cooperation on Transnational Litigation* (OUP 2023) 6–7.

legal norms that fill domestic legal voids.[191] In simple terms, legal transplantation is different from just citing foreign case laws in judgments because it involves creating new legal norms to address gaps in the domestic law.

In exploring the role of South Asian courts in legal transplantation, it is more important to highlight the rationales and motivations of the courts as follows: Why do South Asian courts engage in transplantation in environmental litigation? In this context, two rationales can be highlighted. The first rationale is that adopting exogenous judgments in their domestic environmental litigation is 'justification'.[192] When courts are confronted with legal issues beyond the scope of the existing laws and judicial precedents, judges justify their decisions by referring to similar cases in similar jurisdictions.[193]

With the doctrine of precedent (stare decisis) in South Asian courts, adopting foreign judgments creates new rules of existing decisions, thus accounting for legal transplantation.[194] In other words, when courts encounter gaps in domestic law—possibly due to outdated legal systems that cannot address the dynamics of SD and environmental issues—they may rely on foreign judgments. The use of these external judgments helps to create rules for domestic enforcement rules that transcend state boundaries and account for transnational laws.

Thus, transplanted from the common law practice during British colonial rule,[195] South Asian courts utilise stare decisis to ensure the contemporary development of SD. Additionally, the common law transplantation process facilitated the adoption and assimilation of various legal elements into the legal systems, of India, Malaysia, Sri Lanka, and others. Over time, these legal systems have evolved, blending English common law with local customs, traditions, and legal principles, thereby creating unique hybrid legal systems in each jurisdiction.

Furthermore, globalisation and world trade have increased the trend for South Asian courts to refer to foreign judicial decisions, highlighting the intensification of environmental disputes in

---

[191] Martin Gelter and Mathias M Siems 'Citations to Foreign Courts—Illegitimate and Superfluous, or Unavoidable? Evidence from Europe' (2014) 62(1) American Journal of Comparative Law 35–85, 36–39.

[192] Mousourakis (n 23); Gelter and Siems ibid 39; Smits (n 87) 518.

[193] Mousourakis ibid 182.

[194] ibid 170; Yeh and Chang (n 184) 46.

[195] Graziadei (n 29) 451.

economic activities[196] and raising the profile of the transnational law.[197] Preston noted that there are no boundaries between courts when it comes to addressing environmental issues.

> …environmental problems are inter–disciplinary, they are inter–jurisdictional…the impediments *on implementation of the law* might have different salience and sagacity in different jurisdictions, but their incidence is universal. Examples can be drawn from a range of jurisdictions…' in both the Global North and the Global South, rich and poor countries.[198]

Mattei suggests that the adoption of foreign legal rules often arises from a competitive dynamic, with each legal system offering distinct solutions to address specific issues.[199] Furthermore, within a specific legal framework, efficiency is defined as anything that enhances the functionality of the legal system by reducing the expenses of the transactions.[200] When evaluating its merits, one argument posits that legal transplants frequently contribute to the advancement of the effective legal institutions.[201] This suggests that legal transplantation directs institutional modification by eliminating outmoded mechanisms and procedures.

The second rationale is to blend foreign laws with indigenous cultural practices, resulting in innovative judgments, and creating new legal norms that fill domestic legal voids.[202] Graziadei stressed the necessity for foreign elements to be assimilated by presenting them in familiar forms such as referring to indigenous precedents or local practices strategically rendering unfamiliar and

---

[196] Yeh and Chang (n 184) 7–11.

[197] Cohn (n 24) 428.

[198] Preston 2024 (n 14) 161 (emphasis added).

[199] Mousourakis (n 23) cited, Ugo Mattei, 'Efficiency in Legal Transplants: An Essay in Comparative Law and Economics' (1994) 14(1) International Review of Law and Economics 3–19. See also, Ugo Mattei and Francesco Pulitini, 'A Competitive Model of Legal Rules' in Albert Breton and others (eds), *The Competitive State* (Springer 1991) 207–19.

[200] Mattei 1994 ibid.

[201] Graziadei (n 29) 461.

[202] Yeh and Chang (n 184) 7–8; Antons (n 88) 19 (Asian environmental policies are rooted in indigenous knowledge and values).

innovative concepts as familiar and customary.[203] Indigenous laws apply in the courts of Singapore, Malaysia, Bangladesh, Indonesia, China and Vietnam.[204] For example, 'dispute resolution' is an inherited function of Asian Courts that was not present in Western courts.[205] Another example is the public trust doctrine,[206] a fundamental legal principle used by South Asia and worldwide courts to hold the state accountable for environmental resources and 'sustainability'[207].

Hunter and others argued that culture and social norms serve as potent disciplinary mechanisms that shape behavior, even in the absence of laws, and significantly influence the creation of regulatory laws.[208] International environmental principles, as reflected in South Asian judicial decisions, are blended with the indigenous social norm of 'harmony in society' and harmony with nature.[209] These national courts are 'best positioned to interpret and apply international environmental norms in decisions' highlighting 'how domestic institutional capacity affects the international norm circulation and contestation'.[210] Similarly, the impact of ancient religious policies is reflected in the functions of some Asian courts.[211]

Furthermore, the Asian court's reference to foreign judgments is described as 'judicial transnationalization'.[212] The 'cross–citation of foreign judgments by national courts' and constitutional provisions facilitating environmental and climate adjudications are explained as one

---

[203] Graziadei (n 29) 463.

[204] Allison (n 24) 46.

[205] Yeh and Chang (n 184) 10–11.

[206] See (n 20).

[207] In this thesis, 'sustainability' refers to the status of SD within countries. Unlike SD, 'sustainability' has emerged more recently, shaped by global consensus on climate change, systemic financial and economic crises, rapid socio-economic transformations, and the pervasive influence of neoliberal discourse: Mahanti and Manuel–Navarrete (n 177) 417.

[208] Hunter, Salzman and Zaelke (eds), (n 9) 102–104. See also, Husa (n 29) 129–50.

[209] Yeh and Chang (eds), (n 184) 5, 53–55; Mark A Drumbl, 'Actors and Law–making in International Environmental Law' in Malgosia Fitzmaurice and others (eds), *Research Handbook on International Environmental Law* (Edward Elgar 2010) 3–25, 4,9; See for Buddhist philosophy on harmony with nature: Borowy (n 48) 24.

[210] Angstadt (n 45) 322, 328.

[211] Yeh and Chang (eds), (n 184) 54–55 (In Indonesia, Malaysia, and Bangladesh customary laws are valid as part of the law. Indonesia, Malaysia, Singapore, Philippines have religious courts while India and Bangladesh recognise religious personal laws).

[212] Geetanjali Ganguly, 'Judicial Transnationalization' in Heyvaert and Duvic–Paoli (eds), (n 38) 302, 317.

of the processes of 'judicial transnationalization'.[213] Moreover, transnational litigation is far defined as a '…legal process before a domestic court involving a foreign element' in varying forms such as similar '…events, activities, or situations that occurred in a foreign country', 'involving foreign parties', and 'application of foreign judgments' or laws.[214]

Moreover, contemporary legal systems do not disregard the cultural and social contexts where they operate, particularly when adopting 'transnational legal resources', the unique characteristics of a particular jurisdiction should not impede the adoption of the laws from other systems.[215] As Smits illustrated, foreign laws can serve as normative arguments for adopting specific solutions.[216] In these cases, foreign laws directly influence, guiding adapting based on successful solutions elsewhere. This influence is often indirect, focusing on the reasoning behind foreign laws rather than their direct adoption.

This indirect influence is seen in South Asia, where some multinational companies can exert influence on the regulatory conditions in developing countries and shape the environmental compliances to suit their interests in investment projects. Their bargaining power in negotiating contractual conditions has regulatory implications in developing countries. This can lead to the adoption of legal provisions that align with the interests of these companies, potentially influencing the overall regulatory environment. Additionally, mechanisms such as dispute resolution processes related to investment contracts play a role in transplanting legal norms and standards.

Building on Watson's original idea, the literature has explored the phenomenon of legal transplantation, focusing on its concept and mechanisms. Watson's original idea is also helpful for judges to engage in legal transplantation by adopting foreign judgments within highly customised domestic contexts.

> [S]uccessful legal borrowing could be made from a very different legal system, even from one at a much higher level of development and of a different political complexion. What, in my opinion, the law reformer

[213] ibid 302.

[214] Efrat (n 190) 5.

[215] Smits (n 87).

[216] ibid.

> should be after in looking at foreign systems was an idea which could be transformed into part of the law of his country.[217]

The rationale for judicial involvement in legal transplantation is expanded to include the participation of diverse actors in addressing the current environmental crisis through environmental litigation. The role of NGOs in PIL also falls within this scope, encompassing a wide range of transboundary flows of legal information. Legal principles can be transmitted not only through formal adoption by states but also through informal channels, in 'nonstate channels, 'transnational expert networks', 'dispute resolution, good governance, the rule of law' and the 'bargaining power' of multinational companies for 'contractual conditions' with regulating impact in developing countries.[218] These nonstate channels of legal influence include transnational expert networks, which facilitate the exchange of legal knowledge and practices across borders.

NGOs take their role in PIL shaping international environmental law, including current climate change and green economy movements, which are driving notable legal changes across various jurisdictions. Their active role in bringing environmental matters before courts also induces new legal norms in these decisions that support legal transplantation. One compelling example of this phenomenon is the use of new legal norms as indicators to evaluate a state's performance in addressing environmental pollution, safeguarding citizens' rights against unsustainable foreign investments, and fostering business–friendly environments conducive to SD.

Connecting PIL with society is mostly is intrinsically linked with the phenomenon of courts engaging in legal transplantation, and expanding transnational environmental litigation.[219] As effects of environmental issues transcend national borders, courts increasingly find themselves confronted with complex legal challenges that require drawing from legal principles and precedents established in other jurisdictions. This is justified in Husa's view '… legal transplants

---

[217] John W Cairns, 'Watson, Walton, and the History of Legal Transplants' (2013) 41 Georgia Journal of International & Comparative Law 637–96, 646 cited, Alan Watson, 'Legal Transplants and Law Reform' 92 L.Q.R. 79 (1976).

[218] Mathias W Reimann, 'A Bottom–Up View of Legal Transplants' (2020) 68 (3) The American Journal of Comparative Law 689–94, 692. See also, Toby S Goldbach, 'Why Legal Transplants?' (2019) 15 (1) Annual Review of Law and Social Science 583–601, 589–90, 595; Cohn (n 24) 436.

[219] Yeh and Chang (eds), (n 184) 7, 8, 41.

break the idea of the nationality of law and its bond to a particular system by pointing out the reciprocal relations that cross these national restrictions'.[220]

The issues and difficulties of legal transplantation and ways to minimise negative effects are focused on. The leading argument revolves around the contextual differences between the two countries. Despite legal transplantation providing cost–effective technical assistance to revamp the legal system through 'legal modernisation' or 'institutional reform',[221] the issues and difficulties of using foreign models mainly on the different social, political, and cultural aspects. The success depends on the context between the two countries such as 'nature and the principle of the government, its location and extent' and the people's lifestyle.[222] Mousourakis points to 'transplant bias,' which undermines transplantation's benefits, shaped by political, economic, and linguistic barriers.[223] If these contextual differences are neglected, they may lead to the rejection of the transplanted laws or create unexpected issues, undermining the effectiveness of legal transplantation.

Another criticism is that judicial transplantation being discretionary, may infringe on the citizens' rights, and impose foreign laws without democratic representation. 'Too much discretion' of the judge to adopt foreign judgments against the 'socio–cultural context' may undermine the state laws and indigenous norms.[224] Graziadei argued that legal transplants are flawed because only superficial elements get transferred between jurisdictions, which often amounts to empty phrases.[225] To prevent the legal transplants from disrupting the domestic systems,[226] rather than direct copying.

---

[220] Husa (n 29) 135.

[221] ibid 129.

[222] Allison (n 24) 13; Graziadei (n 29) 453; Carins (n 217) 645 cited Otto Kahn–Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 (1) Modern Law Review 27.

[223] Mousourakis (n 23) 185.

[224] ibid. See also, Hans Petter Graver, *Judges Against Justice: On Judges When the Rule of Law is Under Attack* (Springer 2015) 1–3.

[225] Graziadei (n 29) 457.

[226] Gunther Teubner, 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences' (1998) 61 (1) The Modern Law Review 11. See also, Nelken (n 33) 15.

Despite these criticisms, judicial transplantation is considered safer, when the judges carefully evaluate foreign laws.[227] Markesinis and Fedtke argued that courts adapt legal transplants dynamically to align with global changes.[228] This is evident because domestic courts often serve as transnational bodies not only in cross–border environmental cases but also in various legal subjects.[229]

Nexus Between the SD and PIL

Environmental litigation in South Asian jurisdictions often takes the form of PIL.[230] Legal transplantation in South Asian courts is frequently associated with PIL, especially concerning environmental harms in development projects.[231] PIL has emerged as a prominent recourse because of weak regulatory enforcement, even in rapidly industrialising Asian nations to address environmental pollution issues.[232] In the absence of specific SD legislation, the South Asian courts have proactively introduced and established the concept of SD through PIL, integrating international laws with the indigenous norms. The PIL also serves as a critical support structure for the judicial branch of the government, effectively enforcing environmental policies. A successful PIL is expected to enhance legal certainty from the state's perspective.

PIL is a collective approach to protecting the environment and livelihoods, especially when harmed by investment projects. This approach, representing the best interests for present and future

---

[227] Mousourakis (n 23) 185.

[228] Markesinis and Fedtke (n 99) 307.

[229] Asian Courts' legal transplantation can also be observed in other areas of domestic law. e.g Thailand's criminal laws, based on English legal traditions, have faced uncertainties, later addressed by the Supreme Court: Lasse Schuldt, 'Driving Irritation: Thailand's Supreme Court and the English Roots of Corporate Criminal Liability' (2024) 19 (1) Asian Journal of Comparative Law 142–58.

[230] See (n 41); Angstadt (n 45); Atapattu and Puvimanasinghe (n 11); Konasinghe (n 76).

[231] Yeh and Chang (n 184) 41; Mrinalini Shinde and Tsegai Berhane Ghebretekle, 'Public Participation' in Junker (ed), (n 19) 161; Rajamani (n 18) 294. See also, Holladay (n 18).

[232] Alex Wang, 'Environmental Courts and Public Interest Litigation in China' (2010) 43 (6) Chinese Law and Government 4–17; Lesley K McAllister, Benjamin van Rooij, and Robert A Kagan, 'Reorienting Regulation: Pollution Enforcement in Industrializing Countries' in Krämer L (ed), *Enforcement of Environmental Law* (Edward Elgar 2016)100–12, (Reprinted from 'Reorienting Regulation: Pollution Enforcement in Industrializing Countries' (2010) 32(1) Law & Policy 1–13).

generations, has a scholarly foundation and, is seen as a successful method to integrate SD. Weeramantry J demonstrated that traditional societies in India and Sri Lanka, where groups of people who worked for common rights, promoted SD more effectively than the Western–inherited concept of 'individualism' in international environmental law.[233] The indigenous focus on community rights has contributed to the establishment of PIL in South Asia, which reflects the region's collective approach to addressing environmental and social justice issues.

PIL serves as a channel for claimants to assert their environmental rights, seek compensation for ecological damage, and resolve environmental disputes. In South Asia, PILs are often filed against investment projects for both causing environmental harm and violating the victims' rights by breaching environmental laws and regulations. In such a PIL, courts often adopt principles such as the PPP, the precautionary principle, SD, and the doctrine of public trust to address domestic legal voids. This plays a pivotal role in shaping international environmental law through transnational insights and promoting SD.

Junker and Farah demonstrated that '[T]he globalization of environmental law that is currently under formation in the Global South addresses the integration of the ecological and economic components by analysing the contribution of emerging and developing economies'.[234] Through proactive involvement, environmental law is being assertively shaped, advanced, and furthered. Given the South Asian developing countries' reliance on foreign investment projects, investors must recognise their responsibility for environmental conservation, understand the cultural livelihoods of local communities, and address procedural flaws by learning from numerous case decisions reported in Asia and elswhere.

Analysing PIL from the SD and investment perspectives is crucial, as a country like Sri Lanka must balance the economic targets, heavily reliant on foreign investments, with environmental concerns. International environmental law has failed to address the unfair contract conditions imposed by investors, which violate human rights and lead to the 'immediate exploitation of common resources at the expense of poor countries, vulnerable groups, and future

---

[233] Weeramantry (n 46) 119, 123.

[234] Kirk W Junker and Paolo Davide Farah (eds), 'Introduction' in *Globalization, Environmental Law, and Sustainable Development in the Global South* (Routledge 2021) 1–14, 2.

generations'.[235] The issue has become increasingly central to international law. PIL has resulted in sanctions for violators, including popular multinational companies, which has caused premature termination of some investment projects. The investors are also required to comply with domestic environmental regulations.

In this respect, some argue that SD, when linked to environmental legal sanctions, may inadvertently facilitate environmental destruction rather than protection.[236] This claim indirectly permits environmental harm equivalent to the sanctions, which fail to rehabilitate the damaged environment. Similarly, a lack of environmental management may result in environmental harm and economic losses caused by neglecting development projects, which emphasis the importance of enforcing environmental litigation. '[T]his means that the striving for sustainable development, as a legal obligation, has now been removed from the sphere of political will and the latter is bound by the above fundamental rule, whose custodians are the judiciary'.[237]

In addressing socioeconomic issues, PIL is the primary judicial approach to advance social justice for marginalised citizens in India.[238] When development projects cause environmental pollution—rendering water and land unusable, impacting health, and affecting livelihoods—these issues create socioeconomic problems instead of delivering the intended positive outcomes. The PIL has become an effective mechanism, that offers remedies for those harmed by development projects, including compensation and mandatory remedial actions for the respondents. It compels violators to adhere to the environmental standards and pay compensation for ecological damage through judge–made laws and sanctions.[239]

---

[235] Weeramantry (n 46) 114.

[236] Percival (n 40) 229, 233.

[237] Decleris (n 133) 48.

[238] Yap (n 19) 79–93; Rajamani (n 18); Holladay (n 18) 560–61; Jayanth K Krishnan, 'Legitimacy of Courts and the Dilemma of Their Proliferation: The Significance of Judicial Power in India' in Yeh and Chang (eds), (n 184) 298 (PIL prominent in Asian courts except in Malaysia, China, Mongolia, and Singapore); Preston, 'The Judicial Development of Ecologically Sustainable Development' in Fisher (ed), (n 47) 431.

[239] Marcia E Mulkey, 'Judges and Other Law Makers: Critical Contributions to Environmental Law Enforcement' in Krämer L (ed), *Enforcement of Environmental Law* (Edward Elgar 2016) 85–99 (Reprinted from 'Judges and other Law Makers: Critical Contributions to Environmental Law Enforcement' (2004) IV (1) Sustainable Development Law and Policy 2–16).

PIL has become a potent tool in the hands of NGOs and ordinary citizens, and servs as an effective mechanism to uphold environmental justice and promote sustainable practices. Generally, citizens have expressed interest in initiating environmental lawsuits, seeking the authority to challenge the government actions, or lack thereof, in the management and regulation of the environment. This underscores a collective effort to ensure that governmental bodies are held accountable for their roles in the environmental stewardship.

Moreover, the active involvement of NGOs in South Asia as claimants in PIL against multinational companies has yielded transnational effects. Kalunga demonstrated that the proactive stance of NGOs serves to enforce environmental discipline among transnational investors.[240] The collaborative efforts between the courts and NGOs in filling these legal gaps and exercising their independent roles are aptly illustrated by Bodansky's observations:

> Courts play a more independent role in the implementation process when they apply international law directly or use it to interpret national law. This is especially true in cases against the government, where non–government actors allege that the political branches have failed to implement international environmental law. In these contexts, national courts serve not merely as a tool to effectuate national policies, but as 'an agent of an emerging international system of order'. [241]

Furthermore, South Asia faces growing transnational environmental challenges, marked by a notable rise in climate change litigation.[242] This trend shows a shift toward the judiciary assuming a more prominent role in environmental litigation, surpassing the environmental law enforcement typically associated with governments. India has gained significant scholarly attention for its leading role in advancing the climate–related PIL, and introducing innovative

---

[240] Samvel Varvastian and Felicity Kalunga, 'Transnational Corporate Liability for Environmental Damage and Climate Change: Reassessing Access to Justice after *Vedanta v Lungowe*' (2020) 9 (2) Transnational Environmental Law 323–45, 323.

[241] Bodansky 2011 (n 49) 75–76.

[242] Stephens (n 11); Tan (n 11); Boer (n 11); Jolene Lin and Douglas A Kysar (eds), *Climate Change Litigation in the Asia Pacific* (CUP 2020). See also, Junker and Farah (n 234) ('[S]ometimes, environmental law is part of the solutions; sometimes environmental law is part of the problems' for global South).

perspectives that have influenced environmental cases in other South Asian jurisdictions and beyond Asia.[243]

Despite climate–related laws, countries with explicit constitutional environmental rights have shown strong legal foundation for the enforcement and environmental lawsuits for violations.[244] Such judicial decisions regarding the interface between the constitution and environmental policies are based on international environmental principles. The necessity of constitutional provisions recognising SD as a fundamental right of the people is emphasised,[245] which is already embedded in several constitutions. Constitutional foundations are crucial, as they align the legal system with the SD concerns, reflect government priorities, and support specific legislation. This approach highlights public trust, and outline government duties to promote SD and protect citizens' rights and responsibilities. Prioritising SD in the constitution reinforces the importance of sustainability.

Constitutional environmental rights have significantly evolved since the adoption of the 1972 Stockholm Declaration,[246] showing a notable advancement compared to other civil and

---

[243] Krishnan (n 238) 298; Yeh and Chang (eds), (n 184) 41–42; Mario Gomez, 'Mixing Writs with Rights: The Implications for Public Law in Sri Lanka' (2023) 18 (2) Asian Journal of Comparative Law 253, 264; Dinesha Samararatne, 'Judicial Borrowing and Creeping Influences: Indian Jurisprudence in Sri Lankan Public Law' (2018) 2 (3) Indian Law Review 205. PIL integrating SD into environmental law is on the rise in East Africa: Patricia Kameri–Mbote, and Collins Odote, 'Courts as Champions of Sustainable Development: Lessons from East Africa' (2009) 10(1) Sustainable Development Law and Policy 31–8.

[244] Pedersen (n 16); Nicholas Bryner, 'A Constitutional Human Right to a Healthy Environment' in Fisher (ed), (n 47) 141–163; Prityi and others (n 19) 46–8.

[245] Ross (n 130).

[246] Ryan Kraski, Marek Prityi, and Saskia Münster, 'Constitutional Provisions' in Junker (ed), (n 19) 121–39, 125; Lynda M Collins, 'Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution' (2015) 71 The Supreme Court Law Review 519–39, 537; Preston 2024 (n 14) 159–160. Knox noted that despite the presence of a legal framework in international law supporting 'rights–based approaches to environmental protection', national constitutional environmental rights have contributed to the development of a new legal branch known as 'environmental human rights law': Knox (n 91) 520–23.

political rights.[247] This trend is evident across Europe[248] and Asia,[249] where SD is being integrated into their constitutions and laws. Knox highlighted that despite the presence of a legal framework within international law that supports the 'rights–based approaches to environmental protection', the national constitutional environmental rights have contributed to the development of a new legal branch known as 'environmental human rights law'.[250] In contrast, Kotzé argues that environmental constitutionalism has not yet gained widespread popularity due to a lack of comprehensive systemic analysis.[251] Despite the increasing recognition, there may still be gaps in the integration and enforcement of the constitutional SD provisions that require further scrutiny and action.

Even without the explicit constitutional provisions on SD, the South Asian courts are innovative in transplanting international legal norms creating binding judge–made laws. Bodansky emphasised the capacity and central role of the domestic courts in integrating international law, highlighting that this potential has often gone unrealised.[252] International environmental law has

---

[247] Preston 2024 (n 14) 160 citing David Boyd, 'Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment' in John Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (CUP 2018) 18.

[248] Portugal's 1976 Constitution (amended in 2005), Spain's 1978 Constitution, and the Netherlands' 1983 Constitution include provisions allowing citizens to sue for environmental and SD rights violations. Germany incorporated SD principles into the Basic Law for the Federal Republic of Germany (constitution) in 1994, France in 2005, and Italy in 2001, with explicit SD provisions and protection against harmful health and environmental effects in the art 41. Belgium's 2007 Constitution includes SD objectives in the art 7, and Hungary's 2012 Fundamental Law enshrines SD principles in public policy.

[249] Albanian Constitution (1988), ch v art 59; Bangladesh (1972) (2004 amendment art 18A); Bhutan (art 5); Brazil Constitution (1988 revised in 1992, and 1994) art 225, the right to an ecologically balanced environment; The Constitution of India art 21, Right to life; Constitution of Republic of Korea (1948 with an amendment in 1987) art 35, right to a healthy and pleasant environment; Maldives Constitution (2008) art 23, 'healthy and ecologically balanced environment' and also the right to clean water; Myanmar Constitution (2008) –art 45, 'the Union shall protect and conserve natural environment' and art 390(b) every citizen has to assist preservation and safeguarding of cultural heritage; Philippines (art II, s 16); South African Constitution (1996) s 24, right to the environment; Thailand Constitution (2017) ss 43(2), and 50 expressly recognised SD as a fundamental right of the people also highlighting their responsibility for environmental preservation; Zimbabwe Constitution (2013) s 73, right to the environment.

[250] Knox (n 91) 520–23.

[251] Kotzé, 'Arguing Global Environmental Constitutionalism' (2012) 1(1) Transnational Environmental Law 199–233, 208.

[252] Bodansky 2011 (n 49) 76.

influenced the South Asian court decisions to fill domestic legal gaps with transnational insights. It is worth briefly describing the key international environmental laws that are often adopted by South Asian Courts in PIL.

Initially, the Stockholm Declaration provided a foundation to integrate SD into PIL that could be prominently observed in the Indian and Sri Lankan PILs. Principle 21 recognises that states have the authority to manage their resources according to environmental policies but must also avoid causing harm to other states' environments. Several principles have been transplanted, being binding SD throughout South Asia. It calls for the development of national institutional frameworks to enforce the international and national environmental laws. The famous WCED definition of SD as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs,' is mostly adopted into PIL.[253]

As noted, several principles in the Rio Declaration were integrated by the South Asian PIL to compensate for environmental harm. In addition to Principle 16 (polluter pays principle: PPP) Principles 2, 3, and 4, emphasising the reconciliation of environmental protection with economic growth and a focus on intergenerational equity were articulated.[254] The Rio Declaration has also faced criticism, with some viewing it as intensifying the crisis in SD by 'subordinating nature and society' to the goal of economic development.[255] Thus, these definitions incorporate the ethical notion of justice across generations and establish the legal foundation for SD.

The PPP emphasises the internalisation of environmental costs and has been notably integrated into the domestic legal systems. In Myanmar, the Environmental Conservation Law of 2012 mandates environmental insurance for all businesses, grounded in the PPP, with the constitutional backdrop on the environment.[256] Violations of the environmental statutes may result in criminal penalties and reuire restitution.[257] In India, the PPP has been incorporated into the domestic law through judicial interpretation, influencing the judiciaries in such countries as Sri

---

[253] WCED (n 51). Preston J highlighted that 'The Vienna Declaration emphasised,...right to sustainable development' following a similar definition of the WCED: Preston 2024 (n 14) 163.

[254] Rio Declaration (n 54).

[255] Mahanti and Manuel–Navarrete (n 177).

[256] See (n 249): Myanmar Constitution (2008) art 23,45.

[257] The Environmental Conservation Law 9/2012, ss 26, 31, 34.

Lanka. India formalised the PPP in 2010 with the National Green Tribunal Act, based on the groundwork laid by the judiciary.

Aligning with the legislative foundation of SD as developed in the literature, through both legislative and judicial approaches, and reflecting the integrative goal of SDG 16, which emphasises the rule of law in the 2030 Agenda, this thesis adopts the following working definition of SD: 'Sustainable development refers to a structured approach by which a country seeks to balance its economic growth, environmental protection, and social equity through laws and policies designed to meet present needs without compromising the ability of future generations to meet their own needs'.

In a legislative framework, SD principles are embedded in national laws, regulations, and constitutions, establishing norms for environmental conservation, resource management, and social justice. Judicial decisions interpret and enforce these laws, ensuring alignment with the SD goals. Courts play a key role in adopting domestic law with international SD obligations and integrating the indigenous practices, shaping the application of laws, and ensuring accountability in achieving the SD objectives.

The theoretical framework established in this section is applied in the case study in Chapter 4, which examines how the Sri Lankan judiciary integrated SD into the legal system through PIL, with some transnational insights. First, it analyses the *Chunnakam* case and the SD precedents leading up to it. Next, it explores how the NGOs in South Asia have broadened PIL to support the judiciary's legal transplantation of new SD norms. Finally, it assesses how the *Chunnakam* case incorporates SD through the legal transplantation approach, affirms the integration of SD into the PIL context, and its impact on investments, highlighting the importance of these aspects in South Asia.

CHAPTER 3

Integration of SD Principles through Legislation—The SD Act (2017)

This chapter addresses the first sub–research question by examining Sri Lanka's legislative efforts on SD, particularly through the enactment of the SDA to integrate the 2030 Agenda and SDGs. It begins by analysing the SDA, and the Canadian SD legislation, FSDA, comparing the SDG implementation process. Further, this chapter explores the distinct SDG policy implementation mechanisms adopted by Sri Lanka since 2015, and their deviations from the SDA and underscoring the pivotal role of state commitments in achieving the 2030 Agenda. It underscores the linkage between laws and institutional mechanisms for SDG implementation, emphasising that such legislation forms a crucial foundation for effective actions.

Then, the study investigates the underlying causes of the incomplete implementation of the SDA, and the legal gaps, proposing potential amendments. The chapter concludes by emphasising the crucial role of the state in integrating the SDGs and the importance of a thorough systematic analytical approach when enacting specific legislation. This careful consideration is vital for establishing effective procedural mechanisms that support successful enforcement efforts.

3.1 The Case Study: Sri Lankan SDA, Lessons from Canada's FSDA

Interestingly, the research revealed that the Sri Lankan SDA shares structural similarities with the Canadian FSDA as a framework law for the SDG implementation, despite the contrasting political and legal structures of the two countries. Canada operates under a constitutional monarchy and federal parliamentary democracy, with environmental issues falling under the jurisdiction of federal and territorial governments.[258] This system allows any environmental laws enacted by the central government to be applied uniformly across the nation.[259] In contrast, Sri Lanka is a unitary state with a central judiciary and a two–tier government system.[260] Some state functions and environmental matters are delegated to the Provincial Councils (PCs) (subnational government) creating a twofold administrative landscape.

The Sri Lankan SDA (2017)

Before delving into the SDA, Sri Lanka's environmental legal, and institutional mechanisms are described. Constitutionally, there are three pillars of government in Sri Lanka: the legislature, the judiciary, and the executive.[261] The sources of law in the country are the constitution, parliamentary

---

[258] Constitution Act 1867, 30 and 31 Victoria C 3 (UK): 'An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith' enacted on 29 March 1867, Part I–V [Constitution Act 1867].

[259] Julie Simmons, 'Federalism, Intergovernmental Relations, and the Environment' in Debora L Vannijnatten (ed), *Canadian Environmental Policy and Politics: The Challenges of Austerity and Ambivalence* (3rd ed, OUP 2009), 130, 131–32: SD is a substantive power of subnational governments; Glen Toner, James Meadowcroft and David Cherniak, 'The Struggle of the Canadian Federal Government to Institutionalize Sustainable Development' in VanNijnatten (ed), (n 259) 124.

[260] Sri Lanka is a unitary state with a central government and judiciary: Constitution of the Democratic Socialist Republic of Sri Lanka (1978) ch 1, art 2 and ch XV, arts 105–11) [Sri Lankan Constitution].

The 13th Amendment delegated legislative powers to PCs for subjects in the 'Provincial Council List,' while retaining the unitary nature of the state under art 2. PCs lack legislative authority over subjects in List II, the 'Reserved List', which includes areas like national policy, UN obligations, treaty matters, court jurisdiction, and government auditing (art 154G (7)). For subjects in List III, the 'Concurrent List', both Parliament and PCs must consult each other to enact laws (art 154G (5)). Environmental protection is included in both the Provincial Council and Concurrent Lists. See also (n 262), (n 263). See more details for legislative powers of PCs: Shirani A Bandaranayake and Sampath Dassanayake, 'Devolution and Decentralization in Provincial Administration: Transformational Leadership in the Public Sector' (PIM Conference on Management Studies–1992, 322).

[261] Sri Lankan Constitution, arts 3, 4.

acts, and the Supreme Court case law. Provincial Councils (PCs) were established in 1987, with delegated statutory duties and functions, which constituted an amendment to the constitution and reformed the subnational governance structure.[262] Bylaws and statutes are promulgated under powers entrusted to subnational governments by the constitution and other laws.

Regarding environmental concerns, the 'Directive Principles of State Policy' in Article 27 (14) of the constitution outlines the state's obligation to '…preserve and improve the environment for the benefit of the community'. Similarly, Article 28 (f) states that the duty of the people '…to protect nature and conserve its riches'. The responsibility for any environmental concerns is partially delegated to PCs by the constitution and National Environmental Act No. 47 of 1980 (NEA).[263] Provincial Ministries and Departments on the Environment are functioning under the delegated powers. The NEA is administered both centrally and provincially by the Ministry of the Environment and the Central Environmental Authority (CEA).

Although Sri Lanka lacked a legislative framework on SD before the SDA, the judiciary had already established the concept through environment–related PIL, creating binding SD principles through the judge–made laws. This foundation, laid through some prominent PIL cases against investment projects, made SD norms binding as the courts directed the government to enforce the NEA. Building on this, the government later enacted the SDA, which incorporated the Brundtland Report's definition of the SD.

The Parliament's intent to enact SDA to implement the SDGs reflects its understanding of the SD concept. The legislature highlighted the historical roots of the doctrine of public trust and SD in Sri Lankan Buddhist history, whereas the government demonstrated its dedication by becoming the first country to establish a parliamentary committee on the SDGs.[264] Furthermore,

---

[262] ibid, 13th Amendment, ch VIIA art 154A (1), (2) and Provincial Councils Act No. 42 of 1987. Constitution, art 154G (1) and 'Ninth Schedule', List I, 'the Provincial Council List' (Each PC has the discretion to enact by–laws on these subjects). Since then, Municipal Councils (Municipal Councils Ordinance 1947), Urban Councils (Urban Councils Ordinance 1939), and Local Authorities (Pradeshiya Sabhas Act 1988) are under the purview of respective PC.

[263] Sri Lankan Constitution, Provincial Council List, s 37 (Provincial Councils can enact environmental by–laws 'to the extent permitted by or any law made by the parliament'. In 1990, North–Western Province Environmental Statute 12/1990 was enacted.); NEA, s 12 (1) delegated several functions to local authorities.

[264] Parliament of Sri Lanka, *Index to Parliamentary Debates, Official Report* (Sri Lanka Parliament vol 255, 2017) 439–547, 544, 514, 539

through the SDA, the legislature aimed to establish a robust SDG strategy that would remain in effect until 2023. This will also involve establishing an integrated institutional mechanism and finalising the SDG strategy by 2030.

The SDA mandates to develop the National Policy and Strategy on Sustainable Development (NPSSD) and institutional strategies aligned with the 2030 Agenda.[265] The objectives of the SDA include establishing a legal framework for the development and implementation of the NPSSD, ensuring the efficient use of natural, social, and economic resources, and promoting the integration of the environmental, economic, and social factors in governmental decision–making processes.[266] The NPSSD is the central SDG strategy to be implemented at the national and subnational levels.

The Sustainable Development Council (SDC), established under the SDA, and serving as the central government unit, is tasked with drafting, implementing, and monitoring the NPSSD.[267] Comprised of a 12–member council, including the Chairman of the SDC appointed by the President and four *ex–officio* members, the SDC holds 15 powers, functions, and duties.[268] Endowed with legal entity status, the SDC has the authority to assume the responsibilities of the national government and fulfil its mandates, is funded by the national budget, and equipped with perpetual succession and a common seal.[269] The Cabinet of Ministers appoints the Director General (CEO) and works under the direction of the SDC.[270]

The SDA outlines the procedure to obtain the parliamentary approval for the NPSSD. The SDC must first submit the *first draft* of the NPSSD to the Minister of Sustainable Development, securing the 'concurrence' of the nine PCs and all the relevant parties. Subsequently, the Minister

---

<https://www.parliament.lk/uploads/documents/hansardvolumes/1536299448069513.pdf> accessed 20 October 2022.

[265] SDA, s 10.

[266] SDA, s 2(a)–(c).

[267] SDA, ss 2,11.

[268] SDA, ss 4, 10(a)–(o); Sri Lankan Constitution, art 4 (c) gives the highest appointment authority in the public service to the President. Generally, the Ministers in charge of the subject assigned appoint heads of statutory bodies (public cooperations).

[269] SDA, ss 3(2), 25.

[270] SDA, s 15.

obtains approval from the President and Cabinet, followed by the publication of the *second draft* for public review for 30 days. Upon completion of this process, the Minister submits the NPSSD to the Parliament for approval. Once approved, the SDA delineates the responsibilities of each governmental institution. Every national and subnational institution is then required to develop its institutional strategy aligned with the NPSSD within one year of its approval.[271]

Section 13 of the SDA is a new role that assigns the Auditor General (AG) to oversee environmental and social security compliance in development projects. This provision authorises the AG to conduct an 'environmental and social audit' of development projects undertaken by all national and subnational institutions to ensure their alignment with the SDGs. Before this, as per the constitution, the AG's audits of development projects were confined to their financial and physical progress.[272]

The Canadian FSDA[273]

Before the emergence of the SDGs, Canada's 2008 FSDA was established to provide the legal framework for developing and implementing the Federal Sustainable Development Strategy (FSDS) that would make environmental decision–making more transparent and accountable to Parliament.[274] The FSDS mandates federal departmental SD strategies. The 2008 FSDA, which initially focused on environmental decision–making, was amended in 2019 to incorporate SD decision–making and align with the SDGs.[275]

---

[271] SDA, s 12(1).

[272] Sri Lankan Constitution, art 154.

[273] The conception of the FSDA was based on the report submitted to the Parliament by the Commissioner of the Environment and Sustainable Development appointed under s 15.1 (1) of the Auditor General Act amended in 1995 (RSC 1985 CA–17). The private member bill on FSDA was tabled in 2007: House of Commons Canada, *Federal Sustainability for Future Generations – A Report Following an Assessment of the Federal Sustainable Development Act* (June 2016) 1–3 (Parliament, Canada 2016) <https://www.ourcommons.ca/DocumentViewer/en/42-1/ENVI/report-2> accessed 12 August 2022.

[274] FSDA, s 3.

[275] In 2019, the FSDA was amended through 'An Act to amend the Federal Sustainable Development Act' (SC 2019, c 2) to align with the 2030 Agenda, specifically amending sections 2, 3, 5(f), 7(5), 8(1)(a), 8(3), 9(4), 10(3), 11(3), and 12(2).

Although section 2 of the FSDA defines SD by echoing the definition outlined in the Brundtland Report, Section 5 also stipulates that 'sustainable development is based on an efficient use of natural, social, and economic resources and the need for the Government of Canada to integrate environmental, economic, and social factors in the making of all of its decisions' This provision seems to mirror the Preamble of Canada's 1999 Environmental Protection Act.[276]

Under Section 9 of the FSDA, the Minister of the Environment is responsible for drafting and concurrently presenting the FSDS for consultation with four key parties before it is tabled at Parliament for approval. First, consultation is sought from the Sustainable Development Advisory Council (SDAC), which has 29 members appointed by the Minister, who also serves as its chair.[277] The SDAC represents a diverse range of stakeholders, including provinces and territories, Aboriginal peoples, environmental NGOs, businesses, and labor organisations.

Second, consultation is obtained from the 'Commissioner of Environment and Sustainable Development', appointed by the Auditor General under the Auditor General's Act.[278] Within 120 days, the Commissioner provides reviews and comments on the draft FSDS to the Minister, assessing whether each target in the draft is measurable and includes a timeframe. Third, consultation is sought from the 'Committee on Sustainable Development' of the House of Parliament.[279] Fourth, the draft of the FSDS is published for public review and comments for 120 days.

Following the concurrent consultation process, the Minister seeks approval for the FSDS from the Governor of the Council.[280] Finally, the Minister tables the FSDS in each House of Parliament.[281] Under Section 7 of the FSDA, the Minister is obliged to monitor the progress of the

---

[276] Canadian Environmental Protection Act 1999 (SC 1999 c 33): ('[A]n Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development').

[277] FSDA, ss 8(1), (2).

[278] See (n 273). Since 1995, the Commissioner's primary responsibility has been to submit an annual report on sustainable development to Parliament.

[279] FSDA, s 7(5).

[280] FSDA, s 10(1). The Governor is acting on advice given by the federal Cabinet and giving Royal Assent for a bill to become law. At the central level, the Governor in the Council refers to the Governor General acting with the advice of the Queen's Privy Council. Lieutenant Governors resemble the Governor General at the federal level: Constitution Act 1867, ss 10–14, 58.

[281] FSDA, s 10(2) (Senate and House of Common).

strategy implementation by presenting a report once every three years. The FSDS is overseen by the 'Queen's Committee on Sustainable Development' as per section 6 of the FSDA.

Structural Similarities and Differences Between SDA and FSDA

The SDA of Sri Lanka shares structural similarities with Canada's FSDA in four key aspects. First, both acts initially adopted the definition of SD from the Brundtland Report. Second, the objectives of both acts are comparable and focus focusing on national strategy to achieve SDGs. Third, the SDA introduced the role of an Auditor General (AG), similar to the Commissioner in the FSDA, with both positions held by public officers directly accountable to the Parliament. Finally, both acts establish a council responsible for the national SDG strategies.

Despite these structural parallels, the Sri Lankan SDA involves a complex process of drafting, approving, and reviewing the NPSSD. This complexity is evident at five specific points. *Figure 1* and *Figure 2* illustrate the differences between these two processes.

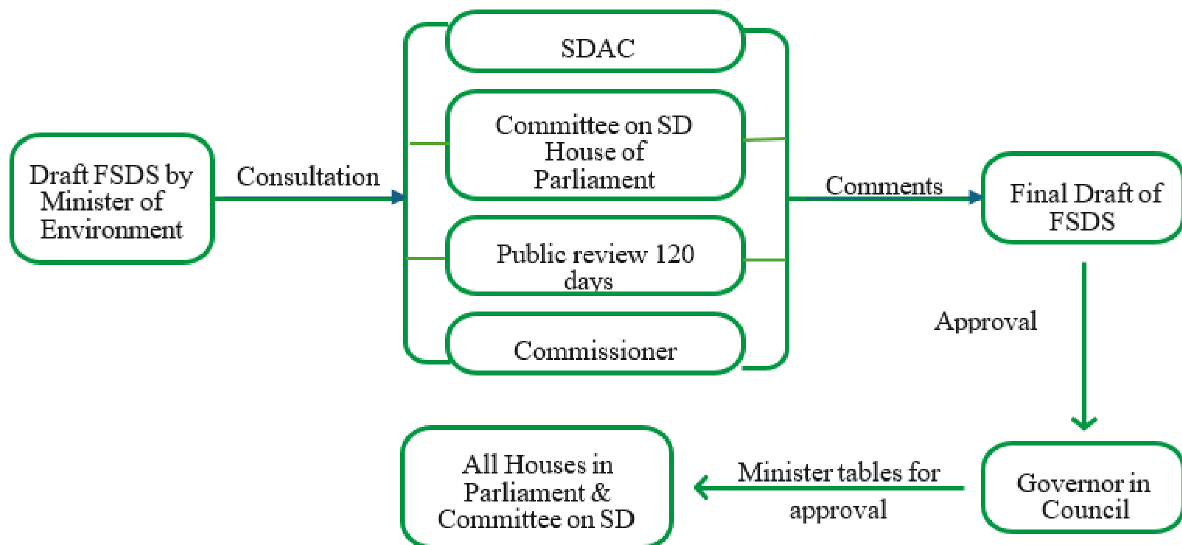

Figure 1: FSDS Approval Process in the Canada's FSDA

A

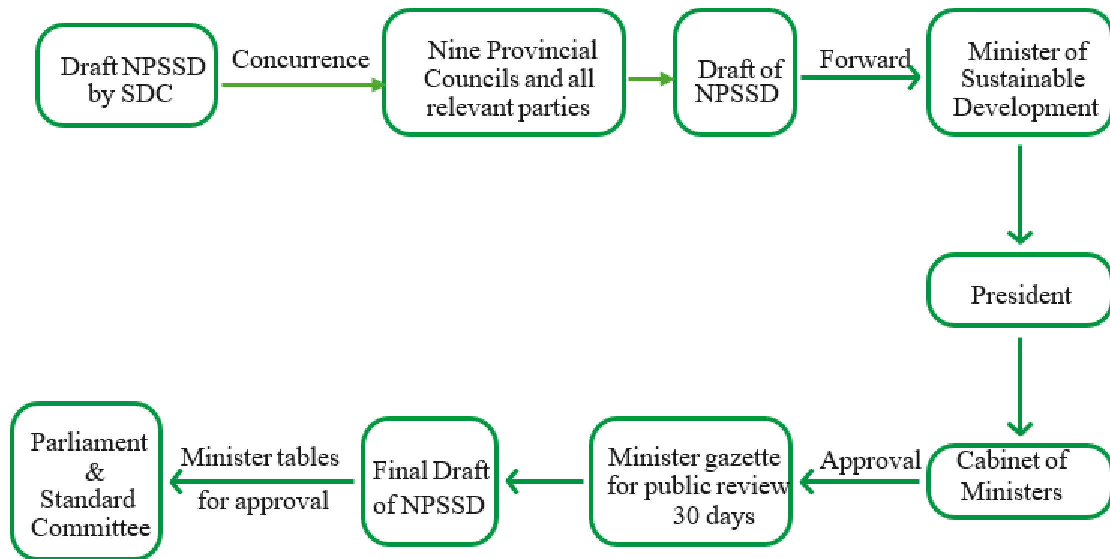

Figure 2: NPSSD Approval Process in the Sri Lanka's SDA

First, the composition and role of the councils are notably different. While the SDAC in Canada features a multistakeholder composition chaired by the minister, which ensures a comprehensive sustainable strategy for the country, the SDC in Sri Lanka is predominantly comprised of bureaucrats, leading to unbalanced representation. Section 4(3) of the SDA stipulates the appointment of subject experts to the council, which contradicts Section 4(1) which mandates four *ex–officio* members and additional members appointed by the President. Therefore, the provision to appoint subject experts is deemed impractical. Additionally, the responsibility for the national implementation and monitoring of the NPSSD is vested in the SDC, whereas the Minister bears accountability in Canada.

Second, the Sri Lankan SDA follows a time–consuming linear process to formulate the NPSSD, whereas the Canadian FSDA concurrently manages the process. In Canada, the Minister (Sustainable Development Office under the Minister) is accountable for drafting, implementing, and monitoring the FSDS, whereas in Sri Lanka, the process is overly bureaucratic, with the SDC being mandated. Unlike Canada, Sri Lanka undergoes a complex process that takes a longer timeframe to finalise the *first draft* of the NPSSD under the SDA. For the *first draft* of the NPSSD,

the Minister must secure 'concurrence' from the President and the Cabinet of Ministers before publishing it in a gazette for public review. With the President's and the Cabinet's comments and suggestions, it must be returned to the SDC.

In Canada, the Minister engages in a simultaneous 'consultation' process with four parties, resulting in the final draft of the strategy. Conversely, the SDC in Sri Lanka following a linear process obtains 'concurrence' from all the relevant parties and nine Provincial Councils before submitting the *first draft* to the Minister. In Canada, the Parliament approves the final draft of the FSDS after recieving approval from the Governor. Conversely, in Sri Lanka, the Parliament approves the final draft of the NPSSD after it is opened for public hearing.

Third, the FSDA imposes specific timeframes for the Minister to draft and obtain Parliament's approval for the NPSSD, a crucial void in the SDA. Section 9(1) of the FSDA mandates that the Minister implement the FSDS within two years of the Act's enactment and subsequently at least once every three years. As of 10 November 2017, the FSDA requires a new FSDS to be implemented every three years.

In contrast, neither Section 10(b) nor Section 11(3) of the SDA impose a timeframe for the SDC to draft the first FSDS or require the Section 11(4) Minister to obtain parliamentary approval within a defined period. Instead, Section 12 of the SDA mandates that public institutions develop their institutional strategies in alignment with the NPSSD within one year of parliamentary approval. However, the approval timeframe is undefined, which creates a void in the SDA, and affects the timely enforcement of subsequent processes. The consequence of this gap is evident in Sri Lanka, where nearly seven years after the SDA's enactment, an FSDS has yet to be implemented. Setting a target timeframe is critical when the law imposes a substantive duty on public officers to ensure its timely enforcement.

Fourth, the FSDA ensures a continuous process that reflects the long-term and ongoing nature of the SDGs by imposing a duty on the Minister to draft and implement the FSDS every three years. In contrast, Section 11(2) of the SDA stipulates that its mandate is limited to implementation until 2030, implying that the Act will become inactive after that year: 'The National Policy and Strategy on Sustainable Development shall be in force until the end of the year 2030.' This indicates a finite scope for SDA, which does not account for the enduring nature of SD beyond 2030. The SDC also lost its mandate due to the cessation of the Act.

Fifth, the position and role of the AG in Sri Lanka differs from those of the Commissioner in Canada. In Sri Lanka, the AG is appointed by the President in accordance with the constitution, whereas in Canada, the Commissioner is appointed by the AG and has a role under the FDSA. The SDA in Sri Lanka introduced an expanded role for the AG, which is similar to that of the Commissioner. A significant difference lies in the fact that the Minister consults with the Commissioner for the draft strategy in Canada, whereas the AG in Sri Lanka plays no role at the draft stage.

Instead, the SDA outlines the role of the AG in four stages after the Parliament approves the strategy. First, the AG audits the performance and the budget of the SDC. Second, it submits national and subnational institutional strategies and progress to the council. Third, the institutional annual reports of the NPSSD are to be audited and submitted to the Parliament. Fourth, environmental and social audits of development projects must be conducted which is the new role empowered under the SDA.

Next, this study explores whether and how Sri Lanka is developing its national SDG strategies. It is noteworthy that although the SDA was enacted for seven years, the NPSSD remains pending.

3.2 The Reality of the SDA: Divergent Processes in SD Policy and Strategy Formation

After the SDA, two distinct policy implementation mechanisms were implemented under the two government regimes. This section reviews the processes during the first (2015–2020) and second periods (after the year 2020).

Previous Implementation Mechanisms of SDGs (2015–2020)

Between 2015 and 2020, the government implemented several policy initiatives. In 2016, the Ministry of Sustainable Development was established for the first time, placing the SDC under its

purview. In February 2018, a 'Public Service Delivery Strategy' was published, which integrated the SDGs into the national programs.[282]

The same year, the government presented a VNR at the UN High–Level Political Forum.[283] During this forum, the stakeholder–led 'Sri Lanka Voluntary Peoples Review 2018' (VPR–2018) was also presented.[284] Subsequently, in 2019, the Cabinet of Ministers established a 'High–Level Committee' consisting of the Parliament Select Committee, the Department of Census and Statistics, and the UN–Sri Lanka, to aid the SDC in drafting the NPSSD together with public institutions.[285] Concurrently, an expert committee appointed by the President submitted a strategic plan to the SDC for guidance.[286]

One notable deficiency in the above policy implementation mechanism was the absence of an inter–ministerial steering committee. Instead, the Secretary to President instructed public institutions to align their projects with the SDGs.[287] The VPR–2018 criticised the fragmentation of institutional infrastructure as one of the barriers to achieving the SDGs.[288] The SDC initiated the NPSSD draft and published it in August 2020, three years after the enactment of the SDA.[289]

---

[282] Sustainable Development Council, Sri Lanka, *Draft Strategy for Public Service Delivery—February 2018* (February 2018) < https://sdc.gov.lk/en/resources> accessed 25 January 2022.

[283] Sustainable Development Council, Sri Lanka, *Sri Lanka Voluntary National Review on the Status of Implementing Sustainable Development Goals 2018* (June 2018) < https://sdc.gov.lk/en/resources> accessed 25 January 2022.

[284] Sri Lanka Stakeholder SDGS Platform, *Sri Lanka Voluntary Peoples Review on the Status of Implementing Sustainable Development Goals* (June 2018) <https://action4sd.org/wp-content/uploads/2018/07/SRI-LANKA-Voluntary-Peoples-Review-on-the-SDGs-to-HLPF-2018.pdf> accessed 25 January 2022 [VPR–2018]; Smallwood (n 67) 201 (NGOs are independently developing monitoring systems for the SDGs for the HLPF, separate from governmental efforts).

[285] Office of the Cabinet of Ministers, Sri Lanka, *Development of a National Policy and Strategy on Sustainable Development* (Cabinet memorandum CP/19/2488/101/159 of 10 September 2019).

[286] Office of the Cabinet of Ministers – Sri Lanka, Press Briefing of Cabinet Decisions, 'Sustainable Sri Lanka 2030 Vision and Strategic Plan' (10 September 2019) <http://www.cabinetoffice.gov.lk/cab/index.php?option=com_contentandview=articleandid=16andItemid=49andlang=enanddID=10078> accessed 25 January 2022.

[287] Presidential Secretariat, Sri Lanka, *Formulation of Sustainable Development Strategies* (Circular No. PS/SP/SB/C/22/2019 of 3 October 2019) <https://sdc.gov.lk/en/resources> accessed 25 January 2022.

[288] VPR–2018 (n 284) 12; (n 321).

[289] Sustainable Development Council Sri Lanka, *DRAFT National Policy and Strategy on Sustainable Development: for a sustainably developed Sri Lanka* (August 2020) <https://www.switch-

However, the process was not pursued for parliamentary approval by the subsequent government, as will be discussed below.

The Current SDG Implementation Mechanisms (After the year 2020)

In November 2019, the elected President announced the new 'National Policy Framework', stating his political commitment to achieving the SDGs.[290] Then, a new government formed in April 2020, which made two policy decisions: A new high–level 'Inter–ministerial Steering Committee' and 'Technical Committee' appointed to support the SDC to prepare and implement the NPSSD.[291] This policy decision was based on a working group's report highlighting the reasons for the slow progress toward the SDGs: the absence of high–level political leadership and fragmented policy planning approaches.[292]

The report emphasised the requirement of multistakeholder collaboration, (including relevant public institutions, nonstate stakeholders including business, civil society academia, and the research community) and recommended establishing a high–level inter–ministerial steering committee to support SDC, citing examples from several countries.[293] Furthermore, vertical coordination between the local governments must be established. The SDG planning and

---

asia.eu/site/assets/files/2592/draft_national_policy_and_strategy_on_sustainable_development.pdf> accessed 25 January 2022.

[290] Government of Sri Lanka, *National Policy Framework Vistas of Prosperity and Splendour–Summary* <http://www.doc.gov.lk/images/pdf/NationalPolicyframeworkEN/FinalDovVer02-English.pdf> accessed 25 January 2022.

[291] Office of the Cabinet of Ministers, Sri Lanka, *Appointing a Steering Committee for Achieving the Sustainable Development Goals (SDGs)*, The joint Cabinet paper by the Prime Minister and the Foreign Minister (Cabinet memorandum No. 20/2064/310/017 of 14 December 2020 approved on 4 January 2021) [2021 Report] This report is not in the public domain. The explanations are based on the joint Cabinet paper.

[292] 2021 Report ibid. See also, Karina Barquet and others, 'Exploring Mechanisms for Systemic Thinking in Decision-making Through Three Country Applications of SDG Synergies' (2022) 17 Sustainability Science 1557–72, 1565–67: Barquet and others' paper explains issues in Sri Lanka: '[M]ore ambitious intervention could help institutionalize a systems approach from the beginning and at the highest level of government, the stakes in the process could also delay or hinder progress due to opposition'. Dernbach demonstrated that 'integrated decision–making' serves as the foundational principle of SD, seamlessly linking environmental considerations with economic planning: Dernbach 2002 (n 65) 248.

[293] 2021 Report (n 291) which reads '…countries including Denmark, Belgium, Germany, Nepal, Bangladesh, Philippines, Azerbaijan, Mexico, Portugal, Slovenia, etc. have created inter–ministerial committees'. See Appendix 2 for more examples.

implementation responsibility is now transferred to the Steering Committee, instead of the SDC's statutory role. Contrary to the SDA, the Cabinet of Ministers seems to have decided that the SDC alone cannot prepare the national strategy. In the first steering committee, the Prime Minister appointed two technical committees to draft the NPSSD, develop strategies, identify environmental SD indicators, and review the appointment of SDC members.[294]

However, following these directives from the Cabinet in 2021, the SDC did not drafted the NPSSD. The Director General of the SDC implied in a newspaper interview that the national policy was being implemented by the SDC in place of the NPSSD.[295] The interview stated that financing is the biggest challenge to Sri Lanka reaching the SDGs. In July 2022, Sri Lanka presented its second VNR to the UN HLPF.[296] The government and academic institutions with the UN resident office guided the VNR process. The VNR highlighted the need to exaggerate the implementation process by involving multistakeholders in the policy planning and implementation processes.[297]

Unexpectedly, in July 2022, a new President was appointed by the Parliament[298] and subsequently the President elected in 2019 resigned due to a political crisis. In August 2022, a new policy framework was established for 2023–2027, creating a new 'Joint National High–Level Steering Committee' with government institutions and the UN–Sri Lanka.[299] The Steering Committee, cochaired by the Secretary of Treasury and the UN Resident coordinator, formed the

---

[294] Office of the Prime Minister, Sri Lanka, *Minutes of the Meeting by the Prime Minister Secretary* of 15 March 2021 (PM Office, Circular No. SDC/07/37 of 01 April 2021). Following these decisions, government institutions were guided.

[295] Sarah Hanan, 'Sri Lanka's national policy well aligned with UN SDGs: Chamindry Saparamadu' *The Morning* (Colombo, 15 January 2022) < https://www.themorning.lk/articles/184507> accessed 18 January 2022.

[296] Sustainable Development Council, Sri Lanka, *Inclusive Transformation Towards a Sustainable Development for All, Second National VNR Sri Lanka 2022 June 24* (June 2022) <https://sdc.gov.lk/sites/default/files/2022-07/VNR%202022_Final%20Report_Combined.pdf> accessed 18 January 2022 [VNR Sri Lanka 2022].

[297] ibid 19.

[298] Parliament of Sri Lanka, 'Hon. Ranil Wickremesinghe elected as the 8th Executive President' (20 July 2022) <https://www.parliament.lk/en/news-en/view/2663/?category=6> accessed 18 August 2022.

[299] Department of National Planning, Sri Lanka, *The United Nations Sustainable Development Cooperation Framework (UNSDCF) for the Period of 2023–2027* (17 August 2022) <https://www.npd.gov.lk/index.php/en/2017-03-02-07-18-53/72-the-united-nations-sustainable-development-cooperation-framework-unsdcf-for-the-period-of-2023-2027.html> accessed 20 August 2022.

Working Committee.[300] The SDC currently works under the purview of this working committee. Despite enacting the SDA in 2017, the long–term SDG policy (the NPSSD) has not been submitted to the Parliament. The subsequent government did not follow–up on the previous first draft of the NPSSD; instead, a new policy was adopted, that diverged from the SDA.

In summary, the slow progress of the SDA can be attributed to the different policy implementation processes of previous and current governmental regimes. The animosity between these regimes over the last seven years has led to distinct short–term SDG policy frameworks, that lack a cohesive long–term vision for 2030. Strong political commitment and sustainable policy and institutional mechanisms are essential to achieving the 2030 Agenda. James demonstrated that 'the politics of the environment are strongly associated with conflicting interests'.[301] A recent study revealed that SDG progress in Sri Lanka typically depends on matters controlled by the government and institutional coordination.[302] This study recommends that the government is obliged to prioritise national policymaking in planning and budgeting for the SDGs.[303]

It has also been noted, that the COVID–19 pandemic in 2020, the current economic downturn, and the debt crisis have further slowed the progress of the SDGs.[304] It is a fact that the

---

[300] See for Inter–ministerial Steering Committee policy decisions, Ministry of Finance, Economic Stabilization and National Policies, Sri Lanka, *Identifying Nationally Appropriate Sustainable Development Goals (SDGs) Targets* (Circular No. NP/HRD/SDG/Gen/22 of 2 January 2023). <https://sdc.gov.lk/sites/default/files/202301/Identifying%20Nationally%20Appropriate%20SDGs%20Targets.PDF> accessed 12 January 2023.

[301] Helen James, 'Introduction: The Dynamics of Sustainability and Environmental Governance in the Asia Pacific' in Helen James (ed), *Population, Development, and the Environment: Challenges to Achieving the Sustainable Development Goals in the Asia Pacific* (Palgrave Macmillan 2019) 1; Jeff Hayens, 'Power, Politics and Environmental Movement in the Third World' (1999) 8(1) Environmental Politics 222–42.

[302] Linn Järnberg and others, *Interaction among Sustainable Development Goals in Sri Lanka: A Systematic Assessment* (Stockholm Environment Institute, SEI Report 2021) 46.

[303] ibid. See also, Bennich, Weitz, and Carlson (n 6) 19.

[304] Conversely, some scholars argue that '[T]he pandemic has also opened a short–lived and narrow window of opportunity for sustainable transformation': Prajal Pradhan and others, 'The COVID–19 Pandemic Not Only Poses Challenges but Also Opens Opportunities for Sustainable Transformation' (2021) 9 Earth's Future 1–14. See also, Anita Breuer and others (eds), (n 6) 2.

Sri Lanka showed strong multistakeholder partnerships during the pandemic, including quarantine centers, food, medicines, hygiene, and social security. SDG planning and future crises can benefit from these experiences: The Ministry of Health, Sri Lanka, *Strategic Preparedness, Readiness and Response Plan to End COVID – 19 Emergency in 2022* (July 2022) 9–24 <https://www.health.gov.lk/wp-content/uploads/2022/08/SPRP-2022-23.08.2022.pdf> accessed 14 August 2023; In 2021, Sri Lanka enacted a new law, The Coronavirus Diseases 2019

country continues to prioritise economic development, but it does not avoid its responsibility to a national plan for SD. The UN noted that until Sri Lanka resolves its economic crisis, it will not be able to meet its 2030 Agenda commitments.[305] According to the 'Sustainable Development Reports', the SDG Index ranks Sri Lanka 94th in 2020, 87th in 2021, and 93rd in 2024 out of 167 countries,[306] underscoring the challenges of SDG policy implementation in small, developing countries.

This section outlined the practical reasons for the prolonged delay in the implementation of the SDA. This study contends that the underlying cause of the slow progress lies in the legal weaknesses and shortcomings of the SDA itself. Consequently, it is suggested that implementation under the SDA is unlikely to improve even after the pandemic and economic crisis subside. The following section examines the actual limitations of SDA.

3.3 Positive and Negative Lessons from the SDA

Sri Lanka chose to enact a new law, the SDA, even though many countries have used inter–ministerial committees within the existing national legal frameworks. Undoubtedly, the SDA serves as a legal mechanism for implementing the 2030 Agenda. However, as revealed in this study, the cumbersome procedural barriers hindering the formulation of the NPSSD are not insurmountable. This section initially elucidates three positive impacts of the SDA, followed by presenting seven procedural limitations.

(COVID–19) (Temporary Provisions) Act No. 17 of 2021 which provides provisions concerning situations wherein people are unable to perform certain actions required by law to be prescribed within the period due to COVID–19 circumstances.

[305] United Nations Sri Lanka, *United Nations Sustainable Development Cooperation Framework for Sri Lanka 2023–2027* (UN Sri Lanka, September 2022) 11, 21–26, 33. Notably slow progress in SDGs is visible even in developed countries as well while lack of integrated approach to SDGs in a central focus: Cameron Allen and others, 'Assessing National Progress and Priorities for the Sustainable Development Goals (SDGs): Experience from Australia' (2020) 15(2) Sustainability Science 521.

[306] Jeffrey D Sachs and others, '3: Policy and Monitoring Frameworks for the SDGs' in *The Sustainable Development Report 2020: The Sustainable Development Goals and COVID–19* (CUP 2020) 27; Sachs and others, 'Part 3: Policy Efforts and Monitoring Frameworks for the SDGs' in *Sustainable Development Report 2021* (CUP 2021) 11; Sachs and others, 'Part 2: The SDG Index and Dashboards' in *Sustainable Development Report 2024* (Dublin University Press 2024) 21.

The foremost positive aspect of the SDA is that it established a substantial statutory mandate on the 2030 Agenda and the SD in the long run. Until the SDA was enacted, the state's responsibility[307] for SD in Sri Lanka did not have a constitutional or legislative guarantee. As noted, it was reactive case–by–case judicial integrations of SD that established the state's duty to sustainability within the constitutional environmental rights and duties. Although the concept of SD is based on nonbinding principles, the Supreme Court's decisions have accepted it as a state policy, which has granted it legal recognition.

Instead, case–by–case integrations, the legislature aims to guide generally willing individuals to stay on the course and compel the 'unwilling parties' to change their behavior.[308] Additionally, procedural law reduces the ambiguities of SD and provides a clearer framework for its interpretation by the judiciary. Moreover, linked with the established judicial precedents on SD, it has the potential to drive significant advancements in future jurisprudence on the subject.

The SDA established a statutory procedural duty on public authorities to implement SDGs, mandating that they achieve their objectives. Ross emphasised that '[I]n order for sustainable development to actually become the central organising principle of government, a substantive duty would need to be imposed on all public bodies.'[309] Despite the notion of SD being considered a duty for all governmental institutions, no such obligation currently exists.[310] For effective enforcement, precise provisions are also critical. The precision of the sustainability law is more important for the enforcement and judicial interpretation than political manifestoes.[311] In doing so, the SDA serves as a benchmark for other UN member countries interested in developing legislation to implement the SDG.

---

[307] See for governments' responsibility on SD integration and lead institutions: James Meadowcroft, 'Who is in Charge here? Governance for Sustainable Development in a Complex World' (2007) 9 Journal of Environmental Policy & Planning 299–314, 302 (SD 'requires goal–directed intervention by governments and other actors'); Glass and Newig (n 73) 2.

[308] Ross (n 130) 1118.

[309] ibid 1117.

[310] ibid 1102.

[311] ibid. See also, John C Dernbach and Joel A Mintz, 'Environmental Laws, and Sustainability: An Introduction' (2011) 3 Sustainability 531–32.

The second positive provision of the SDA is notable for the expanded role it confers upon the AG, specifically empowering the AG to conduct environmental and social audits of development projects. This expansion significantly enhances transparency in the utilisation of public funds, as it ensures that the environmental and social impacts of such projects are thoroughly assessed and accounted for. Moreover, the SDA imposes a crucial requirement for all public institutions to submit an annual compliance report on the NPSSD to the Parliament.

This mandate not only enhances the accountability but also establishes a structured mechanism for monitoring progress. With this in place, the AG can call upon central, provincial, and local government institutions, including the SDC, to address any delays or discrepancies in their progress toward the SDGs as outlined in the NPSSD. This authority acts as a significant tool to ensure the adherence to SD objectives and promote greater accountability within the public sector. The expanded role of the AG is further justified by Ross's view that '…where possible, the substantive objectives must be accompanied by a meaningful toolkit of procedural duties. These include obligations to produce an annual report, require notice, audit or publicity'.[312]

Third, the SDA addresses the fragmented responsibilities for development projects between central and local government institutions by centralising them under the SDC. Without a legislative framework, SD policies and duties often face inconsistencies and temporary implementation, without a principal statutory duty.[313] The SDA corrects this under Section 26 by linking the requirements to balance the environmental, economic, and social aspects of development with the NEA Part IV, which previously lacked an integrated approach. Before the SDA, environmental regulations under the NEA were operated separately at the central and subnational levels. It also improves interagency coordination by integrating central and subnational institutions into the NPSSD, creating a unified strategy that aligns the development projects with national SDG objectives. This framework helps overcome coordination challenges and supports the effective implementation of development goals.

Additionally, the SDA includes provisions that connect its objectives and functions with those of the subnational governments, reflecting an understanding of the importance of local

---

[312] Ross (130) 1119.

[313] Kanie and Biermann (n 66); Steven Bernstein, 'The United Nations and the Governance of Sustainable Development Goals' in Kanie and Biermann (eds), (n 7) 220; Dernbach and Mintz (n 311) 532.

government in implementing the SDGs. This requires PCs to align their policies and strategies with the NPSSD.[314] The national SDG strategy (NPSSD) thus provides a legally grounded framework that address the persistent developmental challenges arising from weak institutional coordination between the central and subnational governments within the country.

In summary, the SDA offers three significant positive lessons: it mandates government responsibility, expands the role of the AG in scrutinising development projects, and enhances the coordination of duties between central and local governments. However, the SDA also exhibits certain deficiencies and weaknesses. The discussion below highlights seven complex legal issues, revealing how the cumbersome legal and administrative procedures diverge from the primary objectives of the SDA. The SDA must attain the same level of credibility and value as the NPSSD for Sri Lanka.

The foremost and most significant detriment relates to the legal standing of Provincial Councils (PCs) and their representation in the drafting process of the NPSSD at the SDC. The requirement for 'concurrence' from all nine PCs underscores a legal void that is impracticable to obtain.[315] Additionally, the insufficient representation of PCs is also a legal void.[316] Out of the nine PCs, only three are rotationally appointed to the SDC, which is unjustified.[317] Additionally, the SDC convenes only four times a year, limiting the attendance of each council to once every two years. Moreover, a *proviso* in the Act allows attendees to participate in SDC meetings when council matters are discussed, and raise legal questions regarding the participation without the statutory membership. Consequently, the SDA itself necessitates 'concurrence' from all the nine PCs, yet the lack of reasonable engagement due to unequal representation remains an issue. Notably, the PCs have been nonfunctional since 2018, primarily because of an unresolved legal issue in the Parliament.[318]

---

[314] SDA, ss 10(d), (i), 11(7), 12(1), (2).

[315] SDA, s 10(b).

[316] ibid.

[317] See (nn 260, 262, 263). Although the PCs have no power over 'National Policy', inter–agency coordination and the contribution of the sub–national government is essential in implementing the NPSSD. Moreover, PCs have the legislative power to enact their own environmental statutes.

[318] However, the Provincial Councils remain nonfunctional without an amendment to the Provincial Council Elections Act No. 2 of 1988. In 2018, Parliament rejected the delimitation report, which required approval by a two–thirds majority by s 3A (11) of the Act, as seen in the proceedings of the Parliament of Sri Lanka: 'Report of the

Proper coordination with PCs is very essential for not only the drafting of the NPSSD but also the implementation. Rather than merely aligning policies with the NPSSD, it is crucial for PCs and local authorities—who have statutory powers—to enact the SD by–laws at the subnational level for effective implementation.[319] In implementing the SDGs, the SDC and its functions should establish a better coordinating mechanism because local governments are key players in implementing the SDGs at the grassroots level.

Meuleman emphasised '…when a national government relies solely on informal arrangements with subnational authorities, reaching national policy targets might become very difficult'.[320] The close ties between the central SDG bodies and local governments are well established in countries such as Japan, the Philippines, and several African countries (Uganda, Nigeria, and Mauritius) as illustrated in Appendix 2. Subnational governments are more closely engaged with the population, providing essential services and collecting taxes governed by regulations, that link SDGs. This proximity facilitates the practical implementation of the national SD laws and policies in various domains such as solid waste management, sewer and stormwater management, landscape and forestry practices, construction regulations, road and vehicle management, administrative services, education (including schools and training institutes), hospitals, and healthcare services.

In contrast, during the drafting stage, Canada's FSDA receives 'comments' from the SDAC and the Commissioner; a relatively simple procedure is discussed ahead. The NPSSD remains

---

Delimitation Committee is not approved by the Parliament' (24 August 2018) <https://www.parliament.lk/news-en/view/1579> accessed 12 January 2022. Currently, PCs are functioning under the Governors who are responsible for executive functions: Sri Lankan Constitution, art 154C. However, Governors have no legislative authority, as confirmed by the Supreme Court in a recent five–judge bench ruling, which held that Governors appointed by the President do not fulfil the role of the PCs— '…when such council has not been constituted in accordance to the law.' See, *In Re the Colombo Port City Economic Commission Bill* [2021] SCSD Nos. 04/2021, 05/2021, 07/2021 to 23/2021, 22–23.

[319] Ross (n 130) 1115–16 (Highlighted the importance of sub–national statutes on SD); Louis Meuleman, 'A Metagovernance Approach to Multilevel Governance and vertical Coordination for the SDGs' in Anita Breuer and others (eds), (n 6) 71–89, 75; The UN emphasized the importance of the vertical coordination with sub–national government to achieve the 2030 Agenda: United Nations, *Voluntary National Reviews–Synthesis Report 2018* (UN 2018) 20 [UN 2018 Report].

[320] Meuleman ibid 73.

unyielding until certain amendments are made to the SDA and PCs are reactivated. The SDC should comprise a multistakeholder composition with equal representation from the nine Provincial Councils. It would also be helpful to streamline the drafting process, which is currently linear, time–consuming, and relies on multiple authority bodies, as shown in *Figure 2.*

The second limitation is the absence of a defined timeframe to draft and obtain the parliamentary approval for the NPSSD. This procedural lack of clear deadlines delays the approval and implementation processes, undermining the effectiveness and timely execution of the NPSSD. Although the SDA established the SDC, it failed to set specific targets or timeframes for its statutory duties, thereby weakening its enforcement and making it challenging to measure its performance effectively. Ultimately, this affects public institutions by delaying their readiness to formulate strategies that align with the central strategy as expected by the SDA. Given that the 2030 Agenda is built around a limited–year target, any defined timeframes in SDG–related legislation are crucial to ensure alignment with the 2030 Agenda's goals.

Third, the SDA faces challenges due to the prolonged approval process for finalising the NPSSD. After obtaining concurrence from the PCs and all relevant parties, the SDC should submit the first draft to the Minister. However, Section 10(b) does not define who is included in 'all relevant parties,' what makes it unclear which authorities should provide their concurrence before the draft is submitted to the Minister. The Minister must then seek approval from the President, followed by the Cabinet of Ministers. If the President or the Cabinet of Ministers have any comments, the draft should be returned to the SDC for revision.

The public may review the draft of the NPSSD only at the end of the drafting process. Before tabling the draft in the Parliament for approval, the Minister is required to publish it for public notice for 30 days. The SDA allows for public comments on the draft NPSSD only after the lengthy bureaucratic process is completed, just before the Minister seeks parliamentary approval. Given that social inclusion is a primary objective of the 2030 Agenda, citizens should be allowed to participate in decision–making during the drafting of the FSDS. This representation should be integrated into the SDC's initial drafting processes to ensure meaningful public involvement.

The Minister receives comments concurrently from the SDAC, the Commissioner, the parliamentary committee, and the public before submitting the final draft to the Governor for approval (*Figure 1*). This procedure has proven effective; Canada completed of its FSDS implementation in 2016 and 2019. In contrast, the SDA in Sri Lanka has yet to be fully

implemented to accomplish the NPSSD due to the complex approval process and the varying political commitment of the subsequent government. An efficient approval process would simplify the lengthy and time–consuming approval process illustrated in *Figure 2*.

The fourth deficiency is the unequal composition of high–level bureaucrats in the SDC, which hinders multistakeholder contributions to the NPSSD. Rather than institutionally integrating between the public service and accountability mechanisms, the SDC assigned implementation responsibilities, creating a bureaucratic monopoly.[321] This is an imperative issue because the NPSSD is the national agenda for the SDGs. As noted, Canada's FSDA provides an example of clear legal provisions for a common stage for all voices in SDG decision–making.

That was also highlighted in the second VNR of Sri Lanka, which was presented at the UN in 2022.[322] The representation of interested community groups, NGOs, businesses, and experts is necessary for Sri Lanka's NPSSD drafting and implementation. Stakeholder participation is a crucial element in the integration of the SDGs[323] and international environmental laws.[324] The SDGs inherently require a coalition of stakeholder engagement, involving all levels of the government and civil society, with a participatory approach that includes input from people across society.

The fifth deficiency lies in the absence of a role for the Auditor General during the drafting stage of the NPSSD, unlike the process in Canada where the Commissioner reviews the draft of the FSDS. In the SDA, the AG's role begins only after the Parliament approves the NPSSD, and

---

[321] Uchita de Zoysa, Prasanthi Gunawardena, and Asoka Gunawardena, *Localising the Transformation in The New Normal, A Domestic Resource Mobilization Framework for Sustainable Development Goals in Sri Lanka* (Janathakshan (GTE) Ltd., and the Centre for Environment and Development 2020) 5–6.

[322] VNR Sri Lanka 2022 (n 296) 18: 'The inclusive and participatory process adopted for the second VNR with the direct engagement of a large number of stakeholders at both national and sub–national level including government, private sector, international development partners, civil society and the academia …'. See also, Järnberg and others (n 302) 8.

[323] Transforming our World (n 2) Preamble, Declaration para 6; Henric Carlsen, Nina Weitz, and Therese Bennich, 'A Decision–making Tool for Systems Thinking in SDG Implementation' in Anita Breuer and others (eds), (n 6) 211–24, 211; Biermann and others (n 7) 83; Bernstein (n 313) 218.

[324] Victor, Raustiala, and Skolnikoff (eds), (n 122) 21; Duncan French, 'The Global Goals: Formalism Foregone, Contested Legality and "Re–Imaginings" of International Law' in Zeray Yihdego, Melaku Geboye Desta, and Fikremarkos Merso Yihdego (eds), *Ethiopian Yearbook of International Law 2016* (Springer 2017) 151, 163; Breuer, Leininger, and Malerba (n 146) at 57.

confines its involvement to the enforcement stage. While the SDA has expanded the AG's role into environmental and social audits, this provision would be more impactful if the AG had the opportunity to provide feedback during the draft stage. This oversight is significant because incorporating the AG's insights and recommendations into the drafting phase would enhance the quality and effectiveness of the NPSSD.

Sixth, the review process of the NPSSD is also flawed. As noted, the NPSSD is rescinded upon the Parliament's approval and will remain in force until 2030. The SDA mentioned periodic reviews of the NPSSD as a function of the SDC.[325] However, the law categorically states that such reviews are decided by the Cabinet rather than the SDC. This review period is also not specified. In Canada, the Minister is mandated to review the FSDS once every three years and submit it to the Parliament. Sri Lanka seems not interested in defining the time for review because it needs to go through a complex process in the nine PCs, the Minister, the President, the Cabinet of Ministers, a 30–day public review, and finally the Parliament for approval.

Finally, the SDA's restriction of the NPSSD's validity to 2030 confines the national SDG strategy to a short–term focus, and disregards the dynamic nature of SD. The legislative rationale for limiting the National SD Act to the 2030 Agenda, rather than extending it beyond it, remains unclear. This narrow approach could render the newly established SDC obsolete before it completes its primary task of drafting the NPSSD. This could challenge the judiciary, and potentially require directives to interpret the SDA to ensure the state's long–term commitment to SD, even after the Act expires in 2030.

In summary, this section identifies the reasons for the long–delayed NPSSD, and obstacles to the SDA functioning more effectively. Sri Lanka may amend the SDA to mitigate the complex procedures involve in the approval and review of the NPSSD. An important general lesson for countries considering new laws on SD: a multistakeholder composition is necessary to create and review national policies and strategies. It is observed that fair representation of PCs at the SDC is necessary to ensure equal participation and to avoid a tedious 'concurrence' process. The SDA should clearly define the target timeframes to achieve the anticipated objectives. Since SD is a long–term, ongoing process that imposes duties on both political and public authorities, the SDA

[325] SDA, s 10.

should not be terminated in 2030. Seven years after its enactment, the SDA has yet to be fully enforced as intended by the legislature, which emphasizes the need for stronger, long–term commitment.

These observations can be used by UN member countries. Some general lessons are helpful for countries considering new laws on SD.[326] A multistakeholder composition is necessary to create and review national policies and strategies. However, it is equally important to consider who should become a stakeholder and provide concurrence to avoid a time-consuming approval process that causes long-delayed policies and strategies.

3.4 Conclusion

SDA brings three notable benefits. First, it establishes a statutory mandate for the 2030 Agenda and SD, providing a long–term legislative framework that was previously absent in Sri Lanka. This legal recognition of SD, which was previously only acknowledged through reactive judicial decisions, now guides and compels change in behavior change among various stakeholders. Secondly, the SDA expands the role of the AG to include environmental and social audits of development projects, enhancing transparency and accountability of public fund utilisation. It also mandates annual compliance reporting to the Parliament, ensuring continuous monitoring and adherence to the SDGs. Finally, the SDA centralises the responsibilities under the SDC to address fragmented governance by providing a cohesive, legally binding strategy that would align the central and local government's efforts with national SDG objectives. This framework helps overcome various institutional coordination challenges and promotes the effective implementation of development goals.

---

[326] See e.g., Nhamo and Mjimba (n 156) 10 ('…there remains challenges in reaching out to Parliaments and working towards policy coherence for SDGs'). See also, Alan Boyle and Catherine Redgwell, *Birnie, Boyle, & Redgwell's International Law and the Environment* (4th edn, OUP 2021) 126 ('… states should be legally accountable for achieving sustainability, whether globally or nationally, then the criteria for measuring this standard must be made clear, as must the evidential burden for assessing the performance of individual states'.); ibid 129 ('Even if there is no legal obligation to develop sustainability, there may nevertheless be law 'in the field of sustainable development"). See also, Biermann and others (n 7) 82 (No barrier to SDGs 'becoming part of legal regimes…including subglobal legal systems').

The SDA has seven significant drawbacks. First, the legal requirement for 'concurrence' from all nine PCs in drafting the NPSSD is impractical, with limited PC representation and infrequent meetings creating engagement issues. PCs have also been nonfunctional since 2018, which further complicates the process. Second, the SDA lacks a defined timeframe for the drafting and parliamentary approval of the NPSSD, which delays implementation and undermines its effectiveness. Third, the approval process for the NPSSD is cumbersome, involving numerous authorities and bureaucratic steps, which slows down progress. Fourth, the SDC's composition is skewed toward high–level bureaucrats, excluding multistakeholder contributions and creating a bureaucratic monopoly. Fifth, the Auditor General's role in the SDA begins only after parliamentary approval, which deprives them of the opportunity to provide valuable feedback during the drafting stage. Sixth, the NPSSD review process is flawed, because it has undefined review periods and relies mostly on the Cabinet of Ministers rather than the SDC for periodic reviews. Finally, the SDA's restriction of the NPSSD's validity only up to 2030 limits the long–term impact of the legislation and create risks that the SDC may become obsolete before it completes its objectives, potentially necessitating judicial intervention to uphold the SD commitments beyond 2030. This study provides insights for countries interested in integrating SDGs into legislation.

CHAPTER 4

Integration of SD Principles via Judiciary—the *Chunnakam* Case (2019)

This chapter examines the role of the Sri Lankan Supreme Court in the PIL, which integrates the SD principles through the adoption of international law and foreign judgments. It explores how courts create legal norms, address domestic legal gaps, and employ legal transplantation, thereby contributing to the development of transnational environmental litigation. Despite the growing literature on this in South Asia, Sri Lanka has been overlooked. This case study analyses a landmark Sri Lankan Supreme Court decision, a PIL—the *Chunnakam* case— to explore its integration into SD through legal transplantation.

The first section analyses the *Chunnakam* case, emphasising the role of legal transplantation in integrating SD. It provides context through Sri Lanka's environmental and investment legal framework and reviews landmark PIL cases that offer transnational insights leading to the *Chunnakam* case. Then examines the involvement of NGOs in PIL and the integration of SD principles in India and other South Asian countries. This analysis includes various case decisions that have been influenced by the Sri Lankan Supreme Court, both before and during the *Chunnakam* case.

Subsequently, the analysis of the *Chunnakam* case was presented from three different perspectives: legal transplantation, the fundamental right–based PIL approach, and impact on foreign investments. The analysis delves into the court's pivotal role in novel legal standards, and facilitating legal transplantation when the judiciary confronts legal challenges beyond the purview of national laws. Finally, the chapter concludes with the findings of the research.

4.1 Transplanting SD into Environmental PILs: Precedents for the *Chunnakam* case

At the outset, it might be helpful to briefly explain the background of the environmental and investment laws in Sri Lanka and their interconnectedness with these laws relevant to this case study. The state must uphold the international law and treaty obligations, as stipulated in Article 27(15) of the constitution, a stance underscored by the Supreme Court in various cases.[327] The Parliament Act is required for the domestic implementation of international treaties in Sri Lanka's dualist legal system.[328]

There is a special provision in the constitution for investment treaties. Without passing the law in parliament, a foreign investment treaty or agreement under Article 157 carries the status of law when approved by two–thirds of the parliament. This provision promotes and protects foreign investments, that are important for developing the national economy. Except when in conflict with national security interests, such investment treaties cannot be overridden by another law, executive, or administrative action. These treaties are subject to judicial oversight in cases of ultra vires or procedural violations.[329]

Regarding investment projects, two primary laws are applicable: Board of Investment of Sri Lanka Law No. 4 of 1978, as amended by its subsequent Amendment Acts (BOI–Law) and the Strategic Development Projects Act (2008).[330] These laws were enacted to facilitate and provide exemptions from the general law for foreign investments based on their contributions to the

[327] *Weerawansa v AG* [2000] 1 SriLR 387, 408–09: ('Article 27 (15) of the constitution implies that the state must likewise respect international law and treaty obligations'); See also, *Eppawela* case (n 334) 275–76.

[328] This has been affirmed by the Supreme Court on several occasions: *Singarasa v AG* [2006] 2 SC Spl (LA) 182/1999; Nigel Rodley, 'The Singarasa Case: Quis custodiet…? A Test for the Bangalore Principles of Judicial Conduct' (2008) 41(03) Israel Law Review 500–521; RKW Goonesekere, 'The Singarasa Case—A Brief Comment' (2006)17/25 Law and Society Trust Review 227–28; *Leelawathi v Minister of Defence* [2007] NLR 68, 487 ('despite being the signatory to UNDHR, it is not a part of the law as the country is a dualist').

[329] The Supreme Court concluded two treaty–based PILs rulings where the government failed to comply with the court instructions. (*WKH Wegapitiya v AHM. Fowzie and Others* [2008] SCFR 535, *Ven. Thinyawala Palitha Thero v AHM. Fowzie and Others* [2008] SCFR 536). During the foreign arbitration in Washington DC, the Sri Lankan government was accused of violating the bilateral investment treaty and paid USD 60Mn compensation to the investor: *Deutsche Bank AG v Democratic Socialist Republic of Sri Lanka* ICSID, ARB/09/2, 31 October 2012.

[330] Board of Investment of Sri Lanka (Greater Colombo Economic Commission) Law No. 4 of 1978 established the Board of Investment (BOI); Strategic Development Projects Act No. 14 of 2008.

national economy. Sections 16 and 17 of the BOI–Law empowers the Board of Investment (BOI) to approve investment projects and grant exemptions to investors from paying import taxes, which is contingent upon their contributions to the national economy and employment generation.

The environmental legal framework intersects with the investment laws to regulate the environmental compliance of investment projects. The National Environmental (Amendment) Act No. 56 of 1988 (NEA) serves as the umbrella legislation for environmental management. It mandates that the CEA regulate, maintain, and control the sources of environmental pollution arising from the development projects. The NEA requires developers to submit proposals for both new projects and modifications to existing ones, allowing the CEA to evaluate their potential environmental impact.

When Sri Lanka's Constitution was drafted in 1978, there was little political interest in the environment.[331] A proposed bill in 2000, which included the right to a clean and healthy environment, was not passed in Parliament due to inconsistencies with other provisions. Even after the 21 amendments within 44 years from 1978 to 2022, Sri Lanka has not included environmental rights in the constitution. This indicates the country's political apathy toward constitutional environmental rights, despite numerous Supreme Court PILs interpreting the rights and addressing the gaps in these rights.

Section 23A in Part IV A of the NEA and its respective regulations stipulate the conditions for certain projects, mandating that they obtain an Environmental Protection Licence (EPL) and the Scheduled Waste Management Licence (SWML) from the CEA prior to commencement. The SWML specifies tolerance limits for the discharge of waste into the environment. Section 23BB in Part IVC of the NEA requires certain projects to undergo an Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) whenever necessary.[332] Furthermore, sections 5 and 20A of the BOI–Law empower the BOI to grant subsequent annual EPLs for foreign investment projects in consultation with the CEA, following the initial EPL granted by the CEA.

---

[331] Joshua Chad Gellers, 'Environmental Constitutionalism in South Asia: Analyzing the Experiences of Nepal and Sri Lanka' (2015) 4(2) Transnational Environmental Law 395–423, 411; Gellers, 'Greening Constitutions with Environmental Rights: Testing the Isomorphism Thesis' (2012) 29(4) Review of Policy Research 523.

[332] USA first introduced the EIA process: Caiphas Soyapi and Louis Kotzé, 'Transnational Environmental Law: The Birth of a Contemporary Analytical Perspective' in Fisher (ed), (n 47) 94.

As noted, the 'Directive Principles of State Policy' in Article 27 (14) of the constitution outlines the state's obligation to protect and improve the environment. However, Article 29 conditions that Article 27 (14) cannot be challenged in court against the state. Unlike India, the fundamental rights (Chapter III) of the Sri Lankan Constitution do not provide explicit provisions for the right to live or to the environment.

In Sri Lanka, liability for any environmental damage can be imposed through both criminal and civil actions. Civil law allows tort claims under the Civil Procedure Code Ordinance No. 2 of 1889 and its amendments. Criminal cases, such as public nuisances under Section 98 of the Code of Criminal Procedure Act No. 15 of 1979, address statutory violations classified as nuisances and impose both physical punishment and financial penalties on perpetrators.

However, victims of environmental harm from large development projects often cannot afford lengthy trials, and NGOs are not permitted to file these claims on their behalf. Instead, PILs are used to address infringements or imminent infringements of fundamental rights, serving as the primary legal mechanism against any environmental harm from large projects. Although the Supreme Court's rulings in PILs are final and conclusive, government institutions are responsible for enforcing them.

Despite the absence of explicit environmental rights or enforceable provisions in the constitution, environmental litigation (PIL) is often brought before the Supreme Court under the general provisions of the fundamental rights chapter. Of the five fundamental right Articles, Article 12, which guarantees equal treatment for all individuals, is the most frequently invoked in environmental cases. Other articles, such as Article 10 (freedom of thought, conscience, and religion), Article 11 (freedom from torture), Article 13 (freedom from arbitrary arrest, detention, and punishment, and prohibition of retrospective penal legislation), and Article 14 (subject to the limitations of Article 15 on the rights to freedom of speech, assembly, association, occupation, and movement) are generally not applicable in environmental PIL. Article 126 outlines the procedure, allowing individuals to file fundamental rights petitions in the Supreme Court, although these cases are limited to challenges against the 'executive or administrative action' under Article 17.

The Supreme Court contemporarily expanded Article 126 (2), allowing genuinely interested parties on behalf of the affected people in fundamental right–based litigation,[333] to have wide access to courts. Despite the constitution's narrow approach to environmental issues, the judiciary in Sri Lanka innovatively expanded the concept of SD by broadening fundamental rights litigation through the PIL approach, similar to India. Another significant judicial development was extending the narrow interpretation of the legal standing (locus standi) in fundamental rights cases to accommodate the PIL approach. These judicial innovations occurred a few decades before the legislature enacted the SDA to implement the 2030 Agenda and SDGs.

Even before the *Chunnakam* case, the Supreme Court relied on legal transplantation in PIL related to the environmental harm caused by foreign–invested development projects, and integrated the concept of SD. This includes adopting international environmental law and foreign judgments, particularly in fundamental rights cases under the constitution challenging environmental and social harm of investment projects. These PILs provide transnational perspectives by transplanting foreign judgments and international environmental law blending with indigenous norms.

Almost 19 years before the *Chunnakam* case, the Supreme Court decision *Bulankulama v Secretary, Ministry of Industrial Development*, (commonly known as the *Eppawela* case)[334] marked an important milestone in Sri Lankan environmental law. In this PIL, the judiciary introduced the nonlegal SD concept in 2000, giving it legal recognition despite the absence of legislative enactment at that time.[335] This was achieved by expanding the available constitutional fundamental rights provisions referring to international law and foreign judgments. The *Eppawela* case decision is a classic example of how the Sri Lankan judiciary transplanted foreign legal norms

---

[333] Atapattu 2017 (n 92); Puvimanasinghe 2009 (n 92); Puvimanasinghe 2021 (n 92).

[334] [2000] 3 SriLR 243, decision 7 April 2000 [*Eppawela* case]. The case was noted by international scholars as it affirmed the SD and public trust doctrine on natural resources. See, Michael C Blumm and Rachel D Guthrie, 'Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision' (2012) 44 University of California Davis Law Review 741–808, 748, cited Preston, 'Judicial Implementation of the Principles of Ecologically Sustainable Development in Australia and Asia' A paper presented to the Law Society of New South Wales Regional Presidents Meeting, Sydney, NSW (21 July 2006).

[335] Konasinghe (n 76) 11–12.

into the domestic legal system blending with indigenous SD norms, in environmental–related PILs filling domestic legal voids.

The case involved a foreign investment contract between the government and the Freeport Mac Moran, USA company and its affiliate Imco Agrico. The proposed final contract conditions unjustifiably granted exclusive rights to the investor to explore and extract phosphate and other minerals in the historically and environmentally sensitive Eppawela area, which is central to the ancient irrigation network that still serves as the primary water source for the North–Central Province.The *Eppawela* case contributes to the legal transplantation of new legal norms in three ways.

For one thing, this is the first fundamental rights litigation that has been significantly integrated with PIL by the courts, as it involved seven petitioners including landowners, residents engaged in the cultivation of the land, and the Chief Buddhist monk in the temple. The Supreme Court dismissed the preliminary objections from the respondents, who argued that the case should be rejected because it was based on the PIL, which is not explicitly recognised in the Sri Lankan Constitution. The court established a 'judge–made law' ruling that the petitioners were qualified and entitled to file a PIL under Article 17 in conjunction with Article 126 (1).[336]

The petitioners challenged the company and the responsible government institutions, arguing that the imminent infringement of their fundamental rights under Articles 12(1), 14(1)(g), and 14(1)(h) of the constitution was violated due to the proposed agreement.[337] They further highlighted the confidential nature of the contract process regarding the phosphate mine, emphasising the government's violation of environmental laws (NEA) and the threat posed to the ancient irrigation system, which was still vital for agriculture and livelihoods. The petition is backed by expert reports from the National Academy of Science and the National Science Foundation, which claimed that the proposed agreement would result in not only environmental harm but also economic disasters.[338] It was highlighted that investors' environmental violations in previous foreign projects were not considered by the government institutions during the procurement process.

---

[336] *Eppawela* case 244.

[337] ibid 243–46.

[338] ibid 233.

The court desisted from proceeding with the foreign investment contract assessing the economic, environmental, and social harm of the proposed agreement.[339] The respondents were accused of imminent infringement of the fundamental rights of petitioners, leading the court to order the Ministry of Industries to properly assess phosphate mines and comply with environmental regulations before finalising the contract.[340] This case higlightsthe importance of proactive PIL (society) actions in preventing significant environmental and economic harm from non–compliant investment projects. Notably, the proactive actions of the petitioners were intended to prevent environmental harm from the proposed agreement.

Second, in the *Eppawela* case, for the first time, the judiciary innovatively introduced the SD concept referencing international environmental law and foreign judgments.[341] This blended the SD concept with norms rooted in Sri Lanka's history, all without any legislative background. The case decision transplanted several nonbinding principles from the Stockholm Declaration and Rio Declaration, integrating them into domestic law through judge–made law by the Supreme Court. Despite being a dualist country that needs subsequent legislative enactments, these principles have become binding laws in Sri Lanka since the *Eppawela* case.

Although highlighting the state's sovereignty to use natural resources for development under its environmental policies, as outlined in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration, the following international environmental principles were transplanted into domestic environmental law. Principle 14 of the Stockholm Declaration ('Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment'); Principle 1 of the Rio Declaration ('Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature'); Principle 4 ('In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it').

These principles were transplanted into the Sri Lankan law to promote the sustainable use of the Eppawela phosphate mine, the country's largest phosphate mine, in alignment with the Sri

---

[339] ibid 246–47, 320–21.

[340] ibid 320.

[341] ibid 274–78.

Lankan Buddhist philosophy of SD.[342] To further justify the legal transplantation of the SD concept, the Supreme Court adopted the ICJ case for the first time, *Hungary v Slovakia.*[343] The *Eppawela* case cited Vice President Judge Weeramantry's opinion on the Sri Lankan historical Buddhist development philosophy on SD transplantation of the *Hungary* case.

Boyle and Redgwell highlighted that for the first time in the ICJ during the *Hungary case*, Judge Weeramantry presented the concept of SD, drawing upon Buddhist cultural norms on environmental conservation from Sri Lanka.[344] Weeramantry J further highlighted that the 'ancient irrigation system of Sri Lanka', particularly in the North–Central Province (including the Eppawela area), mentioned in his judgment, 'is even larger than many modern development projects'.[345] This historical example underscores the scale and sustainability of traditional development practices.

Third, the judiciary introduced the doctrine of public trust, a legal principle that explains that the state holds natural resources as a 'trustee' for the public.[346] The public trust doctrine was also transplanted by adopting the *Hungary* case blending with indigenous norms. The court adopted Judge Weeramantry's opinion on the doctrine of public trust, as referenced in the ICJ case, integrating the doctrine of public trust with the systematic philosophy of conserving natural resources, a concept that dates back to the third century BC. as explained in the great chronicle *Mahawamsa*.[347] This record established that the king (state) bears the guardianship of not ownership, of natural resources, thus enshrining the roots of the public trust doctrine in Sri Lankan

[342] ibid 278.

[343] *Hungary v Slovakia,* also known as *Gaboikovo–Nagimaros Project* case [1997] ICJ Rep 3, ICGJ 65 (ICJ 1997) 5 February 1997 [*Hungary* case].

[344] Boyle and Redgwell (n 326) 117. See also, Vaughan Lowe, 'Sustainable Development and Unsustainable Arguments' in Alan Boyle and David Freestone (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (OUP 1999) 19–25 (Lowe argued that Judge Weeramantry's judgment implies SD as a normative principle). Furthermore, Sands examined the *Hungary* case, which 'illustrates the range of enforcement and dispute settlement options available' for environmental disputes, Sands (n 71) 369.

[345] Weeramantry (n 46) 123.

[346] *Eppawela* case 253–58.

[347] ibid 254–56, referred to the *Hungary* case (n 343) 78, which cited *Mahindagamanaya* (B. C. 306) in the Great Chronicle of Sri Lanka. This historical record is in the *Mahavamsa* in *Sinhala* (*මහාවංශ, Mahāvansha*) [emphasis added] written by the Buddhist monk Mahanama at the Mahavihara temple in Anuradhapura during the 5th–6th century (Mahavamsa ch 68, 8–13).

Buddhist philosophy. The judgment further referred to a similar approach in the Indian and US courts in *MC Mehta v Kamal Nath* [348] and *Illinois Central R. Co v Illinois* [349] pointing to the public trust doctrine.

Following the *Eppawela* case, in the *Watte Gedera Wijebanda v Conservator General of Forests* case (2009)[350] the Supreme Court reemphasised the impact of judge–made laws that transplanted the nonbinding SD concept adopting the Stockholm Declaration and Rio Declaration into the Sri Lankan environmental law.[351] In this case, despite the constitutional environmental rights, for the first–time the judiciary innovatively interpreted the right to a clean environment as inherent in Article 12 (1)—the right to equal treatment, as linked with an unenforceable Article 27 (14) of the constitution (Duty of the state to protect and improve the environment).[352] This marked a significant advancement in SD jurisprudence. The right to a healthy environment was extended to include protection from harmful noise pollution in the case of *Ashik v Bandula and Others* (2007).[353] In this case, the judiciary also relied on Indian precedents and further ordered the Department of Police to issue new regulations to enforce the court's decision.[354]

The *Chunnakam* case

Before delving into the case decision, it is prudent to briefly review the background of the case. Chunnakam (ancient Sinhala name: *Hunugama*; හුණුගම) is a densely populated commercial and agricultural area in the Jaffna District in the Northern Province of Sri Lanka. It has been noted that the main electricity supply source in Chunnakam is thermal power plants.[355] Since 1958, the Chunnakam area has primarily received power from the state–owned Ceylon Electricity Board

[348] [1997] 1 SCC 388.

[349] [1892] 146 US 387.

[350] [2009] 1 SLR 337.

[351] ibid 358–59.

[352] ibid 356.

[353] [2007] 1 SLR 191.

[354] ibid 199–201.

[355] *Chunnakam* case 4–5.

(CEB) thermal power plant. Since it was destroyed during the war, local private companies provided electricity using similar diesel–powered thermal plants.[356]

Because of the insufficient capacity of these local power plants during the war, the BOI selected a foreign investor—Northern Power Company (Pvt) LTD (NPC)— in 2007 to build and operate a thermal power plant to meet the government's requirement to provide electricity for Jaffna.[357] The NPC's power plant is also located on the leased land owned by the CEB and was in very close proximity to the CEB's existing thermal power plant. The NPC and CEB subsequently signed a power purchase agreement in 2007.

The *Chunnakam* case, as a PIL, was petitioned by an NGO working toward preserving the environment challenged the NPC (8th respondent) on groundwater pollution caused by its thermal power plant, which affected the livelihoods and drinking water of the farming community of the Chunnakam area.[358] The PIL pursued the fundamental rights litigation under Articles 12 (1) and 12 (2) of the constitution. Thus, filing a PIL against a private party in fundamental rights litigation is precluded by the provisions of Articles 17 and 126, which specify that the fundamental rights petitions apply exclusively to 'executive or administrative actions', the court granted leave to proceed with the case accepting it as a PIL.

The petitioner challenged the NPC for two reasons. First, the violation of the NEA was by not obtaining the EPL and complying with the procedure for the IEE or EIA before commencing operations in 2009, and by increasing the power plant capacity in 2010 beyond the initial capacity (15 MW) without approval. Second, the pollution of groundwater due to the disposal of petroleum waste onto open land has rendered it unfit for human consumption.[359] This has had a detrimental impact on farming livelihoods by contaminating wells, which serve as the sole water source for their consumption and agricultural activities.

---

[356] The country endured a 30–year terrorist war, which concluded on May 18, 2009. After the war ended, the CEB replaced the old thermal plant with a new one in 2013.

[357] *Chunnakam* case 5, 10.

[358] ibid 1–7.

[359] ibid 6.

Furthermore, it challenged the responsible government institutions.[360] The CEA for failing to enforce the NEA against the NPC and breaching the doctrine of public trust, as residents have a legitimate expectation to access clean water. Other respondents included the Ministers in charge and the heads of the respective government institutions: CEB, BOI, National Water Supply and Drainage Board (NWSDB), and respective local authorities. They were challenged for failing to enforce the NEA against the investment company.

The Supreme Court initially directed the NPC to temporarily halt the operations of the power plant until a decision was made in the case.[361] It is important to note that, before this petition, the residents of the area had filed public nuisance action in the *Mallakam* Magistrate Court for water pollution. On 27 January 2015, the Magistrate Court suspended the power plant's operations.[362] After appealing to the High Court, the NPC obtained permission to perform maintenance work.

The company defended the claim pointing to two reasons.[363] First, just after the end of the war in May 2009, the NPC obtained the EPL, because the CEA had not yet existed in Jaffna in 2007. It was further noted that terrorist activities during the war deprived residents of electric supply through the national grid, and although the Sri Lankan government aimed to provide electricity, the war situation presented these practical difficulties. Further pointed that consequent to the government Emergency Regulations on Electricity generation,[364] obtaining EIA or IEA was not required in 2007. The company refused the claim of an unauthorised increase in capacity.

Second, the NPC is not liable for any groundwater pollution that occurred before 2009 by the nearby CEB thermal power plant.[365] The NPC pointed out that in the Chunnakam area, two thermal power stations existed before its establishment. The first, established in 1956 and operated by the CEB, was destroyed by terrorists during the war, resulting in severe diesel spillage around 1990–1991, the area was popularly known as the 'oil pond' until 2012 (Following the concluding

---

[360] ibid 1–2, 6–7.

[361] ibid 5–6.

[362] ibid 6.

[363] ibid 8–11.

[364] ibid 10 (Generation of Electrical Power and Energy, Extraordinary Gazette 966/11, 12 March 1997).

[365] ibid 9–10.

war in 2009, the CEB replaced it with a new station named 'Uthuru Janani' in early 2013). The second station was operated by the 'Aggreko' company until 2012.

In support of its denial of groundwater pollution from the thermal plant, the NPC presented several expert reports from both local and international institutions.[366] It has been noted that supporting the NPC's argument, both the CEB and the CEA denied that the NPC is solely responsible for groundwater pollution.[367] Supporting the NPC, the CEB submitted a local expert report that does not conclusively prove whether the NPC had contributed to groundwater pollution with oil at Chunnakam. The CEA also stated that, despite continued inspections in the area, such oil contaminations in groundwater could not be definitively identified as being caused by the NPC.

Concerning the first complaint, The CEA responded that following the application from the NPC on 12 October 2009, the initial EPL was issued on 20 May 2010.[368] Subsequent EPLs were issued by the BOI, with its statutory power in concurrence with the CEA. CEA further noted the NEA does not mandate an IEE or EIA for 15 MW capacity power plants.[369]

The court noted violations of NEA by the NPC.[370] The site works commenced on 27 October 2009, and commercial operation began on 10 December 2009. The NPC had not obtained the EPL before commencing operations, as mandated by the NEA. The court held that although an IEE or EIA was not required for the 15 MW thermal power plant, per Section 23 of the NEA, the NPC was still required to obtain the EPL before commencing operations. Furthermore, the NPC failed to renew subsequent annual EPLs on time.

Disregarding the company's denial of the capacity increase, the court held that NPC had unlawfully increased the initial capacity, breaching NEA regulations.[371] This was demonstrated by two documents submitted by the BOI and CEA as evidence, showing that the power plant's capacity had indeed been increased beyond 15 MW without adhering to the mandated EIA procedure. The BOI had approved the company's importation of a 30 MW diesel power plant on

---

[366] ibid 9.

[367] ibid 8.

[368] ibid 25.

[369] ibid 8.

[370] ibid 24–30.

[371] ibid 20–21.

a duty–free basis, indicating the NPC's plan to increase the capacity at a later stage. Furthermore, the oil contamination investigation report prepared by the CEA clearly stated that the capacity was 30 MW during the inspection conducted in 2015.

The court determined that 'it is crystal clear' that the NPC violated the NEA on two occasions, first when increasing the capacity of the power plant without EIA, and then unjustifiable delaying the initial EPL and its annual extensions.[372] The court's 'inescapable conclusion' was that the NPC has no authority to commence its operations until the EPL is granted.[373] The CEA issued the first EPL on 20 May 2010, seven months after its commencement on 27 October 2009. Subsequent annual renewals of the EPL in 2011, 2012, and 2013 have also been delayed.[374] Furthermore, it has been noted that the CEA and BOI identified the need for a SWML, particularly nearly five years later.[375] The CEA agreed with the BOI for a conditional EPL on 30 September 2014, to extend the EPL, subject to obtaining a SWML, which the NPC obtained on 10 November 2014.

Regarding the second complaint—groundwater pollution—in 2013 and 2014, the court pointed out CEA and NWSDB reports proving the NPC's liability.[376] The NWSDB reported that the groundwater of farmers' wells around the power plant had been contaminated with oil and grease. Based on reports, the court held that the NPC had been discharging oil–contaminated wastewater onto open land until 2012. Thus, the company is not solely responsible for oil contamination of the groundwater; the court highlighted that previous pollution does not give them a 'license' for pollution.[377]

The Supreme Court ruled against both the private investor—the NPC and government institutions—CEA and BOI detailing remedial measures. [378] The investor was accused of commencing thermal power plant operations without an EPL, unlawfully increasing its initial

---

[372] ibid 21, 22.

[373] ibid 26.

[374] ibid 24–26.

[375] ibid 30.

[376] ibid 21, 44.

[377] ibid 44.

[378] ibid 61–65.

capacity beyond 15MW, and polluting groundwater by releasing untreated oil effluents onto open land. A 20 million LKR compensation was charged to the company by applying Principle 16 of the Rio Declaration— PPP, referring to the Indian Supreme Court decision, *Vellore Citizens Welfare Forum v Union of India* (1996)[379] (detailed later) to compensate the affected farmers for cleaning their oil–polluted wells. It was ordered that the NPC pay 20 million LKR within three months, with the NWSDB directed to distribute this compensation to the affected residents based on damage assessments to wells conducted by a panel including the BOI and CEA. The Supreme Court further ruled that both the CEA and BOI violated Article 12(1) fundamental rights of residents of the Chunnakam area, and the petitioner.

Noticeably, despite the petitioner's plea for a permanent closure of the power plant, the court, considering the necessity for electricity, allowed it to resume operations under the condition that a comprehensive mechanism be implemented to prevent future environmental damage by the NPC, thereby ensuring the sustainability of the court's decision.[380] The court ordered the NPC to resume operations only after obtaining the necessary EPL and SWML and ensuring adequate measures to prevent water contamination and environmental pollution. Furthermore, the court ruled that the NWSDB must test the water quality of 50 wells located within a 1.5 km radius of NPC's thermal power station quarterly and bi–annually, starting one year after operations resume. Both the BOI and CEA were directed to enforce NEA regulations preventing environmental harm and monitor the operation of the 8th respondent's (NPC) power plant until corrective actions are taken and verified.

4.2 PIL Instigated by NGOs in South Asia

Environmental PIL in South Asia is often driven by NGOs, whose role in SD integration is well–noted. India's pioneering use of PIL, supported by NGOs, has gained significant scholarly attention for its innovative approach and influence on environmental cases in other Asian jurisdictions.[381] Indian courts have led the way in using NGO–driven PIL in investment projects to

---

[379] [1996] AIR SC 2715, 2721.

[380] *Chunnakam* case 61–63.

[381] Rajamani (n 18); Holladay (n 18); Yeh and Chang (n 184).

create new legal norms that promote SD, with this approach being adopted by neighboring South Asian courts, including Sri Lanka.[382]

As the constitutional recognition of the right to a quality environment has increased in South Asia, so has the number of litigations in these countries, with claims that governmental 'action[s] or inaction[s] have infringed' upon environmental rights.[383] Judge–made law, or judicial decisions by superior courts, carries significant precedential weight, akin to legislation. Sri Lankan Supreme Court cases often refer to the Indian judiciary, advancing SD. As detailed below, NGO–supported PIL against environmental harm and damaging livelihood by investment projects in South Asia has expanded existing legal provisions to address these issues.

First, it provides an overview of how the Indian constitutional foundation of SD and environmental protection has empowered courts to continually advance the concept of SD through PIL. The Indian Constitution permits PIL to be filed directly in the Supreme Court under Article 32 or in the High Courts under Article 226. The directive principles assign the duty to protect and improve the natural environment to both the state and its citizens.[384] Under Article 253, which pertains to the implementation of international law, the Parliament holds the authority to enact laws for any part or the entirety of the country to implement treaties, agreements, or conventions on environmental matters.[385]

Article 21 of the Indian Constitution, under the Fundamental Rights Part III, guarantees the right to life and personal liberty. It is the most frequently cited provision in PIL and has been broadened by the judiciary to include environmental rights, emphasising the duty of both the state and citizens to protect the environment.[386] In various PIL cases, against environmental harms by investment projects, the courts have interpreted Article 21 to encompass environmental rights.

---

[382] Anuj Bhuwania, 'Introduction' in *Courting the People: Public Interest Litigation in Post–Emergency India* (CUP 2016) 1–15; Stellina Jolly and Zen Makuch, 'Procedural and Substantive Innovations Propounded by the Indian Judiciary in Balancing the Protection of Environment and Development: A Legal Analysis' in Voigt and Makuch (n 19) 142–69.

[383] Jolly and Makuch ibid 135.

[384] Constitution of India (42nd Amendment Act 1976), arts 48(A), 51(A) (g).

[385] The Air (Prevention and Control of Pollution) Act 1981, and The Environment (Protection) Act 1986, were enacted under this provision, following the Stockholm Declaration.

[386] Lovleen Bhullar, 'Environmental Constitutionalism and Duties of Individuals in India' (2022) 34 (3) Journal of Environmental Law 1, 8–9.

The infamous Bhopal tragedy that occurred four decades ago triggered a PIL in which an NGO appeared in court on behalf of the victims against a foreign investor, Union Carbide India Ltd. a subsidiary of the Union Carbide Corporation of the United States. The judgment *Charan Lal Sahu Etc. v Union of India* (1990) underscored three key responsibilities of the government in development projects: safeguarding human rights, ensuring corporate accountability, and upholding governmental responsibility.[387] This ruling resulted in the formulation of two significant policies concerning investment projects.

First, it has mandated the establishment of 'The Industry Disaster Fund' before granting permits to foreign companies, to ensure prompt actions in the event of future disasters.[388] Second, the case extended the jurisdictional reach of Indian courts to enable compensation payments from the foreign assets of such companies, dismissing attempts to file the case in the US courts.[389] Furthermore, the judiciary noted the decision would be a 'catalyst to expedite the acceptance' of the UN Code and Conduct for multinational companies which shows the transnational impact of the PIL.[390]

After the Bhopal case, Indian courts repeatedly charged investment companies in PIL supported by NGOs, ruling the PPP as part of the law. In *Vellore Citizens Welfare Forum v Union of India* (1996) case (hereafter, *Vellore* case), the court compelled the investment company to cease the discharge of untreated toxic effluent and held them responsible for the environmental damage, with the costs charged to affected residents.[391] Similarly, in the *Calcutta Tanneries* case, (*MC Mehta v Union of India* 1997) the court ordered relocation of tanneries emitting toxic effluents and mandated compensation for damages to the soil, underground water, and residents' health.[392] The investors were charged for the environmental damage and residents affected by the discharge of toxic industry effluent.

---

[387] [1990] AIR SC 1480 [*Bhopal* case].

[388] ibid 103, 104.

[389] ibid; Percival (n 40) 336 (US courts do not welcome transnational litigation. Upon being dismissed in the US, India adopted legislation for the prosecution).

[390] *Bhopal* case ibid.

[391] [1996] AIR SC 2715, 2721 [*Vellore* case].

[392] Preston (n 238) 453 cited *MC Mehta v Union of India* [1997] 2 SCC 411 and *MC Mehta v Union of India* [1996] (10) Suppl SCR 383, 18, 19.

Likewise, in the *Indian Council for Enviro–Legal Action v Union of India*, the chemical factory investor paid the cost of the remediation of polluted aquifers and soil.[393] Furthermore, in the *River Beas* case, the investor was held accountable for damage to the river caused by a construction project.[394] These PILs, which established the PPP as an integral part of domestic law, form as an outcome of the judicial transplantation of the Rio Declaration in PIL, which prompted the Indian government to enact a new legislation on PPP, the National Green Tribunal Act 2010. These developments in PPP have influenced the Sri Lankan judiciary which will be discussed later.

With increasing global attention, efforts by South Asian courts in climate litigation, often driven by NGOs through PIL, have gained prominence. Notably, in 2008, the first UN resolution integrating climate change and human rights was adopted at the request of the Maldives.[395] Preston observed that in South Asian PIL, courts have examined claims related to both 'government actions and inactions in addressing climate change'.[396] These claims often address environmental regulations on climate issues, such as greenhouse gases, with courts trend in ruling based on constitutional environmental rights and acknowledging the consequences of climate change.[397]

Climate litigation in India is also emerging as PIL led by NGOs. In several Indian PIL, courts are engrossed in the impact of climate change on deforestation in development projects. Indian courts have shown significant interest in climate change issues, particularly in landmark PIL supported by NGOs. For instance, in *Association for Protection of Democratic Rights v State of West Bengal and Others* (2018), the Supreme Court mandated that the impact of large–scale deforestation in development projects on carbon sequestration and climate change must be considered.[398] Similarly, in *Ashish Kumar Garg v State of Uttarakhand* (2022) the Supreme Court

---

[393] [1996] AIR SC 1446, 67.

[394] *MC Mehta v Kamal Nath* [1997] 1 SCC 388, 37, 38. See also, *MC Mehta v Kamal Nath* [2000] AIR SCC 1997, 1, 24.

[395] Knox, 'Linking Human Rights and Climate Change at the United Nations' (2009) 33 Harvard Environmental Law Review 477–98, 477; Miao (n 12).

[396] Preston, 'The Evolving Role of Environmental Rights in Climate Change Litigation' (2018) 2 Chinese Journal of Environmental Law 131–64, 131, 134.

[397] ibid 134–35.

[398] [2018] SCSpL 25047, decision 25 March 2021.

emphasised the adverse effects of tree cutting in road development projects on fauna and flora, prompting the government to take action to mitigate carbon emissions in such projects.[399]

In 2019, in the *Hanuman Laxman Aroskar v Union of India*, the court stressed the Indian government should aim for 'zero carbon airport operation' in future airport construction projects lifting the suspension.[400] Once petitioners, citizen Hanuman Laxman Aroskar, and the NGO Federation of Rainbow Warriors challenged the clearance, the Supreme Court suspended the airport's environmental approval due to the government's failure to consider environmental impacts. The PPP is particularly significant in this case, and it highlights the alignment of the idea of SD with the SDGs emphasising the evolved concept of SD through PIL.[401]

In a recent PIL, *MK Ranjitsinh & Ors. V Union of India & Ors.* (2022)[402] the Supreme Court of India held that the government should protect peoples 'right to be free from the adverse effects of climate change.[403] This innovation stems from the expanded interpretation of Article 21's right to life in the constitution, emphasising the state's responsibility under Article 48A to preserve the environment, as well as the citizens' duty to do the same under Article 51A. Importantly, the Court emphasised its 'duty' to integrate international environmental law and give it binding effect within India.[404]

While courts have established the necessity of addressing environmental concerns, Setzer and Byrnes criticised the Indian government's recent post–COVID economic policy to relax environmental assessments for approving development projects to attract investors, arguing that it may negatively affect rural people's livelihoods.[405] Similarly in Sri Lanka, the government relaxed

---

[399] [2022] SCSpLA (C) 12591.

[400] [2018] CivilAp 12251 and [2019] SCC 441 decision 29 March 2019, final decision 16 January 2020.

[401] Florian Müller, 'Mapping and Assessing the Supreme Court of India's Jurisprudence on Sustainable Development in Light of the SDGs: From *Vellore Citizens Welfare Forum* to *Hanuman Laxman Aroskar*' (2022) 25 (2) Asia Pacific Journal of Environmental Law 210–32, 224.

[402] [2019] Writ (Civil) 838, and with [2022] CivilAp 3570, decision 21 March 2024.

[403] ibid paras 19, 17–18.

[404] ibid paras 56, 39–40.

[405] Joana Setzer and Rebecca Byrnes, *Global Trends in Climate Change Litigation: 2020 Snapshot: Policy Report 2020* (Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science 2020) 12.

requirements for conducting feasibility studies assessing ecological and environmental impacts on recent Chinese financial projects.[406] These relaxations on environmental concerns aimed at economic development should be implemented carefully, as they may potentially lead to adverse effects on the environment.

Similarly, the Pakistan courts have indeed played an active role in climate litigation, ensuring access to justice for vulnerable farming communities. In the famous PIL, the *Asghar Leghari v Federation of Pakistan* (2015),[407] a farmer challenged the Punjabi government for its failure to implement the 2012 National Climate Change Policy. The plaintiff contended that the government's failure in policy implementation, violated his constitutional rights under Article 9, the right to life, and Article 14, the right to a healthy and clean environment and human dignity, as climate change poses significant threats to water, food, and energy security in Pakistan. The High Court of Lahore dissolved the 'Climate Change Commission' and established a 'Standing Committee on Climate Change' to serve as an intermediary between the 'Court and the Executive'.[408] This committee will assist the relevant governments and agencies to ensure the ongoing implementation of the climate policy.

This landmark PIL decision has led scholars to recognise South Asia's significant transnational contribution to climate litigation.[409] It emphasises the region's increasing importance in tackling global climate challenges through legal means, particularly in holding governments accountable for climate action and safeguarding the rights of marginalised communities. These NGO–supported case decisions highlight the increasing importance of Asian courts in

---

[406] Agana Gunawardana and Piyumani Ranasinghe, 'Role of NGOs in Balancing Environmental Rights Within Chinese–funded Mega Development Projects in Sri Lanka' (Proceedings of the 7th International Research Conference on Humanities & Social Sciences (IRCHSS) 21 March 2021) 1–10, 6 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3808949 > accessed 14 August 2024.

[407] *Asghar Leghari v Federation of Pakistan* [2015] WP 25501/201, decision 25 January 2018 [*Asghar* case]. See case analysis, Emily Barritt and Boitumelo Sediti, 'The Symbolic Value of *Leghari v Federation of Pakistan*: Climate Change Adjudication in the Global South' (2019) 30(2) King's Law Journal 203–10.

[408] *Asghar* case ibid paras 24, 25, 24–26.

[409] Peel and Lin (n 40) 680; Kim Bouwer, 'The Unsexy Future of Climate Change Litigation' (2018)3 Journal of Environmental Law 483–506; Bouwer, 'Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation' (2020) 9 (2) Transnational Environmental Law 347–78; R Henry Weaver and Douglas A Kysar, 'Courting Disaster: Climate Change and the Adjudication of Catastrophe' (2017) 93(1) Notre Dame Law Review 295–356, 343–44.

transnational environmental litigation and their crucial role in addressing global environmental issues.

One notable aspect of South Asian climate litigation is that scholars have observed Asia's substanitial contribution to global climate litigation, following an independent path.[410] Asian PIL are not directly focused on international climate governance but on rights–based litigation resulting from environmental harm caused by investment projects. In the West, by contrast, climate litigation demands proactive regulatory actions that prioritise climate concerns in government decision–making. Setzer and Benjamin elaborate on Asia's distinct approach to climate litigation, is because of the enforcement issues in environmental legislation, which resulted from 'weak and fragmented institutions, incomplete legal foundations, and limited political will'.[411]

Despite the indirect approach to climate issues, Asian PIL supported by NGOs on climate matters has influenced governments to enact new climate control regulations.[412] These PIL are primarily through constitutional environmental rights and national environmental laws rooted in administrative law principles. These judicial decisions, rather than addressing enforcement issues and weak institutional issues, have often catalysed the enactment of new climate control regulations filling legal voids. While statutory obligations on climate concerns are increasingly recognised,[413] the foundation laid by the South Asian judiciary supports this requirement.

For instance, in 2014, the Ministry of Transport in Sri Lanka enacted regulations for Air Emission, Fuel, and Vehicle Importation Standards[414] following a court order to implement policies

---

[410] Jacqueline Peel and Hari M Osofsky, 'Climate Change Litigation' (2020) 16 Annual Review of Law and Social Science 21–38; Peel and Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) Transnational Environmental Law 37–67, 39; Peel and Osofsky, *Climate Change Litigation Regulatory Pathways to Cleaner Energy* (CUP 2015) 5; Joana Setzer and Lisa Benjamin, 'Climate Litigation in the Global South: Constraints and Innovations' (2020) 9(1) Transnational Environmental Law 77–101, 85–86.

[411] Setzer and Benjamin ibid 82.

[412] ibid; Laura Burgers, 'Should Judges Make Climate Change Law?' (2020) 9(1) Transnational Environmental Law 55–75.

[413] Laura Mai, 'Measuring It, Managing It, Fixing It? Data and Rights in Transnational and Local Climate Change Governance' 2024 (13)1 Transnational Environmental Law 111, 120–21.

[414] The case proceedings were concluded following the submission of the draft Regulation of Air Emission, Fuel & Vehicle Importation Standards which was published in Gazette Notification No. 1887/20 of 05 November 2014 with the corrected Gazette Notification No. 1895/43 of 01 January 2015. Following these regulations, the Ministry of Transport introduced the vehicle emission test, mandating annual emission tests for all kinds of vehicles.

aimed at reducing vehicle emissions and air pollution (including CO_2 emissions) in response to a PIL. Sri Lanka introduced new regulations and institutional mechanisms to regulate vehicle emissions as a result of court rulings in response to a landmark PIL.

These regulations mandated Vehicle Emission Tests to minimise air pollution, establishing a new institutional framework that connected the Central Environmental Authority (CEA) and the Department of Motor Traffic. In this landmark supreme court case, *Environmental Foundation Ltd v Minister of Environment*,[415] the Minister of Environment, and related government institutions were challenged by an NGO to take mitigative actions against the increasingly high levels of air pollution in the Colombo Metropolitan area, Sri Lanka's commercial capital. The court further ruled against the CEA, requiring them to upgrade and install monitoring machines in Colombo. The transnational insights from this decision are crucial, as '[A]ir pollution is the most significant environmental risk globally'.[416]

However, relying solely on reactive, case–by–case litigation is insufficient for addressing the pervasive and cross-cutting nature of global–scale climate issues. The enforcement of individual judgments does not adequately tackle the broader problem of climate change. This challenge requires proactive commitments from states, which play a central role in addressing environmental concerns. Setzer and Benjamin posit that Asia's right–based approach to climate litigation is because of the enforcement issues in environmental legislation, which resulted from 'weak and fragmented institutions, incomplete legal foundations, and limited political will'[417]

South Asian courts have developed new water law norms as a result of PILs filed by NGOs against investment projects. In 2019, Bangladesh became the first country in the world to grant it's all rivers 'living entities' with rights as legal personality (*locus standi*) by a Supreme Court decision *Human Rights and Peace for Bangladesh and Others v Secretary of the Ministry of Shipping and others* (2016).[418] This PIL, brought by NGOs, led the court to construct 'The National River Conservation Commission' to protect and conserve these rivers, ensuring their rights and

[415] [2007] SCFR 87/07, decision 24 September 2014.

[416] Preston 2024 (n 14) 165.

[417] Setzer and Benjamin (n 410) 83.

[418] [2016] Writ Petition 13989, High Court Division of the Supreme Court, decision 30 January 2019 and 03 February 2019.

ecosystems are safeguarded. The Commission can enforce these rights against both private and public entities. This groundbreaking judgment marked the first instance in an Asian court where water was endowed with legal personality.[419]

In 2001, the Supreme Court of Bangladesh, in the landmark PIL, *Farooque v Government of Bangladesh* (1993) held that the right to clean drinking water is derived from Article 32 of the Bangladesh Constitution, which guarantees the right to life.[420] This PIL addressed water pollution in the Buriganga and Shitalakkhya rivers caused by industrial effluents since 2001. Winkler particularly noted that courts in India—as well as in Bangladesh, Pakistan, and Nepal—have derived the constitutional right to water from the right to life.[421]

The Indian Supreme Court has issued evolving judgments recognising citizens' right to water. PILs on water issues, often brought to court by NGOs, typically address concerns related to investment projects that pose harm to the environment and people. Water rights litigation in India has stemmed from traditional values grounded in the public trust doctrine, which is derived from the right to life enshrined in Article 21 of the constitution.[422] The State High Courts have addressed the state's duty to provide clean drinking water for all citizens, as evidenced in cases like *Hamid Khan v State of Madhya Pradesh* (1997) and *Vishala Kochi Kudivella Samarkshana Samithi v State of Kerala* (2006).[423]

Despite the absence of specific legislation for drinking water, PILs such as *Pani Haq Samiti and Ors. v Brihan Mumbai Municipal Corporation and Ors.* (2012) have effectively reinforced water rights.[424] While the proposed National Ganga Rights Act (2017) failed to gain parliamentary

---

[419] Peter Burdon and Claire Williams, 'Rights of Nature: A Critique' in Fisher (ed), (n 47) 170. Scholarly critics have noted that the Bangladesh declaration of legal personality for rivers negatively impacts poor people who depend on riverbanks for their livelihoods. See, Petel (n 70) 19, This underlines the need for integrating social, environmental, and economic aspects.

[420] [1994] WP 891, decision 15 May 2001.

[421] Inga T Winkler, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation* (Hart Publishing 2012) ch 6, 243.

[422] Cullet, 'Water Law in Asia' in Antons (ed), (n 88) 330 cited *MC Mehta v Kamal Nath* [1997] 1 SCC 388, 34; Cullet ibid 327–29 (The sovereign rights of the state to regulate water supply accepted in a previous decision, *Subash Kumar v State of Bihar* AIR [1991] SC 420; Winkler (n 419) 243, 245–47.

[423] Cullet ibid 328, 329 cited AIR [1997] MP 191, 6 and [2006] (1) KLT 919, 3.

[424] ibid 329 cited PIL [2012] 10, interim order of 15 December 2014.

approval, the State High Court of Uttarakhand granted legal personality to two of India's most revered rivers, Ganga and Yamuna.[425] These legal developments indeed signify significant progress in the development of environmental laws within Asian courts, showcasing their contribution to transnational environmental litigation through PILs.

While '[E]nvironmental harms are experienced differently by different individuals and groups of people',[426] the role of NGOs appearing for the affected marginalised communities is significant and promotes public participation in SD decision–making which is endorsed in the 2030 Agenda. Despite the role of NGOs, holding wealthy companies accountable for environmental harm in developing countries is an 'elusive goal' because they invest more in litigation defence than victims.[427] Establishing effective environmental regulatory systems and enforcement mechanisms in developing countries can overcome this obstacle.[428] Because countries with explicit constitutional and legislative environmental rights have shown a strong legal basis for enforcement and environmental lawsuits for violations.[429]

4.3 Lessons from *Chunnakam* case

This section examines how the *Chunnakam* case created a new legal norm in Sri Lanka transplanting foreign judgments and international law principles, further promoting the legal recognition of SD in investment projects. The analysis is based on three aspects: legal transplantation, public–interest litigation approach, and impact on foreign investments.

Legal Transplantation Integrating the SD

First, the judgment is significant because the Supreme Court filled a legal void in the fundamental rights chapter of the Sri Lankan Constitution creating a new judge–made law transplanting Indian case decision and PPP. The constitution is void of explicit provisions for filing a PIL against private parties, as Articles 17 and 126 allow fundamental rights action only against the executive

[425] Burdon and Williams (n 419).

[426] Preston 2024 (n 14) 177.

[427] Percival (n 40) 333, 339.

[428] ibid 337; Jerneja Penca, 'Regulatory Instruments of Transnational Environmental Governance' in Heyvaert and Duvic–Paoli (eds), (n 38) 88–103, 102.

[429] Pedersen (n 16); Bryner (n 244).

or administrative authorities. It means a non–state institution or person cannot be included as a respondent in a fundamental right litigation.

In the *Chunnakam* case, the Supreme Court first time charged the water pollution cost from a foreign investor NPC (8th Respondent) in a PIL by applying PPP, broadening the fundamental rights Articles 12 (1), (2), 17, and 126. This transplantation adopted Principle 16, PPP of the Rio Declaration, and precedent from the Indian Supreme Court detailed below. So far, the *Chunnakam* case is the only judgment that applied the PPP to charge a non–state party. While Sri Lanka lacks legal provisions in fundamental rights litigation for charging environmental pollution costs to private investors, the judiciary adopted the PPP from the Rio Declaration, establishing a new legal norm for holding private parties accountable for environmental pollution.

The judiciary, by transplanting the PPP, highlighted the responsibility of the government to establish mechanisms that ensure polluters bear the cost of pollution.[430] To justify the new legal norm by applying the PPP the judgment refers to a similar Indian *Vellore* case. This was a PIL under Article 32 of the Indian Constitution. This decision applying PPP, charged industries to pay compensation for affected people for contaminating farming lands, groundwater, and the Palar River in Tamil Nadu, the main water source for residents in the area. Then the judiciary further justified the transplantation of the PPP by citing several Indian rulings that similarly applied the PPP to require investors to compensate those affected by pollution.

The court justified the decision further pointing out several Indian decisions that repeatedly applied the PPP to charge investors: *Jagannath v Union of India* (1997), *MC Mehta v Kamalnath* (1997), and *Ramji Patel v Nagric Upbhokta Marg Dharshak Manch* (2000).[431] The Sri Lankan judiciary depended on similar judgments in India, seeking pragmatic answers to the legal issues before the court. Thus, legal transplantation from Indian judgments certainly nurtured Sri Lankan litigation promoting judiciary integration of SD.

Furthermore, the judiciary referred to another Indian Supreme Court decision, *ND Jayal v Union of India* (2004) to extend the scope of Article 12 (1) —right to equal treatment of the Sri Lankan Constitution to environmental rights.[432] The *Jayal* case extended Article 21 of the Indian

---

[430] *Chunnakam* case 63–64.

[431] ibid 64.

[432] ibid 52.

Constitution (right to life) to the right to a clean environment. This case is further accepting scientific reports on water pollution.[433] The *Chunnakam* case decision asserted that the Sri Lankan judiciary, influenced by Indian judgments, employed legal transplantation to create new legal norms and address constitutional voids related to SD and environmental issues.

Additionally, transplantation from the Australian and USA courts was also apparent in the *Chunnakam* case. The *Australia Conservation Foundation Incorporated v Minister for the Environment and Energy* case (2017)[434] is referenced to further emphasise the soundness of the EIA as an accepted procedure worldwide.[435] The USA *Mono Lake* case (1983)[436] was adopted to further establish a public trust doctrine for the state's responsibility for the people's common heritage of groundwater.[437] Highlighting their responsibility, the Supreme Court ruled against both the BOI and CEA to establish necessary regulations under the NEA to prevent future environmental harm.[438] This includes provisions for suspending the operation of the 8th respondent's (NPC) power plant in case of any further violations after the resumption of operations until corrective actions are taken and verified.

Referring to precedent cases, the *Chunnakam* case highlighted the judiciary's emphasis on the government's responsibility to enforce environmental regulations and regulate projects effectively.[439] The *Wijebanda* case reinforced that the PPP should be applied to hold incompetent regulators accountable for their failures. Additionally, the *Eppawela* case was cited to stress that the party responsible for environmental damage should bear the cost, rather than shifting the financial burden onto the public through increased taxation to address such harms.

The Sri Lankan judiciary's judge–made law is a binding nature, which is often referred to and highlighted in Supreme Court decisions as a responsibility of the public authorities.[440] Thus,

---

[433] ibid 43–44.

[434] [2017] FCAFC 134.

[435] *Chunnakam* case 43.

[436] *National Audubon Society v Superior Court* [1983] 33 Cal.3d 419.

[437] *Chunnakam* case 49.

[438] ibid 62–64.

[439] ibid.

[440] ibid 48–49.

while the Rio Declaration is generally not legally binding, the judiciary ruled in the *Chunnakam* case that such international law becomes part of domestic law when adopted in Supreme Court decisions.[441] Further referring to the verdict on the EIA process in the *Eppawela* case the judiciary adopted Principle 17 of the Rio Declaration (Requirement of EIA), and Principle 15 (Precautionary Principle). Notably, Principle 10 of the Rio Declaration is emphasised pointing to the importance of public participation in environmental decision–making and their right to access environmental information held by public authorities. To underscore the adoption of Principle 10 into domestic law, the judiciary highlighted that it is reflected in the 1993 regulations of the NEA, which permit public comments in the IEE and EIA processes.

Environmental regulations are effective tools for environmental protection when supported by efficient administration.[442] Implementing the Rio Declaration imposes a political responsibility on states, and reactive judgments are insufficient to address the increasing environmental depletion, particularly in developing countries. Although the Sri Lankan judiciary plays an exemplary role in environmental protection, implementing the PPP primarily lies with public authorities, allowing the public to participate in decision–making processes. They must enact necessary regulations and policies to ensure accountability for environmental pollution, which helps continue development projects without interruption. A uniform regulatory approach may be more effective for pollution prevention and ensuring project continuity necessary for economic development, compared to the judiciary's case–by–case reactive approach. Establishing robust environmental regulatory systems and enforcement mechanisms in developing countries is crucial for mitigating environmental harm.[443]

There remain more general issues concerning foreign transplantation of the PPP by the judiciary. For example, in the *Chunnakam* case, Does the charged cost fairly compensate for the environmental damage? Mukherjee offers a distinct interpretation of the PPP as applied by Indian courts referring to the same *Vellore* judgment (which the *Chunnakam* decision referred to).[444] The scholar demonstrated that environmental cost is just not the 'tangible cost' which should include

[441] ibid 47–49.

[442] Bodansky 2010 (n 48) 84.

[443] ibid; Percival (n 40) 337; Penca (n 428) 102.

[444] Mukherjee (n 108).

the ‘full environmental cost’ including the cost of preventing environmental pollution.[445] While the ‘full environmental cost’ aspect of the PPP is undefined in the Rio Declaration (1992), it requires systematic academic analysis to develop clear criteria, considering the dynamics of SD, for its implementation by a state.

Notably, the Sri Lankan judiciary also referring to the *Vellore* judgment, underscored that the polluter’s responsibility includes compensating victims and restoring environmental degradation, even so, imposed a 20 million LKR compensation on the NPC for the victims to clean their wells, stating that it should cover ‘at least a part of the substantial loss, harm, and damage caused to the residents… and of soil...’.[446] However, the judgment did not specify the costs of pollution for restoring environmental damage or outline the methodology the judiciary used to evaluate compensation for water pollution costs following the PPP. This analysis provides academic insights for assessing environmental costs in future judgments, as well as regulations to be made under the NEA, as directed by the court to the CEA.

Another counter argument is that judicial transplantation is an ‘infringement of privacy’ of citizens, where alien laws come into force beyond people’s democratic representation in the legislature.[447] It is the central duty of the state to adopt international laws filling the domestic legal gap. The ‘too much discretion’ of the judge to adopt foreign judgments may ‘undermine’ legislature.[448]

Broadened PIL Approach Promoting the Integration of SD

Second, the *Chunnakam* case broadened the PIL approach introduced in the *Eppawela* case (2020) and followed subsequent case decisions, thereby expanding the scope of constitutional fundamental rights. As discussed, despite Sri Lanka having no explicit constitutional provisions for PILs, it is accepted by courts following India. Environmental PILs are brought to the courts under the fundamental rights provisions of the constitution, primarily under Article 12, which

---

[445] ibid 337.

[446] *Chunnakam* case 64.

[447] Mousourakis (n 23) 29.

[448] Gelter and Siems (n 191).

ensures the right to equal treatment, and are only applicable against executive or administrative actions under Article 17 of the constitution.

Following the doctrine of precedent, later decisions broadened the legal norms on environmental rights. The judiciary developed both the PIL approach and citizens' environmental rights by addressing constitutional gaps through legal transplantation, especially when legal issues intersect with multiple areas of environmental law and precedents. In other words, the Sri Lankan judiciary in the environmental rights realm is seen as dynamic, in the sense that courts can introduce new rules whenever needed. In the *Chunnakam* decision, the judiciary pointed to precedent interpretations of environmental rights in PIL.[449]

While the constitution lacks explicit provisions for PIL, the constitutional approach to environmental rights PIL in Sri Lanka the judiciary has reaffirmed the applicability of fundamental rights provisions, thereby expanding their scope to include PIL.[450] The judiciary held that '…in an application of this nature, which has the flavour of public interest litigation and which raises important issues regarding the right of a section of the citizens of this country to have their sources of water protected from pollution'.[451] Amarasinghe demonstrated that the *Chunnakam* case further strengthens the constitutional approach of environmental rights PIL in Sri Lanka.[452] Because the judiciary accepted the case as a PIL while the petitioner filed it under Articles 12(1), 17, and 126 of the constitution.

Furthermore, it is significant that in the *Chunnakam* case, the petitioner was neither a resident of the Chunnakam area nor of the Northern Province.[453] The petitioner's office was situated in the Western Province, far from Chunnakam. Notably, in all previous PILs discussed, residents or affected parties were included in the fundamental rights petition along with an environmental NGO. This indicates that, despite the absence of directly affected residents as petitioners, the Supreme Court accepted the application as a PIL on behalf of the affected residents while the NGO, located outside the Chunnakam area, was the sole petitioner representing the

---

[449] *Chunnakam* case 47–52.

[450] ibid 49.

[451] ibid 15.

[452] Amarasinghe (n 113).

[453] *Chunnakam* case 1, 5.

affected residents. This represents a further expansion in Sri Lankan PIL, promoting genuinely interested parties to involve themselves in environmental issues.

The non–binding norms of SD and doctrine of public trust, previously adopted into domestic binding law in the *Eppawela* case through an ICJ decision and blended with Buddhist norms, were further expanded in the *Chunnakam* case.[454] The judiciary emphasised the responsibility of the state and its institutions to ensure that development projects balance economic development with the well–being of people, thereby promoting SD. It was further stressed that if development projects harm the quality of life of people and destroy the environment, they do not constitute true development.

The BOI and the CEA were highlighted as having a duty (as a trustee) to uphold the objectives of the NEA and its regulations.[455] The judiciary, drawing on the precedent set in the *Eppawela* case, further emphasised the importance of public trust and the need for careful consideration of IEE and EIA. As discussed, Principles 17, 15, and 10 of the Rio Declaration were transplanted, reflecting these principles in the NEA and its regulations aimed at achieving SD.

The judiciary stressed the government's duty to facilitate and ensure the citizens' right to information on environmental matters handled by the government, as well as to encourage public participation in the decision–making process.[456] The *Mono Lake* case cited by the judiciary further justifies the public trust doctrine. The right to access information is a fundamental right under Chapter III, Article 14A of the constitution, established by a constitutional amendment in 2015. Subsequently, the Right to Information Act No. 12 of 2016 (RTIA) was enacted to foster a culture of disclosure among public authorities, subject to several limitations outlined in Section 4. Following the RTIA government authorities are mandated to disclose information to the public. Additionally, it was emphasised that effective access to both judiciary and administrative proceedings should be provided, including avenues for redress and remedies.

The *Chunnakam* decision further affirmed the environmental rights–based PIL that the judiciary had pointed to in precedent interpretations of the constitution's environmental rights in several PIL. Additionally, all these cases highlighted the public trust doctrine highlighting the

---

[454] ibid 51.

[455] ibid 47–50.

[456] ibid 48–50.

state's responsibility for environmental conservation and sustainable development. The landmark cases cited: *Eppawela* case (2008), *Wijebanda* case (2009), *Premala Perera v Tissa Karaliyadde* (2009), *Environmental Foundation Ltd. v Mahaweli Authority* (2010) suggested the contemporary development of PIL, transplanting foreign judgments.[457]

The Sri Lankan judiciary has long played a progressive role in contributing to environmental litigation. In this context, the judiciary transplanted international environmental principles, whereas Sri Lanka did not legally adopt any international environmental agreements.[458] Prityi noted binding interpretation of environmental provisions in constitutions and laws in common law jurisdictions develop 'new norms' in environmental law.[459] By contrast, the Sri Lankan judiciary has developed environmental rights, adopting foreign judgments and international environmental law despite explicit provisions in the constitution.

Lessons for Future Foreign Investments

We will now turn to a discussion of the impact of PIL on foreign investments by examining the reasons for defects in both the state and investors regarding environmental and social aspects. Developing countries, such as Sri Lanka, promote foreign investments to achieve economic development. Despite an increase in PIL against foreign investors for environmental harm in Sri Lanka, similar enforcement issues persist, although case decisions often highlight the stories of affected residents and the role of the government in environmental preservation. The *Chunnakam* case demonstrates how government authorities have repeatedly overlooked environmental and social considerations in investment project management.

The Supreme Court highlighted investor's legal breaches in the project: violating NEA by not following EPL and EIA procedures. The EPL was not obtained before commissioning operations and did not comply with the EIA in terms of exceeding the power plant capacity. These statutory environmental requisites are well–known basic procedures to be followed in any development project. However, it is noted that the investor came to Sri Lanka during the war, in

---

[457] ibid 49.

[458] So far enacted two laws adopting international law: International Covenant on Civil and Political Rights Act 2007 (ICCPR Act) and the Convention Against Torture and Other Inhuman and Degrading Punishment Act 1994 (CAT Act). The case does not refer to the SDA (2017).

[459] Prityi and others (n 19) 45.

an unsettled situation, at the government's invitation to supply electricity to Jaffna, which the government could not provide. The case decision states that the investor faced practical difficulties in obtaining the EPL, as the CEA had not maintained an office in Jaffna in 2017.

Both the CEA and BOI have a statutory duty to ensure compliance with environmental regulations while facilitating investment projects, as seen in their role in supplying electricity to Jaffna during the war, a key government infrastructure initiative. Also, both organisations have experience with previous judiciary actions on foreign–invested development projects that violate similar provisions in the NEA (i.e., *Eppawela* case). While the BOI approved duty–free machinery imports for the 30 MW power plant (despite being aware that the initial capacity was 15 MW and that any increase beyond this would require an EIA), the requirement for conducting an EIA should have been clear to the BOI.

Also, BOI has an additional mandate to facilitate investors throughout the project by guiding and monitoring domestic legal procedures.[460] Despite the judiciary's significant role and interest in environmental protection and SD, weak law enforcement and institutional issues persist in Sri Lanka.[461] The country continues to grapple with severe environmental pollution, depletion of natural resources, and loss of biodiversity, hindering its progress towards SD.[462]

The main loophole in this situation lies in weak institutional mechanisms for enforcing the NEA and environmental regulations for development projects. Additionally, the absence of institutional practices to learn lessons from previous similar cases, which underscored the importance of the EIA procedure, is notable. For instance, public participation is an important component of Sri Lanka's EIA process, providing 30 days for public comments and several public hearings. A project needs to assess the impact on the environment and livelihood dependency.

---

[460] Preston 2024 (n 14) 169 (it's the responsibility of the government to enforce case decisions and environmental standards. The failure to do is a 'violation of the right to a fair hearing').

[461] Sarath N Silva: Chief Justice of the Supreme Court of Sri Lanka (1999–2009), 'Environmental Law: A Judicial Perspective' in Mario Gomez (ed), *Judges & Environmental Law A Handbook for the Sri Lankan Judiciary* (Environmental Foundation Limited 2009) 10. See also, S Sarath Mathilal de Silva, 'Constitutional Protection of Environment: The Role of the Judiciary' (2017) 62(1) Journal of the Royal Asiatic Society of Sri Lanka 29–39.

[462] Kokila Lankathilake Konasinghe and Asanka Amitharansy Edirisinghe, 'Protecting Human Rights in the Light of Industrial Water Pollution: Sri Lankan Law and Obligations Under International Law' (2020) 1(1) University of Colombo Review 60–80.

Weeramantry emphasised the 'current generation actually serves as a trustee for the generations yet to come'.[463] However, the BOI and CEA, omitted their duty as 'trustees' of natural resources disregarded the EIA, avoiding public participation in the project, which had a direct impact on the residents. The merits of the EIA as a powerful tool to assess the impact on the environment and livelihood dependency have been well–recognised worldwide[464] and often by the judiciary in environmental PIL.

The legal gap refers to the absence of legal provisions addressing environmental rights and regulations that assess and compel polluters to be liable for environmental and social harm. Additionally, the current EIA process should be modified to better cater to development projects. The public hearing process in the existing EIA procedure does not motivate the public to engage, as project information is mostly presented in technical language.[465] There is no obligation on authorities to provide understandable project information to the public. This reliance on technical and scientific reports constrains meaningful responses from affected people. These weak provisions on public participation in the EIA process do not pose serious challenges for investors dealing with domestic environmental procedures.

The selected location is a 'densely populated' agricultural hub in Jaffna,[466] which the authorities (BOI, CEB, and CEA) chose without proper environmental, social, and economic considerations. The wrong location selection—surrounded by high–density farming communities that utilise groundwater for agriculture and daily consumption also impacts the investor and the project's failure. Such a location is unsuitable for a diesel thermal power plant without a proper EIA. When the community's sole drinking water sources were polluted, the government temporarily supplied clean water through local authorities.[467]

---

[463] Weeramantry (n 46) 111.

[464] Fisher, 'Environmental Impact Assessment: "Setting the Law Ablaze"' in Fisher (ed), (n 47) 341.

[465] Lareef Zubair, 'Challenges for Environmental Impact Assessment in Sri Lanka' (2001) 21 (5) Environmental Impact Assessment Review 469–78.

[466] *Chunnakam* case 3.

[467] Office of the Cabinet of Ministers, Sri Lanka, *Draft Cabinet Decision*, (A letter of 18 December 2014 by the Secretary to the Cabinet of Ministers) referring to Item 79 of the Minutes of the Cabinet Meeting held on 17 December 2014, directed the District Secretary of Jaffna and the Ministry of Water Supply and Drainage to take immediate action to provide 'safe drinking water' to the people in the Chunnakam area until permanent remedial measures were implemented (This letter is not in the public domain).

Furthermore, the lack of an EIA process resulted in no public consultation on the selected location. Throughout the centuries, farming livelihood depended entirely on groundwater from wells. The area has not received any water services from the government (NWSDB). The government institutions—BOI, CEA, and CEB did not prioritise these critical aspects when approving the location, which has impacted the project.

The implications of PPPs are also significant for investors. When the Supreme Court created a 'judge–made law' to charge private investors for environmental harm, the decision precedent for all investment projects. This decision is crucial because groundwater has a low recharge rate and is not easily recoverable once depleted or contaminated.[468] Both government and investors should address environmental and social impacts during the project planning stage to avoid environmental harm and achieve the project's economic benefits while integrating SD.

The investor's 'environmental misconduct' led to a loss of social trust,[469] undermining the project's operation. While investors anticipate project sustainability in a foreign country, they must adhere to domestic environmental legal procedures, given the sensitivity of environmental issues are closely tied to livelihoods. Social perceptions and responses are crucial for ensuring the sustainability of investments that aim to deliver economic and social benefits. Developing countries often rely on investors for new technologies to integrate into development projects that may prioritise economic growth over environmental sustainability.[470]

Preston emphasisied that '…institutional responsibility for fundamental environmental values lies with the legislature and the executive rather than the judiciary'.[471] Faure argued that economic policies, along with environmental, institutional, and regulatory mechanisms, should

[468] Gabriela Cuadrado–Quesada and Rosemary Rayfuse, 'Towards Sustainability in Groundwater Use: An Exploration of Key Drivers Motivating the Adoption and Implementation of Policy and Regulation' (2020) 32(1) Journal of Environmental Law 111–37, 112.

[469]Tomoko Ishikawa, *Corporate Environmental Responsibility in Investor–State Dispute Settlement: The Unexhausted Potential of Current Mechanisms* (CUP 2023) 178–80.

[470] Studwell (n 1).

[471] Preston 2024 (n 14) 160.

evolve in parallel.[472] This integrated legal and economic framework fosters adaptation and establishes a connection between environmental law and environmental economics.[473]

Reactive adjudications alone are insufficient to meet the government's economic targets, investors' expectations, and to address environmental damages, despite courts' commendable work in PIL. This limitation negatively impacts foreign investments, as the presence of discretionary judicial power in transnational contexts is perceived as an 'anti-democratic move'.[474] Such perceptions highlight a failure in state governance.

4.4 Conclusion

The study identified three strengths of judicial integration of SD through legal transplantation in the *Chunnakam* case: creation of new legal norms integrating SD; promotion of public participation in SD decision–making and the emphasis on the accountability of government institutions for environmental compliance. It also highlighted the insufficiency of the judiciary's reactive approach to SD and the criticism of transnational judicial power in adopting foreign laws.

First, the *Chunnakam* case is the first instance in Sri Lanka where PPP was adopted to non–state actors, in a PIL based on fundamental rights, demonstrating effective legal transplantation. The case significantly impacted the legal system by creating a new legal norm that filled a constitutional void through legal transplantation, adopting international law and foreign case decisions to integrate SD. The court adopted Principle 16 of the Rio Declaration (polluter pays principle) citing the *Vellore* case, to hold a foreign investor accountable for water pollution, expanding the interpretation of fundamental rights in Articles 12(1), 12(2), 17, and 126 in the constitution.

Second, the judiciary reinforced the integration of SD by promoting public participation in environmental decision–making. By accepting a PIL from a non–resident petitioner, the court expanded the scope of environmental PILs, enabling a broader range of advocates to represent

---

[472] Michael Faure, 'Economic Approaches to Environmental Governance: A Principal Analysis' in Fisher (ed), (n 47) 94. See also, Ershov (n 1).

[473] Faure ibid.

[474] Gelter and Siems (n 191) 40; Ganguly (n 212) 317; Burgers (n 412) 59; Graver (n 224).

affected communities. The judiciary recognised the role of NGOs in advocating for environmental rights and extended the PIL approach seen in the *Eppawela* case (2020) and subsequent rulings, even without explicit constitutional provisions. Furthermore, the court emphasised the importance of EIA for a thermal power plant affecting a farming community, highlighting the state's duty under the public trust doctrine, informed by precedents from Australia and the USA.

Third the Supreme Court, citing international environmental principles and case precedents, emphasised state accountability for SD and environmental compliance in development projects. It highlighted institutional weaknesses by holding the BOI and CEA accountable for failing to enforce environmental regulations. The case underscored the government's responsibility to implement effective measures and consistently monitor enforcement, revealing significant gaps in maintaining environmental standards.

The chapter concludes that case–by–case judicial decisions alone are insufficient to address environmental challenges, as they are often reactive rather than proactive. Judicial orders may not fully remedy environmental damage, especially when institutions fail to ensure conservation. Some environmental harms, such as groundwater contamination, are irreversible and cannot be fully rehabilitated through judicial decisions alone.

There is criticism that judges exercising transnational judicial power might be seen as undermining democratic processes and reflecting state failures. Despite this, the research underscores the judiciary's crucial role in upholding SD, particularly when governments fail to address environmental issues. The judiciary, along with politicians and legislators, plays a key role in managing SD issues and ensuring effective implementation.

Widespread environmental degradation from foreign development projects in South Asia underscores the persistent failures to learn from past disasters and landmark PIL that have created new legal norms. NGOs play a crucial role in representing marginalised communities affected by such projects, using PILs to address legal gaps and highlight growing global threats from industrial polluters. In Sri Lanka, a small island facing economic and environmental challenges, the judiciary has made significant contributions through PILs.

CHAPTER 5

Conclusion

This chapter revisits the primary research question and synthesises the conclusions. It summaries key findings, conclusions, and the major limitations, and recommendations for future research. The primary research question guiding the research and the analysis presented throughout this thesis was: *How effective has SD been integrated into the Sri Lankan legal system?* The research aimed to refine the conceptualisation of cross–border integration of the SD concept by the legislature and judiciary in Sri Lanka. It investigated the domestic legal mechanisms, focusing on transnational insights on both legislative and judicial aspects. To address the primary research question, it was divided into two sub–questions, each explored in a dedicated chapter.

Both studies address the primary research question, revealing a key finding: the SD principles have been integrated into the SDA and the Supreme Court's *Chunnakam* case, both of which hold legal significance for SD. The judiciary's integration of the SD principles predates that of the legislature by more than two decades. Although the judiciary's reactive rulings in this integration have been criticised as undemocratic, and insufficient for establishing a consistent state mechanism to implement the SD principles, its role in promoting SD and protecting environmental rights remains significant. However, the effective enforcement of the SD laws relies on institutional mechanisms.

5.1 Key Findings

Integration of the SD by Legislature

The first sub–question: *How has the legislative approach in Sri Lanka integrated SD?* was examined in chapter 3. This chapter analysed how cross–border SD principles were integrated into the SDA, assessing its strengths and weaknesses, and examined the formulation, implementation, and monitoring of the NPSSD, highlighting its structural similarities and differences with Canada's FSDA. The study aimed to understand the role of laws and institutions in addressing SDG integration failures and the legal gaps within the SDA. It also reviewed how institutional mechanisms caused divergences in Sri Lanka's SDG policy implementation from the SDA across different regimes.

The research found that the SDA has a limited capacity to integrate SD, due to its limitations. It identified three key positive outcomes, along with seven significant limitations of the SDA. Positively, SDA creates a statutory framework for the 2030 Agenda and the SDGs, and imposes responsibilities on the public authorities, centered on the SDC; enhances transparency with financial, environmental, and social audits; and improves inter–agency coordination. However, the SDA faces certain drawbacks such as impractical PC concurrence requirements; lack of defined NPSSD timelines; a cumbersome approval process; bureaucratic dominance in the SDC; delayed AG involvement; flawed NPSSD review processes; and a restricted validity period limiting long–term effectiveness of SD principles.

The first positive lesson is that the SDA established a statutory mandate for the 2030 Agenda and the SD, offering a long–term legislative framework that Sri Lanka previously lacked. This means that the government development decision–making frameworks should be centered around the SDGs, treating them as a statutory duty rather than a previous practice of voluntary commitment. The legislative approach mandates enforcement responsibilities for the government and institutions for the objectives set out in the SDA focusing on the 2030 Agenda.

The SDA established the NPSSD as the national SDG strategy, assigning a central role to the SDC. It imposes a substantive duty on public institutions, mandating that the SDC serve as the nodal institution in this process. The subnational institutions should also align with the NPSSD creating a cohesive approach to the national strategy. This legal recognition of SD, previously addressed only through reactive judicial decisions, now proactively guides and compels behavior change among various stakeholders.

Second, the SDA expands the role of the AG to include environmental and social audits of development projects, enhancing transparency and accountability in public fund utilisation. It also mandates annual compliance reporting to the Parliament, ensuring continuous monitoring and adherence to SDGs. The AG's new role and financial audits, which are linked to monitoring NPSSD progress within the SDC and other institutions, establish third–party oversight with direct reporting to Parliament, ensuring greater accountability. Effective enforcement of SD laws depends on efficient institutional mechanisms and financial, environmental, and social reporting oversight.

Third, the SDA improves interagency coordination by integrating central and subnational institutions into the NPSSD, offering a cohesive, and legally binding strategy that aligns

development projects with the national SDG objectives. Through the regulations under Section 26, the SDA links the requirement for balancing environmental, economic, and social aspects of development projects with NEA Part IV, which previously lacked an integrated approach. Before the SDA, environmental regulations under the NEA functioned separately between central and subnational governments. This framework addresses coordination challenges and promotes effective implementation of development goals.

However, the SDA also has seven procedural drawbacks. First, the requirement for 'concurrence' from all nine PC in drafting the national SDG strategy (NPSSD) proves impractical due to limited representation and infrequent meetings, with PCs having been non–functional since 2018. This situation hampers the effective implementation of the Act and the 2030 Agenda. While active participation from local governments is crucial for achieving SDGs, the current system's inefficiencies undermine the Act's objectives and delay progress toward SDGs.

Second, the SDA lacks a defined timeframe for drafting and parliamentary approval of the NPSSD, leading to delays and reduced effectiveness. The absence of clear deadlines hinders both the approval and implementation processes. Although the SDA establishes the SDC, it does not set specific targets or timeframes for its duties, weakening enforcement and complicating performance measurement. This delays public institutions' ability to align their strategies with the central framework, which is essential for achieving the 2030 Agenda's limited–year targets.

Third, the NPSSD approval process is cumbersome and inefficient, involving multiple authorities and extensive bureaucratic steps. This complex and linear procedure significantly slows down progress, as each stage requires input and approval from various entities, which can lead to delays and administrative bottlenecks. The intricate process not only hinders timely approval but also complicates coordination among stakeholders, further impeding the swift implementation of the NPSSD and its associated sustainability goals.

Fourth, the SDC's composition is disproportionately composed of high–level bureaucrats, which excludes valuable input from a diverse range of stakeholders. This skewed representation creates a bureaucratic monopoly, limiting the participation of civil society organisations, NGOs, local communities, subject experts, and other relevant groups. As a result, the SDC may lack a comprehensive perspective on sustainability issues and miss out on innovative solutions and grassroots insights. The dominance of bureaucrats in the SDC potentially reduces the effectiveness

of the Council by failing to incorporate a broader range of expertise and viewpoints essential for addressing complex and multifaceted sustainability challenges.

Fifth, the AG's role in the SDA begins only after parliamentary approval, missing the opportunity to provide valuable feedback during the drafting stage. This delay prevents the integration of critical insights that could improve the national SDG policy. Although the AG is involved in financial, environmental and social audits under the SDA, their input during the drafting stage and subsequent reviews of the NPSSD is crucial. By the time the AG reviews the policy, many issues may already be established, limiting the potential for meaningful adjustments and undermining the overall quality and readiness of the NPSSD for implementation.

Sixth, the NPSSD review process is flawed, because of the undefined review periods and the reliance on the Cabinet of Ministers rather than the SDC for periodic reviews. The lack of specified intervals for reviews creates uncertainty and inconsistencies in assessing the NPSSD's progress and effectiveness. Additionally, delegating the review responsibilities to the Cabinet of Ministers, rather than the SDC, undermines the process as the Cabinet may lack the specialised focus and comprehensive oversight needed for effective evaluations. This misalignment may lead to delays in addressing various issues, adapting policies, and ensuring that the NPSSD remains relevant and aligned with evolving sustainability goals.

Finally, the SDA's restriction of the NPSSD's validity to the year 2030 limits its long–term impact and risks rendering the SDC obsolete before it has fulfilled its objectives. These temporal limitations may undermine the Council's ability to address ongoing and future sustainability challenges effectively, as it may not have sufficient time to implement comprehensive strategies and achieve meaningful results. The expiration of the NPSSD's validity by 2030 could necessitate judicial intervention to ensure that sustainability commitments are upheld beyond this deadline. Such intervention may be required to address any gaps or deficiencies left by the expiration of the NPSSD and to ensure that the momentum for SD continues beyond 2030.

In summary, this study shows that enacting SDA along with enforcement procedures integrated into the framework from nonbinding SDGs into a legal obligation. Despite the procedural obstacles and legal voids in the SDA, the motivation behind Sri Lanka's enactment of the new laws to implement the SDGs reflects commendable aspirations. This is particularly notable given that many countries remain hesitant to adopt a legal framework for SD implementation. However, due to the limitations of SDA, the legislative approach alone could not effectively

integrate SD into the legal system. The fact identified by answering the first sub–research question is that SD laws should be formulated carefully avoiding legal and procedural barriers to enforcement.

Integration of the SD by the Judiciary

The second sub–question, *How has the judicial approach in Sri Lanka integrated SD?* was examined in chapter 4. This was tackled by examining a landmark PIL, the *Chunnakam* case, which involved a lawsuit against a foreign investment company accused of groundwater pollution by a thermal power plant. Chapter 4 concludes that the Sri Lankan judiciary integrates SD into PIL by adopting international environmental principles and precedents from similar jurisdictions. Through legal transplantation, PIL created new norms to address constitutional gaps in SD.

The study found that the judiciary's reactive stance in integrating SD into PIL has independently advanced the concept of SD in Sri Lanka, distinct from legislative developments. It identified three strengths that developed the environmental legal system. Inadequacy of case–by–case judicial approach and criticism related to the transnational judiciary power to integrate SD principles through legal transplantation were also identified.

The first significant impact is that in the *Chunnakam* case, the court integrated the SD principles into the domestic legal system by creating a new legal norm through the legal transplantation of international law and foreign case decisions. This cross–border integration of SD occurred reactively, as the case involved charging a private investor for water pollution, an issue that fell beyond the scope of the existing constitution. The court first adopted Principle 16 of the Rio Declaration— PPP to charge the foreign investor NPC (8th Respondent) for water pollution, broadening the interpretation of fundamental rights under Articles 12(1), 12(2), 17, and 126. This legal transplantation was justified citing the *Vellore* case from the Indian Supreme Court. The *Chunnakam* case represents the first judgment in Sri Lanka to apply the PPP to hold a non–state party accountable for environmental harm.

Second, this study emphasised the judiciary's role in the cross–border integration (legal transplantation) of the SD concept by promoting public participation in environmental decision–making. The court underscored the significance of EIA and the public trust doctrine, incorporating precedents from Australia and the USA to strengthen its integration of SD. In this context, the judiciary's reliance on local precedents reinforces its role in advancing SD through public participation in the EIA process.

Moreover, the judiciary further promoted public involvement by recognising the role of an NGO advocating for environmental rights. The acceptance of a PIL filed by a non–resident petitioner in the *Chunnakam* case expanded the scope of environmental PILs, allowing genuinely interested parties to advocate for affected communities. This case broadened the PIL approach introduced in the *Eppawela* case (2020) and subsequent rulings, despite the absence of explicit constitutional provisions for PILs.

Third, the case study addressed the institutional weaknesses in the environmental compliance and emphasised the government's responsibility to effectively implement environmental regulations. It held both the the BOI and the CEA were accountable for ensuring proper protective measures. The *Chunnakam* case demonstrated how government authorities, including the BOI and CEA, failed to adhere to the environmental regulations such as the EPL and EIA, leading to environmental damage, particularly groundwater pollution in densely populated agricultural areas. The *Chunnakam* case, along with other landmark judgments such as *Eppawela* case and *Wijebanda* case reinforced the government's duty to disclose environmental information and ensure public access to judicial and administrative remedies.

The study found that weak institutions in Sri Lanka have negatively impacted foreign investments, particularly by neglecting environmental and social issues. In the *Chunnakam* project, the investor's failure to comply with statutory environmental procedures—partly due to weak law enforcement and the lack of institutional mechanisms—resulted in the project's termination, preventing it from achieving its goal of providing electricity to Jaffna. The research highlighted that environmental and social considerations were overlooked, particularly in sensitive areas like Jaffna, leading to environmental degradation and a loss of social trust, which ultimately undermined the project's sustainability.

The weakness of judiciary's integration of the SD principles through reactive adjudications alone are insufficient to overcome the current environmental challenges, despite courts excelling in environmental litigation. Relying solely on the case–by–case judicial orders may be insufficient due to the irreversibility of environmental damage caused by investment projects when institutions fail to ensure conservation. Some environmental damage cannot be fully rehabilitated or corrected through judicial decisions alone, and corrective action can be time–consuming and costly. This issue is compounded by the nature of certain natural resources, like groundwater, which have a low recharge rate and are difficult to recover once depleted or contaminated.

The criticism that judges exercising transnational judicial power may be seen as making anti–democratic moves, reflecting state failures. Nevertheless, the research shows that the judiciary plays a crucial role in upholding SD, especially when governments fail to address environmental concerns and public participation in foreign development projects. Therefore, Sri Lankan politicians, legislators, and the judiciary are crucially positioned at the forefront, as they are the first to evaluate facts and play a key role in managing SD issues.

In summary, this study conceptualised laws as a means of integrating the SD principles at the national level, focusing on state responsibility through the judiciary's role via PIL. The research highlighted the judiciary's approach to integrating SD even in the absence of explicit constitutional provisions, by transplanting foreign legal principles into Sri Lankan law. While some critics argue that the judiciary's approach to enforcing environmental law and SD may be potentially undemocratic, the Sri Lankan judiciary has played a significant role in advancing transnational legal principles. However, due to inherent limitations associated with judicial decisions—such as a non–democratic approach and an insufficient case–by–case approach for SD integration—the judiciary alone could not provide a comprehensive framework for SD integration.

5.2 Limitations and Future Research Opportunities

Research Limitations

In assessing the academic significance of this study, it is imperative to acknowledge the limitations of the research, including any unanswered questions and new inquiries that have surfaced through the analysis presented in this thesis. There were three limitations in this study.

First, this study was limited to the connection between SD and environmental law using a single case study method. Legislative integration of the SD principles may also be present in economic and social–related laws, which were not the focus here. This limitation is inherent in any research on SD, as the concept is continuously evolving and marked by complexities and interconnected issues across social, economic, and environmental contexts. Both legislative and judicial approaches are also influenced by these interconnected issues.

The unprecedented challenges from the COVID–19 pandemic have created new obstacles for Sri Lanka's SD efforts, particularly in managing economic setbacks and the resulting foreign debt crisis. Consequently, Sri Lanka has had to prioritise rapid economic development, with

involvement from the International Monetary Fund (IMF), leading to amendments in commercial and land laws to attract investors for economic recovery. However, amid the enduring influence of the judiciary on SD and international commitments, the legislature may increasingly engage with SD in both economic and social dimensions.

Moreover, there is growing recognition of the interconnectedness between human health, environmental sustainability, and economic resilience, leading to a reevaluation of development strategies and priorities in alignment with the IMF program, especially in light of the pandemic's impact and debt crisis. Addressing these post–COVID complexities requires a comprehensive and interdisciplinary approach that integrates public health, environmental protection, economic recovery, social equity, and resilience–building efforts to promote SD in a rapidly changing world. These multifaceted challenges could significantly influence legislative and judicial approaches to SD in Sri Lanka, warranting further research, particularly on the interlinkages with the SDA as the 2030 Agenda deadline approaches.

The second limitation concerns the availability of primary data and resources on public policies and strategies involved in the drafting of the SDA. The protracted drafting process of the SDA involved multiple government organisations, but the unpublished versions of this primary data within these institutions posed a significant barrier to research. Although the study highlighted significant structural similarities between the SDA and FSDA, this limitation prevented a novel analysis of the SDA through the lens of legal transplantation theory. Understanding the underlying rationale for adopting provisions from the Canadian FSDA is crucial for such an analysis.

The research scrutinised the SDA and identified certain legal gaps, revealing that the legislation was enacted without a thorough legal analysis of its explicit provisions. The context surrounding the adoption of Canadian law and the drafting of new SDG–related legislation may potential the analysis through the lens of legal transplantation theory. This is particularly important as the SDA was enacted under a previous government and underwent changes three years later, indicating that the pre–enactment context is also important. Although the study focused only the Canada's FSDA, a broader examination of other UN member countries' SDG strategies could provide different insights into Sri Lanka's deviation from the SDA under subsequent governments. Therefore, employing legal transplantation theory necessitates consideration of various contextual factors.

The third limitation pertains to the second research objective and arises from the constraints of accessing court decision data due to time limitations and the study's scope. In Sri Lanka, a substantial body of environmental PIL exists that could be used for a comparative analysis of the judiciary's implementation of the SD principles. Over the past three decades, the Sri Lankan judiciary has shown interest in advancing SD and has produced numerous PILs integrating international laws and foreign precedents. Many of these cases would underpin research on the judicial integration of the SD and the analysis of the *Chunnakam* case. Additionally, this broader analysis should employ the legal transplantation theory, which further requires a comprehensive examination of the evolution of Sri Lankan judicial decisions. Exploring the evolution of judicial decisions may yield different outcomes in research when compared with the analysis of the *Chunnakam* case alone.

Furthermore, the analysis primarily focused on understanding the influence of similar jurisdictions on Sri Lankan judicial decisions, particularly by examining Indian judgments cited in Sri Lankan cases. However, the research did not explore the impact of other jurisdictions beyond India. The findings might have differed if the study had included an examination of Sri Lankan case laws over the past three decades, during which the judiciary has made efforts to promote SD.

These additional judgments may have referenced certain foreign decisions from jurisdictions other than India (perhaps from civil law countries). Due to time constraints and the limited scope of the study, a comprehensive analysis was not feasible. Nonetheless, a broader research effort could provide new insights into how and which jurisdictions have influenced the development of Sri Lankan jurisprudence on SD.

Future Research Opportunities

Building on the limitations discussed earlier, this study identified several opportunities for further research. This section outlines five potential avenues for exploration. The first key area is to continue examining the integration of legislative and judicial approaches to national SD implementation in Sri Lanka, particularly considering post–COVID economic development policies. This includes assessing the impact of government legal and policy changes on social and economic aspects.

Given Sri Lanka's struggle with post–COVID foreign debt and the regime changes in 2022 aimed at attracting foreign investments, presents a significant area for further investigation.

Another research avenue could explore how The Coronavirus Disease 2019 (COVID–19) (Temporary Provisions) Act, enacted in 2021, impacts SD and the enforcement of the SDA. This would involve examining the law's effects on government policies, strategies, society, and businesses in achieving SDGs, and its interaction with the SDA.

Second, the economic crisis has adversely affected citizens' livelihoods, including the cost of living, access to food and medicine, and education, impacting the achievement of SDGs and potentially driving lawsuits against unsustainable policies. Future research could explore how the post–pandemic economic policies have influenced PILs addressing SD issues and evaluate the effectiveness of these legal responses in tackling SDGs during the evolving post–COVID challenges.

Additionally, further categorising economic principles into specific areas could provide detailed insights into the impact and progress of SD issues related to the 2030 Agenda. This involves subdividing the post–COVID economic policies into categories such as national SDG policy implementation, environmental vulnerability, and NGO activities, to examine their influence on the government's enforcement of the SDA and the emergence of new PIL.

Third, future research could provide a more comprehensive understanding of the SDA's enactment in Sri Lanka investigating the reasons behind the structural similarities between the Canadian FSDA and the SDA. It would offer research on legal transplantation theory, better accounting for the contextual differences between the two countries and enhancing the analysis of the decision–making process. The similar legal structures of the FSDA and SDA revealed in this research, present a unique opportunity to study the influence of legal transplantation on the SDA's enactment.

Although this thesis aimed to identify the legal gaps in the SDA and explain Sri Lanka's challenges in enforcing it for the 2030 Agenda, it did not explore the underlying motivations behind the government's decision to enact the law, except through the Parliament Hansards. The examination of the roles of institutions such the Ministry of Environment, the Legal Draftsman's Department, and the Attorney General's Department in drafting the SDA was beyond this study's scope. Such examinations could yield valuable findings in the study of legislative legal transplantation.

A fourth research avenue could involve conducting an international–level empirical study to explore the underlying reasons for the limited interest in the legislative approach to the 2030

Agenda among the UN member countries. Each respective country may have different motivations based on their political, and social contexts, and the nature of their legal systems. This research area would be extensive, encompassing a comparison across a few countries (Korea, Malta, Canada, and Sri Lanka) with the laws on the 2030 Agenda. Given the rising scholarly debates on the reasons for the lack of motivation toward the legislative approach, as explored in Chapter 2 of this research, a systematic analysis within the context of UN countries could yield significant findings. Such research outcomes would contribute to SD scholarship and offer insights for countries interested in pursuing the legislative approach at a global level.

This research could be refined to focus on specific economic or geographical regions, such as continents, regions, or SDG achievement ranks published by the UN. Given this study's new discussions concerning Sri Lanka's legislative and judicial approaches to SD, it could be expanded to the South Asian or Asia–Pacific levels. Such an extension would provide a broader comparative analysis of SD efforts across different regions.

Fifth, there is potential to explore how the legal transplantation theory applies to the evolution of Sri Lankan judicial decisions, particularly integrating the SD principles from international law and foreign judgments over the past 30 years. A comprehensive study can provide valuable insights into the contemporary development of Sri Lankan jurisprudence and its role in incorporating SD. This research could focus on identifying the foreign jurisdictions that have significantly influenced Sri Lanka's SD legal framework.

Although this thesis mainly examined the influence of the Indian judiciary, especially through the *Chunnakam* case, a broader analysis of judicial developments could provide a clearer understanding of other jurisdictions' contributions. Such research would offer a more complete perspective on how judicial interventions have advanced SD in Sri Lanka. This expanded approach will enhance the legal transplantation literature by providing a more nuanced and holistic view.

Appendix 1

Enacting Specific Legislation on Sustainable Development to Implement SDGs

	Country	SD Legislation
1	Canada	The Federal Sustainable Development Strategy (FSDS) was developed under the purview of the Federal Sustainable Development Act 2008 (FSDA) amended in 2019 to align SDGs. [b]
2	The Republic of Korea	The Sustainable Development Act No. 8612 enacted in 2007 (SDA 2007) and amended in 2015 to meet SDGs. It was lastly amended in 2015 by Act No. 13532 of 1 December 2015. Established the Presidential Commission on Sustainable Development (PCSD) in 2016 led by the Ministry of Environment. [b, c] This Act was repealed by Framework Act on Sustainable Development 2022 No. 18708 of 04 January 2022 establishing Council for SD. Article 35 of the Constitution of the Republic of Korea recognises the enforceable right to a healthy and clean environment, while Article 2 embraces the concept of SD.
3	The Republic of Malta	The Sustainable Development Act 2012 (SDA 2012) was amended in 2019 establishing an SD network to meet SDGs. [a]
4	Sri Lanka	In 2017, the Sustainable Development Act No. 19 of 2017 (SDA) was enacted to implement the 2030 agenda and SDGs. The SDA established a new central body, the Sustainable Development Council (SDC) to formulate and implement the National Policy and Strategy on Sustainable Development (NPSSD). [b]

Sources a. Institutional and Coordination Mechanisms (n 44) 7–13, 37–41.

b. Canada: VNR Canada (2018) 6; VNR Canada (2023); FSDA (2008).

Korea: VNR Republic of Korea (2016); Denise Yoon, *Starting Strong on the SDGs in Asia: Readiness in South Korea* (Institute for Global Environmental Strategies (IGES) 2016) 2; SDA (2007) and, SDA (2015).

Sri Lanka: SDA; VNR (2018); UN 2018 Report (n 317).

The above VNRs were accessed in <https://hlpf.un.org/countries> accessed 20 May 2024.

c. Yoon, ibid.

Appendix 2

Utilising Institutional Mechanisms Within Existing Legal Frameworks to Implement SDGs

	Country	Institutional Mechanisms for SDGs
1	Africa	Several African countries established Local Government Service Commissions to function with local government officers. (e.g., Uganda, Mauritius, Nigeria).[a]
2	Afghanistan	High Council of Ministers (HCM) is the national body for SDGs.[c]
3	Argentina	The inter–institutional mechanism is coordinated by the National Council for Social Policy Coordination. [c]
4	Azerbaijan	The National Coordination Council for Sustainable Development with its Secretariat. [c]
5	Australia	Use the existing institutional framework led by a newly formed 'inter-departmental group of senior officials'.[b]
6	Bangladesh	Inter–ministerial Mechanism. [c]
7	Belarus	A national coordination mechanism, the President is the National Coordinator. [c]
8	Belgium	Political Steering Committee chaired by the Prime Minister. [C] (Thus Article 7 of the Belgium Constitution recognises the SD, not enacted a specific SD law).
9	Belize	Sustainable Development Unit, Technical Committees, and Working Tables. [c]
10	Benin	The institutional framework is overseen by the Directorate General for the Coordination and Monitoring of the SDGs, under the Minister of State for Planning and Development. [c]
11	Botswana	National Steering Committee (NSC) co–chaired by the government and the UN Representative. [b,c]
12	Brazil	National Commission for the SDGs. It includes 16 representatives from federal and Municipal governments and civil society.[b]
13	Chile	National Council for the SDGs. [c]
14	China	Inter–ministerial mechanism including 43 ministries and agencies, chaired by the Ministry of Finance. [a]
15	Colombia	Inter–ministerial Commission under the Office of the President.[a]
16	Costa Rica	National Covenant for the SDGs in 2016. The National Pact for the Advancement of the SDGs was signed with government and private agencies. In 2019, created Institutional Technical Commission (INEC) to monitor SDG indicators. [b,c]
17	Cyprus	Inter–ministerial mechanism. [c]
18	Czech Republic	Government Council for Sustainable Development chaired by the Prime Minister. [c]
19	Denmark	Inter–ministerial mechanism. [c]
20	El Salvador	Technical and Planning Secretariat of the Office of the President. [c]
21	Ethiopia	Inter–ministerial mechanism. [c]
22	Guatemala	Inter–ministerial mechanism. [c]
23	Ghana	High–Level Inter–Ministerial Committees (HLIMC). The national coordination of the SDGs is organized at three levels. the SDGs

		Implementation Coordinating Committee (SDGs–ICC) and a Technical Committee (TC). The SDGs–ICC and TC have government, civil society, and private sector representatives, while the UN Country Team has observer status on the HLMC. [b]
24	Germany	Inter–ministerial committee. Use the existing government working channel to create departments responsible for its results.[a] Before the 2030 Agenda, SD principles were incorporated into the 1994 Basic Law for the Federal Republic of Germany (constitution). Several laws were subsequently amended to integrate SD. The Renewable Energy Sources Act of 25 October 2008, later repealed by subsequent amendments, aimed to support the expansion of renewable energy. The latest amendment seeks to ensure a consistent and accelerated expansion, to increase the share of gross electricity consumption covered by renewables to at least 80% by 2030. The consolidated Renewable Energy Sources Act (EEG 2023) was enacted on 5 February 2024 (BGBl 2024 I Nr. 33).
25	Honduras	Local commission for SD that includes the participation of both the public sector and civil society.[c]
26	India	The National Institution for Transforming India (NITI) Aayog, Chaired by the Prime Minister. India redesigned the national development agenda and SDGs by the formation of several parliamentary forums to develop policies that mainly focus on 'Eradicating Poverty and Promoting Prosperity in a Changing World'. The Ministry of Statistics & Programme Implementation has developed a list of draft national indicators considering SDG indicators. [b,c]
27	Indonesia	National Coordination Team with a multistakeholder working mechanism headed by the state. [a,c]
28	Italy	Institutional coordination on National Sustainable Development Strategy 2017/2030 for SDGs led by the Prime Minister. [c]
29	Japan	A new cabinet body on 20 May 2016. The SDGs Promotion Headquarters, which the prime minister chaired. It coordinates with all ministries and government institutions including local governments (prefectures, cities, ward offices). [b,c]
30	Jordan	Inter–ministerial mechanism. [c]
31	Kenya	Inter–ministerial mechanism and establishment of SDGs Liaison Office within the secretariat of the Council of Governors. [c]
32	Luxemburg	Inter–agency mechanism. [c]
33	Malaysia	National SDGs Council chaired by the Prime Minister. The National Steering Committee (NSC) is headed by the Director General of the Environmental Protection Unit which works under the council. [b,c]
34	Maldives	National Ministerial Coordination Committee, supported by a Technical Committee. [c]
35	Mexico	Specialised Technical Committee on Sustainable Development Goals in 2015 and the National Council for SDGs in 2017 with implementing and followup mechanisms. [b]
36	Monaco	Inter–agency mechanism. [c]

37	Nepal	A steering committee, chaired by the Prime Minister; a Coordination Committee chaired by the Vice Chairman of the National Planning Commission (NPC) and nine thematic committees are headed by NPC Members. [c]
38	Netherlands	Inter–agency mechanism. [c]
39	Nigeria	Inter–ministerial mechanism. [c]
40	Panama	Inter–institutional coordination. [c]
41	Pakistan	Established the first parliamentary SDG Secretariat, a dedicated national body for SDGs. [b]
42	Peru	Multi–level Government coordination bodies. [c]
43	Portugal	Inter–institutional coordination. Adopting the Organisation for Economic Cooperation and Development (OECD) Action Plan on the SDGs. [c]
44	Qatar	Inter–institutional coordination for National Development Strategy. [c]
45	Sierra Leone	Presidential Board on the SDGs (PBS). [b]
46	Slovenia	Inter–agency mechanism for National Development Strategy 2030. [c]
47	Sweden	Multistakeholder Committee. [c]
48	Tajikistan	Inter–institutional coordination. [c]
49	Thailand	The National Committee for Sustainable Development (CSD), chaired by the Prime Minister. [b,c] (Thus Section 43 of the Thailand Constitution recognise the SD as a fundamental right, not enacted a SD law).
50	The Philippines	Established three main bodies: The National Economic and Development Authority (NEDA). The Authority includes the Committee on SDGs for national implementation. The National Council for Sustainable Development created a website as a hub for sub–national sustainable development bodies. [b]
51	Togo	Inter–institutional coordination for National Development Plan 2018-2022. [c]
52	Uruguay	Inter–institutional coordination. [c]
53	Zimbabwe	The Chief Secretary chairs the Steering Committee to the President and Cabinet and the membership comprises all line ministry Permanent Secretaries and the heads of the UN agencies. The Technical Committee is chaired by the Permanent Secretary in the Ministry of Macroeconomic Planning and Investment Promotion. Inter–ministerial coordination. [c]

Sources a Institutional and Coordination Mechanisms (n 44) 7–13, 37–41.

b VNR Australia (2018) 6–7; VNR Botswana (2017); VNR Brazil (2017); VNR India (2017) 1; VNR India (2020); VNR Japan (2017) 7; VNR Malaysia (2017); VNR Malaysia (2021); VNR Mexico (2018) 27–31; VNR Pakistan (2019) 9; VNR Philippines (2016); VNR Ghana (2019) xii; VNR Sierra Leone (2019); VNR Costa Rica (2020); VNR Thailand (2017); UN 2018 Report (n 317).

The above VNRs were accessed in < https://hlpf.un.org/countries> accessed 20 May 2024.

c United Nations, *Voluntary National Reviews: Compilation of Executive Summaries* (UN 2017).

Bibliography

Primary Sources: Cases, Legislations, and Other sources

Cases

Asghar Leghari v Federation of Pakistan [2015] WP 25501/201
Ashik v Bandula and Others [2007] 1 SLR 191
Ashish Kumar Garg v State of Uttarakhand [2022] SLP (C) 12591
Association for Protection of Democratic Rights v State of West Bengal and Others [2018] SCSLP 25047
Australia Conservation Foundation Incorporated v Minister for the Environment and Energy [2017] FCAFC 134
Bulankulama and Others v Secretary, Ministry of Industrial Development and Others [2000] 3 SriLR 243
Charan Lal Sahu Etc. v Union of India [1990] AIR 1480
Colombo Port City Economic Commission Bill, Re [2021] SCSD 04/2021, 05/2021, 07/2021 to 23/2021
Environmental Foundation Ltd v Mahaweli Authority [2010] 1 SriLR 1
Environmental Foundation Ltd v Minister of Environment [2014] SCFR 87/07
Farooque v Government of Bangladesh [1994] WP 891, decision15 May 2001
Hamid Khan v State of Madhya Pradesh [1997] AIR MP 191
Hanuman Laxman Aroskar v Union of India [2018] CA 12251
Human Rights and Peace for Bangladesh and Others v Secretary of the Ministry of Shipping and Others [2016] Writ 13989, High Court Division of the Supreme Court
Hungary v Slovakia [1993] ICJ Rep 7
Illinois Central R. Co v Illinois [1892] 146 US 387
Indian Council for Enviro–Legal Action v Union of India [1996] AIR SC 1446
Leelawathie v Minister of Defence and External Affairs [2007] 68 NLR
MC Mehta v Kamal Nath [1997]1 SCC 388
MC Mehta v Union of India [1997] 2 SCC 411
MK Ranjitsinh & Ors. v Union of India & Ors. [2019] Writ (Civil) 838, and with [2002] Civil Ap 3570, decision 21 March 2024
ND Jayal v Union of India [2004] AIR SC 867
Nallaratnam Singarasa v Attorney General [2006] 2 SCSpl (LA) 182/1999
National Audubon Society v Superior Court [1983] 33 Cal 3d 419
Pani Haq Samiti and Ors. v Brihan Mumbai Municipal Corporation and Ors. [2012] PIL 10
Premala Perera v Tissa Karaliyadde [2009] SCFR 891
Ravindra Gunawardena Kariyawasam v Central Environment Authority and Ors. [2015] SCFR 14
Sugathapala Mendis and another v Chandrika Kumaratunge and Others [2008] 2 SRiLR 339
Vellore Citizens Welfare Forum v Union of India [1996] AIR SC 2715, 2721
Vishala Kochi Kudivella Samarkshana Samithi v State of Kerala [2006] (1) KLT 919
Watte Gedera Wijebanda v Conservator General of Forests [2009] 1 SLR 337
Weerawansa v The Attorney–General and Others [2000] 1 SriLR 387

Legislations

Auditor General Act 1995 (Amended) RSC 1985 CA–17
Basic Law for the Federal Republic of Germany (amendment in 1994)
Brazil Constitution 1988, revised in 1992 and 1994
Civil Procedure Code Ordinance No. 2 of 1889 and its amendments
Code of Criminal Procedure Act No. 15 of 1979
Constitution Act 1867*,* 30 and 31 Victoria C 3 (UK)
Constitution of India 1950 and 42nd Amendment Act 1976
Constitution of Italy 1947 (amendment in 2001)
Constitution of Spain 1978
Constitution of the Democratic Socialist Republic of Sri Lanka 1978 and amendments up to 2022
Constitution of the Federative Republic of Brazil 1988 (amendments in 1992,1994)
Constitution of the Kingdom of Bhutan 2008
Constitution of the Kingdom of Thailand 1997 (amendment in 2017)
Constitution of the Netherlands 1983
Constitution of the People's Republic of Bangladesh 1972 (amendment in 2004)
Constitution of The Republic of Albania 1998 (amendment in 2008)
Constitution of the Republic of Korea 1948 (amendment in 1987)
Constitution of the Republic of Maldives 2008
Constitution of the Republic of South Africa No. 108 of 1996
Constitution of the Republic of the Philippines 1987
Constitution of the Republic of the Union of Myanmar 2008
Constitution of Zimbabwe, Amendment Act, No. 20 of 2013
Constitution Portugal 1976 (amended in 2005)
Coronavirus Diseases 2019 (COVID–19) (Temporary Provisions) Act No. 17 of 2021
Environmental Protection Act 1999 SC 1999 c 33
Federal Sustainable Development Act 2008 SC 2008 C 33, amendment SC 2019 C 2
Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis Act 2021 No. 18469 of 24 September 2021
Framework Act on Low Carbon and Green Growth 2010 No. 9931 of 13 January 13, amendment Act No. 16133 of 31 December 2018
Framework Act on Sustainable Development 2022 No. 18708 of 04 January 2022
Municipal Councils Ordinance No. of 1947
National Environmental Act No. 47 of 1980
North–Western Province Environmental Statute 1990 (No. 12 of 1990)
Pradeshiya Sabhas Act No. 15 of 1987
Sustainable Development Act 2007 Act No. 8612 of 3 August 2007 as amended last by Act No. 13532 of 1 December 2015 (repealed)
Sustainable Development Act 2012 Cap. 521 amended by Act No. I of 2019
Sustainable Development Act No. 19 of 2017
The Belgian Constitution 1970 (amendment in 2007)
The Constitution of the People's Republic of Bangladesh 1972
The Environmental Conservation Law 9/2012
The French Constitution 1958 (amendment in 2005)
Urban Councils Ordinance 61 of 1939, last amendment 16 April 1987

Other Sources

Department of National Planning, Sri Lanka, *The United Nations Sustainable Development Cooperation Framework (UNSDCF) for the Period of 2023–2027* (17 August 2022) <https://www.npd.gov.lk/index.php/en/2017-03-02-07-18-53/72-the-united-nations-sustainable-development-cooperation-framework-unsdcf-for-the-period-of-2023-2027.html> accessed 20 August 2022

Government of Sri Lanka, *National Policy Framework Vistas of Prosperity and Splendour–Summary* <http://www.doc.gov.lk/images/pdf/NationalPolicyframeworkEN/FinalDovVer02-English.pdf> accessed 25 January 2022

House of Commons Canada, *Federal Sustainability for Future Generations – A Report Following an Assessment of the Federal Sustainable Development Act* (June 2016) 1–3 (Parliament, Canada 2016) <http://www.doc.gov.lk/images/pdf/NationalPolicyframeworkEN/FinalDovVer02-English.pdf> accessed 25 January 2022

Ministry of Finance, Economic Stabilization and National Policies, Sri Lanka, *Identifying Nationally Appropriate Sustainable Development Goals (SDGs) Targets* (Circular No. NP/HRD/SDG/Gen/22 of 2 January 2023) <https://sdc.gov.lk/sites/default/files/202301/Identifying%20Nationally%20Appropriate%20SDGs%20Targets.PDF> accessed 12 January 2023

Office of the Cabinet of Ministers, Sri Lanka, *Draft Cabinet Decision* (A letter of 18 December 2014 by the Secretary to the Cabinet of Ministers) This letter is not in the public domain

—*Development of a National Policy and Strategy on Sustainable Development* (Cabinet memorandum CP/19/2488/101/159 of 10 September 2019)

—*Appointing a Steering Committee for Achieving the Sustainable Development Goals (SDGs), The joint Cabinet paper by the Prime Minister and the Foreign Minister* (Cabinet memorandum No. 20/2064/310/017 of 14 December 2020 approved on 4 January 2021)

Office of the Prime Minister, Sri Lanka, *Minutes of the Meeting by the Prime Minister Secretary of 15 March 2021* (PM Office, Circular No. SDC/07/37 of 01 April 2021)

Parliament of Sri Lanka, *Index to Parliamentary Debates, Official Report* (Sri Lanka Parliament vol 255, 2017) 439 <https://www.parliament.lk/uploads/documents/hansardvolumes/1536299448069513.pdf> accessed 20 October 2022

Presidential Secretariat, Sri Lanka, *Formulation of Sustainable Development Strategies* (Circular No. PS/SP/SB/C/22/2019 of 3 October 2019) <https://sdc.gov.lk/en/resources> accessed 25 January 2022

Sustainable Development Council, Sri Lanka, *Draft Strategy for Public Service Delivery-–February 2018* (February 2018) < https://sdc.gov.lk/en/resources> accessed 25 January 2022

—*Sri Lanka Voluntary National Review on the Status of Implementing Sustainable Development Goals 2018* (June 2018) < https://sdc.gov.lk/en/resources> accessed 25 January 2022

—*DRAFT National Policy and Strategy on Sustainable Development: For a Sustainably Developed Sri Lanka* (August 2020) <https://www.switch-asia.eu/site/assets/files/2592/draft_national_policy_and_strategy_on_sustainable_development.pdf> accessed 25 January 2022

—*Inclusive Transformation Towards a Sustainable Development for All, Second National VNR Sri Lanka 2022 June 24* (June 2022) <https://sdc.gov.lk/sites/default/files/2022-07/VNR%202022_Final%20Report_Combined.pdf> accessed 18 January 2022

The Ministry of Health, Sri Lanka, *Strategic Preparedness, Readiness and Response Plan to End COVID – 19 Emergency in 2022* (July 2022) <https://www.health.gov.lk/wp-content/uploads/2022/08/SPRP-2022-23.08.2022.pdf> accessed 14 August 2023

United Nations, *Stockholm Declaration on the Human Environment, Report of the United Nations Conference on the Human Environment*, Stockholm, 5–16 June 1972, UN Doc. A/CONF 48/14

—*The Hauge Declaration on the Environment*, Hague 11 March 1989, UN Doc. A/44/340–E/1989/120

—*Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development*, Rio de Janeiro, Brazil, 3–14 June 1992, UN Doc. A/CONF151/26/Res.1(Vol 1)

—*United Nations Conference on Environment and Development, Agenda 21: Programme of Action for Sustainable Development*, 3–14 June 1992, Rio de Janeiro, Brazil, UN Doc. A/CONF151/26/Rev.1

—*Copenhagen Declaration on Social Development, Report of the World Summit for Social Development*, Copenhagen, 6–12 March 1995, UN Doc. A/CONF166/9

—*Report of the World Summit on Sustainable Development*, Johannesburg, South Africa, 26 August – 4 September 2002, UN Doc. A/CONF199/20

—*The Human Right to a Clean, Healthy and Sustainable Environment,* 28 July 2022 (UN Doc. A/ RES/76/300

—*Transforming Our World: The 2030 Agenda for Sustainable Development*, Resolution adopted by the General Assembly on 25 September 2015 in United Nations Summit on Sustainable Development, New York, 25–27 September 2015, UN Doc. A/RES/70/1

Secondary Sources (Books, Journal articles, Newspapers, Policy Documents)

Abraham CM, 'The Indian Judiciary and the Development of Environmental Law' (1991) 11(1) South Asia Research 61

Adelman S, 'The Sustainable Development Goals, Anthropocentrism, and Neoliberalism' in French D, and Kotzé L (eds), *Sustainable Development Goals: Law, Theory, and Implementation* (Edward Elgar 2018)

Aining Z, 'On the Realization of the Right to Development under the Context of Environmental Rights' in Xigen W (ed), *The Right to Development: Sustainable Development and the Practice of Good Governance* (Print force 2019)

Alam S, and Begum N, 'An Assessment of the Legal and Policy Framework for Participatory Forest Governance in Bangladesh' (2023) 26 (1) Asia Pacific Journal of Environmental Law 33

Allen C and others, 'Assessing National Progress and Priorities for the Sustainable Development Goals (SDGs): Experience from Australia' (2020) 15(2) Sustainability Science 521

Allen C, Metternicht G, and Wiedmann T, 'Prioritising SDG Targets: Assessing Baselines, Gaps and Interlinkages' (2019) 14 Sustainability Science 42

Allison JWF, 'A Method for Transplants' in A Continental Distinction in *Common Law: A Historical and Comparative Perspective on English Public Law* (OUP 2000) 49

Allott P, 'The Concept of International Law' (1991)10 European Journal of International Law 31

Amarasinghe K, 'Right to be Free from Degradation of the Environment in Sri Lanka: A Review of Chunnakam Power Station Case' (2022) 1 (1) South Asian Journal of Environmental Law and Policy 95

<https://drive.google.com/file/d/1mNcXi35Wv_SFHH9sbNAvsCjUQbUNg9pT/view> accessed 22 June 2024

Angstadt JM, 'Can Domestic Environmental Courts Implement International Environmental Law? A Framework for Institutional Analysis' (2023) 12(2) Transnational Environmental Law 318

Anita Breuer and others 'Governing the Interlinkages Between the SDGs: Approaches, Opportunities and Challenges' in Anita Breuer and others (eds), *Governing the Interlinkages Between the SDGs: Approaches, Opportunities and Challenges* (Routledge 2023)

Antons C, 'What is "Asian Law"– Asia in Law, the Humanities and Social Sciences' in Antons C (ed), *Routledge Handbook of Asian Law* (1st edn, Routledge 2017)

Arts K, 'Inclusive Sustainable Development: A Human Rights Perspective' (2017) 24 Current Opinion in Environmental Sustainability 58

Asian Development Bank, *South Asia Conference on Environmental Justice Bhurban, 24–25 March 2012* (ADB 2013)

Atapattu S, 'The Right to a Healthy Life or the Right to Die Polluted? The Emergence of a Human Right to a Healthy Environment under International Law' (2002) 16 Tulane Environmental Law Journal 65

—'International Environmental Law and Soft Law: A New Direction or a Contradiction?' in Bailliet CM (ed), *Non–State Actors, Soft Law, and Protective Regimes: From the Margins* (CUP 2012)

—'The Significance of International Environmental Law Principles in the North–South Divide' in Alam S and others (eds), *International Environmental Law and Global South* (CUP 2015)

—'The Emergence of Sustainable Development Jurisprudence in South Asia' in Segger M–CC, and Judge Weeramantry CG (eds), *Sustainable Development Principles in the Decisions of International Courts and Tribunals 1992–2012* (Routledge 2017)

—and Gonzalez CG, 'The North–South Divide in International Environmental Law: Framing the Issues' in Alam S and others (eds), *International Environmental Law and the Global South* (CUP 2015)

—and Puvimanasinghe S, 'Guidance from the Ground Up: Lessons from South Asia for Realizing the Sustainable Development Goals' in Xigen W (ed), *The Right to Development: Sustainable Development and the Practice of Good Governance* (Brill Nijhoff 2019)

Australian Government, *Report on The Implementation of The Sustainable Development Goals: 2018 (VNR)*

Bandaranayake SA, and Sampath Dassanayake S, 'Devolution and Decentralization in Provincial Administration: Transformational Leadership in the Public Sector' (PIM Conference on Management Studies–1992, 322)

Bansal S and others, 'Indigenous Communities and Sustainable Development: A Review and Research Agenda' (2024) (43) 4 Global Business and Organizational Excellence 1

Barquet K and others, 'Exploring Mechanisms for Systemic Thinking in Decision–making Through Three Country Applications of SDG Synergies' (2022) 17 Sustainability Science 1557

Barral V, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23 (2) European Journal of International Law 377

Barritt E, and Sediti B, 'The Symbolic Value of *Leghari v Federation of Pakistan*: Climate Change Adjudication in the Global South' (2019) 30(2) King's Law Journal 203

Barrow CJ, *Environmental Management for Sustainable Development* (2nd edn, Routledge 2006)

Barry D–C, and Bass S, 'National Strategies for Sustainable Development: The Challenge Ahead' (2011) 25 Environmental Planning Issues 1

Baum I, 'Legal Transplants v. Transnational Law: Lessons from the Israeli Adoption of Public Factors in Forum Non Conveniens' (2015) 40 (2) Brooklyn Journal of International Law 358

Bell J, 'Legal Research and the Distinctiveness of Comparative Law: Introduction: Legal Research as a Normative Social Science' in Hoecke MV (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011)

Bennich T, Weitz N, and Carlson H, 'Scientific Approaches to SDG Interactions Analyses–The State of Play' in Breuer A and others (eds), *Governing the Interlinkages Between the SDGs: Approaches, Opportunities and Challenges* (Routledge 2023)

Bernstein S, 'The United Nations and the Governance of Sustainable Development Goals' in Kanie N, and Biermann F (eds), *Governing Through Goals: Sustainable Development Goals as Governance Innovation* (MIT Press 2017)

Bhuwania A, 'Introduction' in *Courting the People: Public Interest Litigation in Post–Emergency India* (CUP 2016)

Biermann F and others, 'Scientific Evidence on the Political Impact of the Sustainable Development Goals' (2022) 5(9) Nature Sustainability 795

Birnie P, Boyle A, and Redgwell C (eds), *International Law and the Environment* (3rd edn, OUP 2009)

Blumm MC, and Guthrie RD, 'Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision' (2012) 44 University of California Davis Law Review 741

Bodansky D, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?' (1999) 93 (3) American Journal of International Law 596

—*The Art and Craft of International Environmental Law* (Harward University Press 2010)

—'Implementation of International Environmental Law' (2011) 54 Japanese YearBook of International Law 62

Boer B, 'The Rise of Environmental Law in the Asian Region' (1998) 32 University of Richmond Law Review 1503

Borowy I, *Defining Sustainable Development for Our Common Future. A History of the World Commission on Environment and Development (Brundtland Commission)* (Routledge 2014)

Boulot E, and Sterlin J, 'Steps Towards a Legal Ontological Turn: Proposals for Law's Place Beyond the Human' (2022) 11(1) Transnational Environmental Law 13

Bouwer K, 'Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation' (2020) 9(2) Transnational Environmental Law 347

Boyle A, 'Human Rights and the Environment: Where Next? (2012) 23(3) The European Journal of International Law 613

—and Freestone D (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (OUP 1999)

—and Redgwell C, *Birnie, Boyle, and Redgwell's International Law and the Environment* (4th edn, OUP 2021)

Brunnée J, and Toope S (eds), *Legitimacy and Legality in International Law: An Interactional Account* (CUP 2010)

Bryner N, 'A Constitutional Human Right to a Healthy Environment' in Fisher D (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (2nd edn, Edward Elgar 2022) 141

Burdon P, and Williams C, 'Rights of Nature: A Critique' in Fisher D (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (2nd edn, Edward Elgar 2022) 164

Burgers L, ‘Should Judges Make Climate Change Law?’ (2020) 9(1) Transnational Environmental Law 55
Caiado RGG and others, ‘A Literature–Based Review on Potentials and Constraints in the Implementation of the Sustainable Development Goals’ (2018) 198 Journal of Cleaner Production 1276
Cairns JW, ‘Watson, Walton, and the History of Legal Transplants’ (2013) 41 Georgia Journal of International & Comparative Law 637
Cameron J, and Ramsay R, ‘Transnational Environmental Disputes’ (1996) 1(1, 2) Asia Pacific Journal of Environmental Law 5
Cavosky A, ‘Transnational Environmental Regulation and Evolving Approaches to Compliance’ in Heyvaert V, and Duvic–Paoli L–A (eds), *Research Handbook on Transnational Environmental Law* (Edward Elgar 2020) 124
Charney JL, ‘Compliance with International Soft Law’ in Shelton D (ed), *Commitment and Compliance: The Role of Non–binding Norms in the International Legal System* (OUP 2000) ch 4
Charron N, and Lapuente V, ‘Does Democracy Produce Quality of Government? (2010) 49 (4) European Journal of Political Research 443
Chazournes LB de, ‘The Sustainable Development Goals (SDGs) and the Rule of Law: A Propos SDG 6 on Access to Water and Sanitation’ in *American Society of International Law, Proceedings of the ASIL Annual Meeting: The Promise of International Law, Sustainable Development and International Law* (CUP 2021) 143
Clarke WC, ‘Learning from the Past: Traditional Knowledge and Sustainable Development’ (1990) 2 (2) The Contemporary Pacific 233
Cohn M, ‘Legal Transplants: A Theoretical Framework and Case Study from Public Law’ in Seims M, and Yap PJ (eds), *The Cambridge Handbook of Comparative Law* (CUP 2024) 426
Collins LM, ‘Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution’ (2015) 71 The Supreme Court Law Review 519
Cotterrell R, ‘What is Transnational Law?’ (2012) 37 (02) Law & Social Inquiry 500
Cranston R, ‘Legal Transplants: The Sri Lankan Experience’ in *How Law Works: The Machinery and Impact of Civil Justice* (OUP 2006) 293
Cuadrado–Quesada G, and Rayfuse R, ‘Towards Sustainability in Groundwater Use: An Exploration of Key Drivers Motivating the Adoption and Implementation of Policy and Regulation’ (2020) 32(1) Journal of Environmental Law 111
Cullet P, ‘Definition of an Environmental Right in a Human Rights Context’ (1995)13 Netherlands Quarterly of Human Rights 25
—‘Water Law in Asia’ in Antons C (ed), *Routledge Handbook of Asian Law* (1st edn, Routledge 2017) 323
De Oliveira CC, ‘Sustainable Development Partnerships as a Bridge Between International Commitments and their National Implementation’ in Fitzmaurice M, Maljean–Dubois S, and Negri S (eds), *Environmental Protection and Sustainable Development from Rio to Rio+20* (Brill 2014) 40
Decleris M, *The Law of Sustainable Development: General Principles: A Report Produced for the European Commission* (European Communities 2000)
Dernbach JC, ‘Targets, Timetables and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development’ (2002) 27(1) William and Mary Environmental Law and Policy Review 79
—‘Achieving Sustainable Development: The Centrality and Multiple Facets of Integrated Decisionmaking’ (2003) 10 (1) Indiana Journal of Global Legal Studies 247

—'Navigating the U.S. Transition to Sustainability: Matching National Governance Challenges with Appropriate Legal Tools' (2008) 44 Tulsa Law Review 93
—and Mintz JA, 'Environmental Laws, and Sustainability: An Introduction' (2011) 3 Sustainability 531
—Salkin PE, and Brown DA, 'Sustainability as a Means of Improving Environmental Justice' (2012) 19 (1) Journal of Sustainability and Environmental Law 2
—and Cheever F, 'Sustainable Development and Its Discontents' (2015) 4 (2) Transnational Environmental Law 247
Dressel B (ed), *The Judicialization of Politics in Asia* (Routledge 2012)
Drumbl MA, 'Actors and Law–making in International Environmental Law' in Fitzmaurice M, Org DM, and Merkouris P (eds), *Research Handbook on International Environmental Law* (Edward Elgar 2010) 3
Duvic–Paoli L–A, 'From Aspirational Politics to Soft Law? Exploring the International Legal Effects of Sustainable Development Goal 7 on Affordable and Clean Energy' (2021) 22 Melbourne Journal of International Law 1
Ebbesson J, and Hey E (eds), *The Cambridge Handbook on the Sustainable Development Goals and International Law* (CUP 2022)
Efrat A, *Intolerant Justice: Conflict and Cooperation on Transnational Litigation* (OUP 2022)
Erie MS, and Ha DH, 'Law and Development Minus Legal Transplants: The Example of China in Vietnam' (2021) 8 (2) Asian Journal of Law and Society 372
Ershov DN, 'Legal Framework for Sustainable Development and Current Global Challenges' (2023) 1(1) Sustainable Social Development 1
Faure M, 'Economic Approaches to Environmental Governance: A Principal Analysis' in Fisher D (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (2nd edn, Edward Elgar 2022) 94
Federal Government of Mexico, *Voluntary National Review for The High-Level Political Forum on Sustainable Development Basis for A Long-Term Sustainable Development Vision in Mexico: 2018*
Fedtke J, 'Legal Transplants' in Jan SM (ed), *Elgar Encyclopedia of Comparative Law* (Edward Elgar 2006)
Ferreri S, and DiMatteo LA, 'Terminology Matters: Dangers of Superficial Transplantation' (2019) 37 (35) Boston University International Law Journal 35
Feteris T, *Fundamentals of Legal Argumentation: A Survey of Theories on the Justification of Judicial Decisions* (2nd edn, Springer 2017)
Fisher E, 'Environmental Law as "Hot" Law' (2013) 25 (3) Journal of Environmental Law 347
—Lange B, and Scotford E (eds), *Environmental Law: Text, Cases, and Materials* (2nd edn, OUP 2018)
—'Environmental Impact Assessment: 'Setting the Law Ablaze' in Fisher D (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (2nd edn, Edward Elgar 2022) 339
French D, 'The Global Goals: Formalism Foregone, Contested Legality and "Re–Imaginings" of International Law' in Yihdego Z, Desta MG, and Yihdego FM (eds), *Ethiopian Yearbook of International Law 2016* (Springer 2017) 151
Frey DF, and MacNaughton G, 'A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development Agenda' (2016) 6 (2) SAGE open <https://journals.sagepub.com/doi/epub/10.1177/2158244016649580> accessed 20 October 2022
Futhazar G, Maljean–Dubois S, and Razzaque J (eds), *Biodiversity Litigation* (OUP 2022)
Ganguly G, 'Judicial Transnationalization' in Heyvaert V, and Duvic–Paoli L–A (eds), *Research Handbook on Transnational Environmental Law* (Edward Elgar 2020) 302

Geller PE, 'Legal Transplants in International Copyright: Some Problems of Method' (1994) 199 (13) Pacific Basin Law Journal 199

Gellers JC, 'Greening Constitutions with Environmental Rights: Testing the Isomorphism Thesis' (2012) 29(4) Review of Policy Research 523

—'Environmental Constitutionalism in South Asia: Analyzing the Experiences of Nepal and Sri Lanka', (2015) 4(2) Transnational Environmental Law 395

Gelter M, and Siems MM, 'Citations to Foreign Courts – Illegitimate and Superfluous, or Unavoidable? Evidence from Europe' (2014) 62(1) American Journal of Comparative Law 35

Ghosh S, 'India, Bangladesh, and Pakistan' in Rajamani L, and Peel J (eds), *The Oxford Handbook of International Environmental Law* (2nd edn, OUP 2021) 1078

Gillespie J, 'Towards A Discursive Analysis of Legal Transfers into Developing East Asia' (2008) 40 New York University Journal of International Law and Politics 657

Giupponi BO (ed), *International Environmental Law Compliance in Context* (Routledge 2021)

Glass L–M, and Newig J, 'Governance for Achieving the Sustainable Development Goals: How Important are Participation, Policy Coherence, Reflexivity, Adaptation and Democratic Institutions?' (2019) 2 Earth System Governance 1

Goldbach TS, 'Why Legal Transplants?' (2019) 15(1) Annual Review of Law and Social Science 583

Gomez M, 'Mixing Writs with Rights: The Implications for Public Law in Sri Lanka' (2023) 18 (2) Asian Journal of Comparative Law 253

Goonesekere RKW, 'The Singarasa Case—A Brief Comment' (2006) 17(25) Law and Social Trust Review 227

Government of Canada, *Canada's Implementation of the 2030 Agenda for Sustainable Development Voluntary National Review–2018*

--*Canada's 2023 Voluntary National Review: A Continued Journey for Implementing The 2030 Agenda and The Sustainable Development Goals*

Government of India, *Voluntary National Review Report on Implementation of Sustainable Development Goals:2017*

—*Decade of Action Taking SDGs From Global to Local India Voluntary National Review 2020*

Government of Japan, *Japan's Voluntary National Review Report on The Implementation of The Sustainable Development Goals: 2017*

Government of Malaysia, *Malaysia Sustainable Development Goals Voluntary National Review 2017: High–Level Political Forum*

Government of Malaysia, *Malaysia Voluntary National Review (VNR) 2021*

Government of Pakistan, *Pakistan's Implementation of the 2030 Agenda for Sustainable Development Voluntary National Review: 2019*

Government of Sierra Leone, *2019 VNR Report on SDGs in Sierra Leone* (June 2019)

Government of Thailand, *Thailand's Voluntary National Review on The Implementation of the 2030 Agenda for Sustainable Development* (June 2017)

Graver HP, *Judges Against Justice: On Judges When the Rule of Law is Under Attack* (Springer 2015)

Graziadei M 'Comparative Law, Transplants, and Receptions' in Reimann M, and Zimmermann R (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019) 443

Gunawardana A, and Ranasinghe P, 'Role of NGOs in Balancing Environmental Rights within Chinese–Funded Mega Development Projects in Sri Lanka' (Proceedings of the 7th International Research Conference

on Humanities & Social Sciences (IRCHSS) 21 March 2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3808949 > accessed 14 August 2024

Guneratne C 'Using Constitutional Provisions to Advance Environmental Justice – Some Reflections on Sri Lanka' (2015) 11 Law Environment and Development Journal 1

Guzman AT, and Meyer T, 'Soft Law' in Kontorovich E, and Parisi F (eds), *Economic Analysis of International Law* (Edward Elgar 2016) ch 5

Halpérin J–L, 'Western Legal Transplants and India' (2010) 2 (1) Jindal Global Law Review 14

Harrison J, 'Significant International Environmental Law Developments: 2021–22' (2022) 34 (3) Journal of Environmental Law 499

Hasan R (ed), *Handbook on National Environmental Legislation and Institutions in South Asia* (South Asia Cooperation For Environment Programme 2002)

Hayens J, 'Power, Politics and Environmental Movement in the Third World' (1999) 8(1) Environmental Politics 222

He Miao, 'Legal Research on Carbon Emission Rights from the Perspective of a Right to Development' in Xigen W (ed), *The Right to Development: Sustainable Development and the Practice of Good Governance* (Brill Nijhoff 2019) ch 8

Hester TD, 'Green Statutory Interpretation by Environmental Courts and Tribunals' (2017) 29 Environmental Law and Management 1

Hoffmann A, 'The Transnational and the International: From Critique of Statism to Transversal Lines' (2021) 35(6) Cambridge Review of International Affairs 796

Holladay Z, 'Public Interest Litigation in India as a Paradigm for Developing Nations' (2012) 19(2–9) Indiana Journal of Global Studies 555

Hongbo L, 'The Development and the Environment: The Conflict and Balance in the View of Human Rights Law: Perspective and Reflection Based on China' in Xigen W (ed), *The Right to Development: Sustainable Development and the Practice of Good Governance* (Brill Nijhoff 2019) ch 7

Hunter D, Salzman J, and Zaelke D, *International Environmental Law and Policy* (3rd edn, Foundation Press 2002)

Husa J, 'Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law' (2018) 6(2) The Chinese Journal of Comparative Law 129

Ishikawa T, *Corporate Environmental Responsibility in Investor–State Dispute Settlement: The Unexhausted Potential of Current Mechanisms* (CUP 2023)

James H, 'Introduction: The Dynamics of Sustainability and Environmental Governance in the Asia Pacific' in James H (ed), *Population, Development, and the Environment: Challenges to Achieving the Sustainable Development Goals in the Asia Pacific* (Palgrave Macmillan 2019) 1

Järnberg L and others, *Interaction Among Sustainable Development Goals in Sri Lanka: A Systematic Assessment* (Stockholm Environment Institute, SEI Report 2021)

Javanmardi E, Liu S, and Xie N, 'Exploring the Challenges to Sustainable Development from the Perspective of Grey Systems Theory' (2023) 11 (70) Systems 2

Jolly S, and Makuch Z, 'Procedural and Substantive Innovations Propounded by the Indian Judiciary in Balancing the Protection of Environment and Development: A Legal Analysis' in Voigt C, and Makuch Z, *Courts and the Environment* (Edward Elgar 2022)

Junker KW, and Farah PD (eds), 'Introduction' in *Globalization, Environmental Law, and Sustainable Development in the Global South* (Routledge 2021) 1

Kameri–Mbote P, and Odote C, 'Courts as Champions of Sustainable Development: Lessons from East Africa' (2009) 10(1) Sustainable Development Law and Policy 31

Kanie N, and Biermann F, 'Conclusion: Key Challenges for Global Governance through Goals in Kanie N, and Biermann F (eds), *Governing Through Goals: Sustainable Development Goals as Governance Innovation (*MIT Press 2017) 296

—'Introduction: Global Governance through Goal Setting' in Kanie N, and Biermann F (eds), *Governing Though Goals: Sustainable Development Goals as Governance Innovation* (MIT Press 2017) 1

Karlsson–Vinkhuyzen S, 'Global Regulation through a Diversity of Norms: Comparing Hard and Soft Law' in Levi–Faur D (ed), *Handbook on the Politics of Regulation* (Edward Elgar 2013)

Kathuriya S, 'Economic Choices Enabled by Environmental Law' in Junker KW (ed), *Environmental Law Across Cultures (*Routledge 2019) 177

Khan HA, *Globalization and the Challenges of Public Administration: Governance, Human Resources Management, Leadership, Ethics, E–Governance and Sustainability in the 21st Century* (1st edn, Springer 2018)

Kim RE, 'The Nexus between International Law and the Sustainable Development Goals' (2016) 25 (1) RECIEL 2

Knox JH, 'Human Rights, Environmental Protection, and The Sustainable Development Goals' (2015) 24 (3) Washington International Law Journal 517

Kohsaka R, and Rogel M, 'Traditional and Local Knowledge for Sustainable Development: Empowering the Indigenous and Local Communities of the World' in Filho WL and others (eds), *Encyclopedia of the UN Sustainable Development Goals Partnerships for the Goals* (Springer 2019) 1

Konasinghe KL, and Edirisinghe AA, 'Protecting Human Rights in the Light of Industrial Water Pollution: Sri Lankan Law and Obligations under International Law' (2020) 1(1) University of Colombo Review 60

—'The Role of the Judiciary in Promoting Sustainable Development in Sri Lanka' (2021) 3(1) International Journal of Governance and Public Policy Analysis 1

Kotzé LJ, 'Arguing Global Environmental Constitutionalism' (2012) 1(1) Transnational Environmental Law 199

—'Human Rights, the Environment, and the Global South' in Alam S, Attapattu S, Gonzalez CG, and Razzaque J (eds), *International Environmental Law and the Global South* (CUP 2015) 171

—and Daly E, 'A Cartography of Environmental Human Rights' in Lees E, and Viñuales JE (eds), *The Oxford Handbook of Comparative Environmental Law* (OUP 2019) ch 46

—and Adelman S, 'Environmental Law and the Unsustainability of Sustainable Development: A Tale of Disenchantment and of Hope' (2023) 34 Law and Critique 227

Krämer L, *Enforcement of Environmental Law* (Edward Elgar 2016)

Kraski R, Prityi M, and Münster S, 'Constitutional Provisions' in Junker KW (ed), *Environmental Law Across Cultures* (Routledge 2019) 121

Krishnan JK, 'Legitimacy of Courts and the Dilemma of Their Proliferation: The Significance of Judicial Power in India' in Yeh J–R, and Chang W–C (eds), *Asian Courts in Context* (CUP 2015) 269

Lahilote HS, 'Legal Transplant in the Substance of the Authority of Religious Courts in Indonesia' (2020) 93 Journal of Law Policy and Globalization 135

Latham GP, and Locke EA, 'Self–Regulation Through Goal Setting' (1991) 50 (2) Organizational Behavior and Human Decision Processes 212

Lawrence MF, 'An Appraisal of the Influence of Legal Transplant on National Legal Systems, The Case of Cameroon' (2020) 7 European Journal of Comparative Law and Governance 89

Lee M, *EU Environmental Law, Governance and Decision–making* (2nd edn, Hart Publishing 2014)

Leininger J, and Malerba D, 'Governance Mechanisms for Coherent and Effective Implementation of the 2030 Agenda—A Cross–National Comparison of Government SDG Bodies' in Breuer A and others (eds), *Governing the Interlinkages between the SDGs: Approaches, Opportunities and Challenges* (Routledge 2023)

Lie C, 'Contextualizing Legal Transplant: China and Hong Kong' in Monateri PG (ed), *Methods of Comparative Law* (Edward Elgar 2012) 192

Lin J, and Kysar DA (eds), *Climate Change Litigation in the Asia Pacific* (CUP 2020)

Long JA, 'Sustainability Starts Locally: Untying the Hands of Local Governments to Create Sustainable Communities' (2010) 10 Wyoming Law Review 1

Lopez–Claros A, 'Challenges of Sustainable Development' (2012) 22 (1) 4 The Journal of Bahai Studies 25

Lowe V, 'Sustainable Development and Unsustainable Arguments' in Boyle A, and Freestone D (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (OUP 1999) 19

Lu Y and others, 'Five Priorities for the UN Sustainable Development Goals' (2015) 520 Nature 432

Magraw DB, and Hawke LD, 'Sustainable Development' in Bodansky D, Brunnée J, and Hey E (eds), *The Oxford Handbook of International Environmental Law* (1st edn, OUP 2008) 627

Mahanti A, and Manuel–Navarrete D, 'From Sustainable Development to Governance for Sustainability' in Redclift M, and Springett D (eds), *Routledge International Handbook of Sustainable Development* (Routledge 2015) 417

Mai L, 'Measuring It, Managing It, Fixing It? Data and Rights in Transnational and Local Climate Change Governance' 2024 (13)1 Transnational Environmental Law 111

Markesinis BS, and Fedtke J, *Engaging with Foreign Law* (1st edn, Hart Publishing 2009)

Mathilal De Silva SSM, 'Constitutional Protection of Environment: The Role of the Judiciary' (2017) 62(1) Journal of the Royal Asiatic Society of Sri Lanka 29

Mattei U, 'Efficiency in Legal Transplants: An Essay in Comparative Law and Economics (1994) 14(1) International Review of Law and Economics 3

—and Pulitini F, 'A Competitive Model of Legal Rules' in Breton A and others (eds), *The Competitive State: International Studies in Economics and Econometrics* (Springer 1991) 207

May JR, and Dalay E (eds), *Global Environmental Constitutionalism* (CUP 2015)

Mcallister LK, van Rooij B, and Kagan RA, 'Reorienting Regulation: Pollution Enforcement in Industrializing Countries' in Krämer L (ed), *Enforcement of Environmental Law* (Edward Elgar 2016)100–12, (Reprinted from 'Reorienting Regulation: Pollution Enforcement in Industrializing Countries' (2010) 32(1) Law & Policy 1–13)

McGregor D, Whitaker S, and Sritharan M, 'Indigenous Environmental Justice and Sustainability' (2020) 43 Current Opinion in Environmental Sustainability 35

Meadowcroft J, 'Who is In Charge here? Governance for Sustainable Development in a Complex World' (2007) 9 Journal of Environmental Policy & Planning 299

Michaels R, 'American Law (United States)' in Smits JM (ed), *Elgar Encyclopaedia of Comparative Law* (2nd edn, Edward Elgar 2014) 66

Miller JM, 'A Typology of Legal Transplants: Using Sociology, Legal History, and Argentine Examples to Explain the Transplant Process' (2003) 51(4) The American Journal of Comparative Law 839

Miyazawa S, 'Legal Transplants in Contemporary Asia: Foreword' (2021) 8(2) Asian Journal of Law and Society 348

Morin JF, and Gold ER, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) 58(4) International Studies Quarterly 781

Mousourakis G, *Comparative Law and Legal Traditions Historical and Contemporary Perspectives* (Springer Nature 2019)

Mukherjee S, 'How Much Should the Polluter Pay? Indian Courts and the Valuation of Environmental Damage' (2023) 35(3) Journal of Environmental Law 331

Mulkey ME, 'Judges and Other Law Makers: Critical Contributions to Environmental Law Enforcement' in Krämer L (ed), *Enforcement of Environmental Law* (Edward Elgar 2016) 85–99 (Reprinted from 'Judges and other Law Makers: Critical Contributions to Environmental Law Enforcement' (2004) IV (1) Sustainable Development Law and Policy 2–16)

Natarajan U, 'Environmental Justice in the Global South' in Atapattu SA, Gonzalez CG, and Seck SL (eds), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (CUP 2021) 12

Nelken D, 'Towards a Sociology of Legal Adaptation' in Nelken D, and Feest J (eds), *Adapting Legal Cultures* (Hart Publishing 2001) 7

Nhamo G, and Mjimba V, 'Scaling Up SDGs Implementation: Down the Road to Fast Approaching 2030' in Nhamo G, Odularu GOA, and Mjimba V (eds), *Scaling Up SDGs Implementation–Emerging Cases from State, Development and Private Sectors* (Springer 2020) 3

Oanh LETK, 'Adjustment of Domestic Legal Formants as a Solution for Implementing Transplanted Law in Vietnam: A Case of the Principle of Changed Circumstances' (2023) 299 J Stage 19

Oosterhof PD, *Localizing the Sustainable Development Goals to Accelerate Implementation of the 2030 Agenda for Sustainable Development: The Current State of Play of Sustainable Development Goal Localization in Asia and the Pacific* (ADB 2018, 33)

Park KR, and Park YS, 'Addressing Institutional Challenges in Sustainable Development Goals Implementation: Lessons from the Republic of Korea (2024) 32 Sustainable Development 1354

Pavoni R, and Piselli D, 'The Sustainable Development Goals and International Environmental Law: Normative Value and Challenges for Implementation' (2016) 13 Veredas Do Direito 13

Pedersen OW, 'Environmental Law and Constitutional and Public Law' in Lees E, and Viñuales JE (eds), *The Oxford Handbook of Comparative Environmental Law* (OUP 2019)1073

Peel J, and Lin J, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113(4) The American Journal of International Law 679

Peel J, and Osofsky HM, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) Transnational Environmental Law 37

Peel J, and Osofsky HM, 'Climate Change Litigation' (2020) 16 Annual Review of Law and Social Science 21

Penca J, 'Regulatory Instruments of Transnational Environmental Governance' in Heyvaert V, and Duvic–Paoli L–A (eds), *Research Handbook on Transnational Environmental Law* (Edward Elgar 2020) 88

Percival RV, 'Transnational Litigation: What Can We Learn from Chevron–Ecuador?' in Heyvaert V, and Duvic–Paoli L–A (eds), *Research Handbook on Transnational Environmental Law* (Edward Elgar 2020) 318

Petel M, 'The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature' 2024 (13)1 Transnational Environmental Law 12

Płonka A and others, 'The Idea of Sustainable Development and the Possibilities of Its Interpretation and Implementation' (2022) 15(5394) Energies 1

Pobedinsky V, Yerezhepkyzy R, and Shestak V, 'Improving Environmental Legislation in Central Asia: Current Trends and Features of Cooperation with the European Union' (2020) 29 European Energy and Environmental Law Review 39

Pradhan P, 'A Threefold Approach to Rescue the 2030 Agenda from Failing' (2023) 10 (7) National Science Review 1

—and others 'The COVID–19 Pandemic Not Only Poses Challenges but Also Opens Opportunities for Sustainable Transformation' (2021) 9 Earth's Future 1

Preston BJ, 'Judicial Implementation of the Principles of Ecologically Sustainable Development in Australia and Asia' A paper presented to the Law Society of New South Wales Regional Presidents Meeting Sydney, NSW (21 July 2006)

—'Characteristics of Successful Environmental Courts and Tribunals' (2014) 26(3) Journal of Human Environmental Law 365

—'The Evolving Role of Environmental Rights in Climate Change Litigation' (2018) 2 Chinese Journal of Environmental Law 131

—'The Judicial Development of Ecologically Sustainable Development' in Fisher D (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (2nd edn, Edward Elgar 2022) 427

— 'The Nature, Content and Realisation of the Right to a Clean, Healthy and Sustainable Environment' (2024) 36(2) Journal of Environmental Law 159

Prityi M and others, 'Locating Environmental Law Functions Among Legislative, Judicial, and Implementation Bodies' in Junker KW (ed), *Environmental Law Across Cultures* (Routledge 2019) 43

Puvimanasinghe S, 'Towards a Jurisprudence of Sustainable Development in South Asia: Litigation in the Public Interest' (2009) 10(1) Sustainable Development Law and Policy 41

—'The Role of Public Interest Litigation in Realizing Environmental Justice in South Asia: Selected Cases as Guidance in Implementing Agenda 2030' in Atapattu S, Gonzalez CG, and Seck SL (eds), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (CUP 2021) 137

Rachovitsa A, and Hesselman M, 'Introduction to the Special Issue: International Law for the Sustainable Development Goals' (2020) 2(1) Brill Open Law 1

Rajamani L, 'Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability' (2007) 19(3) Journal of Environmental Law 293

Redgwell C, 'National Implementation' in Bodansky D, Brunnée J, and Hey E (eds), *The Oxford Handbook of International Environmental Law* (1st edn, OUP 2008) 929

Reimann MW, 'A Bottom–up View of Legal Transplants' (2020) 68(3) The American Journal of Comparative Law 689

Republic of Botswana, *Botswana Voluntary National Review on Sustainable Development Goals 2017*

Republic of Ghana, *Ghana: Voluntary National Review Report on The Implementation of the 2030 Agenda for Sustainable Development* (June 2019)

Republic of Korea, *Executive Summary: 2016 (VNR)*

Rodley N, 'The Singarasa Case: Quis Custodiet…? A Test for the Bangalore Principles of Judicial Conduct' (2008) 41(3) Israel Law Review 500

Rooij, BV, McAllister LK, and Kagan RA, 'Reorienting Regulation: Pollution Enforcement in Industrializing Countries' (2010) 32 (1) Law and Policy 1
Rose R, *Lesson–Drawing in Public Policy: A Guide to Learning Across Time and Space* (Chatham House Publishers 1993)
Ross A, 'Why Legislate for Sustainable Development? An Examination of Sustainable Development Provisions in UK and Scottish Statutes' (2008) 20 (1) Journal of Environmental Law 35
—'It's Time to Get Serious –Why Legislation is Needed to Make Sustainable Development a Reality in the UK' (2010) 2 Sustainability 1101
Sachs JD, *The Age of Sustainable Development* (Columbia University Press 2015)
—and others, '3: Policy and Monitoring Frameworks for the SDGs' in *The Sustainable Development Report 2020: The Sustainable Development Goals and COVID–19* (CUP 2020)
—and others, 'Part 3: Policy Efforts and Monitoring Frameworks for the SDGs' in *Sustainable Development Report 2021* (CUP 2021)
—and others, 'Part 2: The SDG Index and Dashboards' in *Sustainable Development Report 2024* (Dublin University Press 2024)
Samararatne D, 'Judicial Borrowing and Creeping Influences: Indian Jurisprudence in Sri Lankan Public Law' (2018) 2 (3) Indian Law Review 205
Sands P, 'Enforcing Environmental Security: The Challenges of Compliance with International Obligations' (1993) 46 (2) Journal of International Affairs 367
Sands P and others (eds), *Principles of International Environmental Law* (3rd edn, OUP 2015)
Sands P and Peel J (eds), *Principles of International Environmental Law* (4th edn, CUP 2018)
Sarah Hanan, 'Sri Lanka's national policy well aligned with UN SDGs: Chamindry Saparamadu' The Morning (Colombo, 15 January 2022) < https://www.themorning.lk/articles/184507> accessed 18 January 2022
Sarvajayakesavalu S, 'Addressing Challenges of Developing Countries in Implementing Five Priorities for Sustainable Development Goals' (2015) 1(7) Ecosystem Health and Sustainability 1
Schorr DB, 'Horizontal and Vertical Influences in Colonial Legal Transplantation: Water by–laws in British Palestine' (2021) 61(3) American Journal of Legal History 308
Schuldt L, 'Driving Irritation: Thailand's Supreme Court and the English Roots of Corporate Criminal Liability' (2024) 19 (1) Asian Journal of Comparative Law 142
Scoltz W, and Barnard M, 'The Environment and the Sustainable Development Goals: "We are on Road to Nowhere"' in French D, and Kotzé L (eds), *Sustainable Development Goals: Law, Theory, and Implementation* (Edward Elgar 2018) ch 10
Scott C, '"Transnational Law" as Proto–Concept: Three Conceptions' (2009) 10(6–7) German Law Journal 859
Segger M–CC, 'Policy and "Soft Law" Rationales for Addressing Social and Environmental Concerns in Trade and Investment Treaties' in *Crafting Trade and Investment Accords for Sustainable Development: Athena's Treaties* (OUP 2021) ch 9
—and Judge Weeramantry CG (eds), *Sustainable Development Principles in the Decisions of International Courts and Tribunals 1992–2012* (Routledge 2017)
Setzer J, and Benjamin L, 'Climate Litigation in the Global South: Constraints and Innovations' (2020) 9(1) Transnational Environmental Law 77

Setzer J, and Byrnes R, *Global Trends in Climate Change Litigation: 2020 Snapshot* (Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science 2020) 12

Shaffer G, and Pollack MA, 'Hard and Soft Law' in Dunoff JL, and Pollack MA (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2012)

Shah P, 'Globalisation and the Challenge of Asian Legal Transplants in Europe' [2005] Singapore Journal of Legal Studies 348

Shelton D, 'Introduction: Law, Non–Law and the Problem of "Soft Law"' in Shelton D (ed), *Commitment and Compliance: The Role of Non–binding Norms in the International Legal System* (OUP 2000) 13

—'Soft Law' in David Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009)

Shinde M, and Ghebretekle TB, 'Public Participation' in Junker KW (ed), *Environmental Law Across Cultures* (Routledge 2019) 161

Silva SN, Chief Justice of the Supreme Court of Sri Lanka (1999–2009), 'Environmental Law: A Judicial Perspective' in Mario Gomez (ed), *Judges & Environmental Law A Handbook for the Sri Lankan Judiciary* (Environmental Foundation Limited 2009)

Simmons J, 'Federalism, Intergovernmental Relations, and the Environment' in Vannijnatten DL (ed), *Canadian Environmental Policy and Politics: The Challenges of Austerity and Ambivalence* (3rd edn, OUP 2009)

Siragusa A and others, *European Handbook for SDG Voluntary Local Reviews–2022 Edition* (Office of the European Union 2022)

Skjærseth JB, Stokke OS, and Wettestad J, 'Soft Law, Hard Law, and Effective Implementation of International Environmental Norms' (2006) 6 (3) Global Environmental Politics 104

Smallwood JM, *Implementing International Environmental Law and Policy an Interactive Approach to Environmental Regulation* (Routledge 2024)

Smits JM, 'Comparative Law and its Influence on National Legal Systems' in Reimann M, and Zimmermann R (eds), *The Oxford Handbook of Comparative Law* (OUP 2006) 514

Spijkers O, 'The Cross–fertilization Between the Sustainable Development Goals and International Water Law' (2016) 25 (1) Review of European Comparative and International Environmental Law 39

Stephens T, 'Environmental Litigation by Asia Pacific States at The International Court of Justice' (2021) 21 Melbourne Journal of International Law 1

Studwell J, *How Asia Works: Success and Failure in the World's Most Dynamic Region* (Grove Press 2013)

Tan AKJIN, 'Environmental Laws and Institutions in Southeast Asia: A Review of Recent Developments' (2004) 8 Singapore Yearbook of International Law and Contributors 177

Tarlock AD, 'Ideas Without Institutions: The Paradox of Sustainable Development' (2001) 35 Indian Journal of Global Legal Studies 35

Tawfiq LM, 'Achieving Sustainable Development Goals Through Effective Domestic Laws and Policies on Environment and Climate Change' (2018) 48(1) Environmental Policy and Law 42

Terranova G, 'The Transplant of Trusts in Different Legal Jurisdictions: The Example of China' (2020) 2 (3) Global Jurist 1

Teubner G, 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences' (1998) 61 (1) The Modern Law Review 11

The Federative Republic of Brazil, *Voluntary National Review on the Sustainable Development Goals: Brazil 2017*

The Philippines, *Voluntary National Review at the 2016 High–Level Political Forum on the Sustainable Development Goals (SDGs)*

Thilakarathna KAAN, 'The Role of The Judiciary in Recognizing and Implementing International Law: A Comparative Analysis with Special Reference to Sri Lanka' (2021) 7 (2) Journal of Liberty and International Affairs 128

Toha K, 'The Influence of US and Japanese Laws Upon Indonesian Law in Haley JO, and Takenaka T (eds), *Legal Innovations in Asia: Judicial Law Making and the Influence of Comparative Law* (Edward Elgar 2014) 273

Toner G, Meadowcroft J, and Cherniak D, 'The Struggle of the Canadian Federal Government to Institutionalize Sustainable Development' in Vannijnatten DL (ed), *Canadian Environmental Policy and Politics: The Challenges of Austerity and Ambivalence* (3rd edn, OUP 2009) 124

United Nations Development Programme, *Institutional and Coordination Mechanisms: Guidance Note on Facilitating Integration and Coherence for SDGs Implementation* (UNDP 2017)

United Nations Sri Lanka, *United Nations Sustainable Development Cooperation Framework for Sri Lanka 2023–2027* (UNSL September 2022)

United Nations, Department of Economic and Social Affairs, *Handbook for the Preparation of Voluntary National Reviews: 2024 Edition* (UN 2024)

United Nations, *Voluntary National Reviews: Compilation of Executive Summaries* (UN 2017)

— *Voluntary National Reviews–Synthesis Report 2018* (UN 2018)

—*Working Together: Integration, Institutions, and the Sustainable Development Goals: World Public Sector Report* (UN Department of Economic and Social Affairs, ST/ESA/PAD/SER.E/200, 2018)

—*Global Sustainable Development Report 2019—The Future is Now: Science for Achieving Sustainable Development* (UN 2019)

—*Stakeholder Engagement & the 2030 Agenda: A Practical Guide* (UN 2020)

—*The Sustainable Development Goals Report* 2022 (UN 2022)

Varvastian S, and Kalunga F, 'Transnational Corporate Liability for Environmental Damage and Climate Change: Reassessing Access to Justice after *Vedanta v Lungowe*' (2020) 9(2) Transnational Environmental Law 323

Verschuuren J, 'Sustainable Development and the Nature of Environmental Legal Principles' (2006) 9 (1) Potchefstroom Electronic Law Journal, 4 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=899537> accessed 12 January 2021

—'The Principle of Sustainable Development as a Legal Norm' in Fisher D (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (2nd edn, Edward Elgar 2022) 228

Victor DG, Raustiala K, and Skolnikoff EB (eds), *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice* (MIT Press 1998)

Viñuales JE, 'Sustainable Development' in Rajamani L, and Peel J (eds), *Oxford Handbook of International Environmental Law* (2nd edn, OUP 2021) ch 17

Voigt C, and Makuch Z, *Courts and the Environment* (Edward Elgar 2022)

Wang AL, 'Environmental Courts and Public Interest Litigation in China' (2010) 43(6) Chinese Law and Government 10

Wang T–S, 'The Influence of Japanese Law on Taiwan Law in Haley JO, and Takenaka T(eds), *Legal Innovations in Asia: Judicial Lawmaking and the Influence of Comparative Law* (Edward Elgar 2014) 233

Watson A, *Legal Transplants: An Approach to Comparative Law* (2nd edn, The University of Georgia Press 1993)

WCED (World Commission on Environment and Development), *Our Common Future* (OUP 1987)

Weaver AH, and Kysar DA, 'Courting Disaster: Climate Change and the Adjudication of Catastrophe' (2017) 93(1) Notre Dame Law Review 295

Weeramantry CG, 'Introduction: Judges and Environmental Law' in Shelton D, and Kiss A (eds), *Judicial Handbook on Environmental Law* (UN 2005)

—*Tread Lightly on the Earth: Religion, the Environment and the Human Future: A Report for the World Future Council* (Stamford Lake 2009)

Winkler IT, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation* (Hart Publishing 2012)

Wise EM, 'The Transplant of Legal Patterns' (1990) 38 The American Journal of Comparative Law in Monateri PG (ed), *Methods of Comparative Law* (Edward Elgar 2012) 1

Yap PJ, *Courts and Democracies in Asia* (CUP 2017)

Yeh J–R, and Chang W–C, *Asian Courts in Context* (CUP 2015)

Yin RK, *Case Study Research* (6th edn, Sage 2009)

Yoon D, *Starting Strong on the SDGs in Asia: Readiness in South Korea* (Institute for Global Environmental Strategies (IGES) 2016) 2

Young OR, 'Conceptualization: Goal Setting as a Strategy for Earth System Governance' in Kanie N, and Biermann F (eds), *Governing Through Goals: Sustainable Development Goals as Governance Innovatio*n (MIT Press 2017) 32

Young Z, 'NGOs and the Global Environmental Facility: Friendly Foes?' in Rootes C (ed), *Environmental Movements: Local, National, and Global* (Frank Cass 1999) 243

Yu C–Y, 'Application of Sustainable Development in Indigenous People's Revival: The History of an Indigenous Tribe's Struggle in Taiwan' (2018) 10 (9) 3259 Sustainability 1

Zoysa U de, Gunawardena P, and Gunawardena A, *Localising the Transformation in The New Normal, A Domestic Resource Mobilization Framework for Sustainable Development Goals in Sri Lanka* (Janathakshan (GTE) Ltd., and the Centre for Environment and Development 2020)

Zumbansen PC, 'Transnational Law, Evolving' in Jan Smits (ed), Encyclopedia of Comparative Law (2nd edn, Edward Elgar 2012) 899

Websites

Office of the Cabinet of Ministers – Sri Lanka, 'Sustainable Sri Lanka 2030 Vision and Strategic Plan' (Press Briefing of Cabinet Decisions, 10 September 2019) <http://www.cabinetoffice.gov.lk/cab/index.php?option=com_contentandview=articleandid=16andItemid=49andlang=enanddID=10078> accessed 25 January 2022

Parliament of Sri Lanka, 'Hon. Ranil Wickremesinghe elected as the 8th Executive President' (20 July 2022) <https://www.parliament.lk/en/news-en/view/2663/?category=6> accessed 18 August 2022

Parliament of Sri Lanka, 'Report of the Delimitation Committee is not approved by the Parliament' (24 August 2018) <https://www.parliament.lk/news-en/view/1579> accessed 24 August 2018

Trevelyan AM, ‘Written Answers — Foreign, Commonwealth and Development Office Sri Lanka: Power Stations’ (Minister of State. Foreign, Commonwealth and Development Office 19 March 2024) < https://www.teamtrevelyan.co.uk/parliament?page=19> accessed 06 October 2024