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Right To Environment As A Separate Fundamental Right: An Analysis¹

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Introduction

"Man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights--even the right to life itself." The World today is celebrating International Human Rights Day. Do you know that right to a safe and healthy environment is considered one of the basic human fundamental rights? The 1972 United Nations Conference on the Human Environment commonly called the Stockholm conference declared that "Humans have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and a solemn responsibility to protect and improve the environment for present and future generations"². We are aware of the harm we have caused to nature and the environment through our own activities. The whole world today is looking for solutions and mitigation options to fight the abuse we have caused to the environment. According to environmental justice foundation³ an estimated 12 million people live in poverty and by 2050 around 150 million people could be forced from their homes because of climate change, facing a future with no means to support themselves. Natural resources such as air, water, and land are fundamental to all life forms. But there are many people who do not even have access to clean air to breathe, safe drinking water or a hygienic place to live. There is no denying to the fact that the people who will suffer most due to climate change will be the poor and the indigenous people who have no option but to depend on the natural resources and the environment. By deteriorating the environment and depleting the natural resources further and further for our worldly needs we are infringing on the fundamental right of these poor and indigenous people to live.

The existing human rights catalogue was drafted in a time when environmental concerns were not yet an issue and hence fail to adequately address all environmental needs. However in a degrading environment no other human right can be secured. Recent decades have witnessed a debate on whether there is a need for

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² <https://www.lawteacher.net/free-law-essays/international-law/links-between-human-rights-and-environmental-sustainability-international-law-essay.php?vref=1>

³ Dynamic, agile and effective, the Environmental Justice Foundation (EJF) is working to secure a world where natural habitats and environments can sustain, and be sustained by, the communities that depend upon them for their basic needs and livelihoods.

an additional human right to a clean environment. As a consequence, environmental rights have been inserted in several international agreements and constitutions of various states.

Objectives of the Study

- ⇒ The first aim of this article is to analyse the nature of the right to the environment to come to an understanding of whether it is able to guarantee a higher level of environmental protection.
- ⇒ The second aim is to analyse how efficiently the sections of the Estonian Constitution can be invoked for the protection of the environment and whether there is a need for amendments.
- ⇒ To realize the importance of clean and healthy environment for all the human beings, that is also the main motto of this suggestions.

This article are of the view that the environment is an independent value and needs as strict protection as other commonly agreed values such as the right to property or the right to life and health. Enlisting the right to the environment as a basic right in the Constitution would help to protect this value from the detrimental activities of private entities and also states.

Human Right to Environment

Faced with the results of polluting and destructive actions, many international treaties and local laws and regulations on environmental protection have been introduced in the second half of the 20th century. These at first did not mention human rights in relation to environmental protection. But since the 1970's, links between human rights and the environment have progressively been recognized. People more and more started to see that a clean and healthy environment is essential to the realization of fundamental human rights such as the right to life, personal integrity, family life, health and development. Because each human beings are depends on protecting the environment as the resource base for all life. And where it started with mere linking acknowledged human rights to cases of environmental disruption, like the Bhopal and Chernobyl disasters, it has become more acknowledged over the years that human rights and the environment are so inherently interlinked that (a clean and healthy) Environment is a Human Right.

Protection of the Environment in a historical perspective

If we look at society from a historical perspective, we realize that protection and preservation of the environment has been integral to the cultural and religious ethos of most human communities. Nature has been venerated by ancient Hindus, Greeks, Native Americans and other religions around the world. They worshipped all forms of nature believing that it emanated the spirit of God. Hinduism declared in its dictum that "the Earth is our mother and we are all her children." The ancient Greeks worshipped Gaea or the Earth Goddess. Islamic law regards man as having inherited "all the resources of life and nature" and having

certain religious duties to God in using them. In the Judeo-Christian tradition, God gave the earth to his people and their offspring as an everlasting possession, to be cared for and passed on to each generation.⁴

Relationship between Environment and Development

- *Firstly*, the exhaustion of nature over the years, the international community has increased its awareness on the relationship between environmental degradation and human rights abuses. It is clear that, poverty situations and human rights abuses are worsened resources leads to unemployment and emigration to cities.
- *Secondly*, this affects the enjoyment and exercise of basic human rights. Environmental conditions contribute to a large extent, to the spread of infectious diseases. From the 4,400 million of people who live in developing countries, almost 60% lack basic health care services, almost a third of these people have no access to safe water supply, good air and good hygiene.
- *Thirdly*, degradation poses new problems such as environmental refugees. Environmental refugees suffer from significant economic, socio-cultural, and political consequences.
- *Fourthly*, environmental degradation worsens existing problems suffered by developing and developed countries. Air pollution, for example, accounts for 2.7 million to 3.0 million of deaths annually and of these, 90% are from developing countries.

Approaches to environmental law and human rights

Human rights and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the last quarter of the 20th century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. Because of the many complex issues that arise when these two seemingly distinct spheres interact, it is to be expected that there are different views on how to approach 'human rights and the environment'.

- The *first* approach is one where environmental protection is described as a possible means of fulfilling human rights standards. Here, environmental law is conceptualized as 'giving a protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood.' Here, the end is fulfilling human rights, and the route is through environmental law.
- The *second* approach places the two spheres in inverted positions – it states that 'the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection.' The second approach therefore highlights the presently existing human rights as a route to environmental protection. The focus is on the existing human right. In this context, there exists a

⁴ Article written by Dr. M.Sanjeev Rao, titled Human Rights and Environmental Protection, Published in International Journal of Academic Research: Vol.2, Issue-4(5), October-December.

raging debate on whether one should recognize an actual and independent right to a satisfactory environment as a legally enforceable right. This would obviously shift the emphasis onto the environment and away from the human rights. These are the subtle distinctions between the two ways in which this approach can be taken.

- A *third* approach to the question of ‘human rights and the environment’ is to deny the existence of any formal connection between the two at all. According to this approach, there is no requirement for an ‘environmental human right.’ The argument goes that, since the Stockholm Conference in 1972, international environmental law has developed to such extents that even the domestic environments of states has been internationalized. In light of the breadth of environmental law and policy, and the manner in which it intrudes into every aspect of environmental protection in an international sense and notwithstanding the concept of state sovereignty, it is argued that it is unnecessary to have a separate human right to a decent environment. This view militates against the confusion of the two distinct spheres of human rights law and environmental law. However, there are many who oppose this view. They argue that there is in fact a benefit to bringing environmental law under the ambit of human rights. Environmental law has in many parts of the world, be it at the international or domestic level, suffered from the problem of standing. Because of this barrier, it is often difficult for individuals or groups to challenge infringements of environmental law, treaties or directives, as the case may be.

There has been a great deal of debate on the theoretical soundness of the idea of a human right or rights to a satisfactory environment. For one thing, there can occasionally be a conflict, or tension, between the established human rights and the protection of the environment *per se*. There are circumstances where the full enjoyment of the rights to life, to healthy living and to ones culture can lead to the depletion of natural resources and environmental degradation.

Regional and International Bodies on the issue

The right to a healthy environment is now to be found in a number of regional human rights instruments around the world. Article 11 of the Additional Protocol to the Inter-American Convention on Human Rights (1994) popularly known as the San Salvador Protocol, states that (1) everyone shall have the right to live in a healthy environment and to have access to basic public services; (2) the state parties shall promote the protection, preservation and improvement of the environment. The Convention on the Rights of the Child (1989) at article 24(2) (c) requires State parties in the matter of combating disease and malnutrition to take into consideration, ‘the damage and risks of environmental pollution.’ The African Charter on Human and People’s Rights 1981 proclaims in Art. 24(1) a right to ‘a general satisfactory environment favourable to

their development.’ In fact, the Final Report of the Special Rapporteur on Prevention of Discrimination and Protection of Minorities⁵ listed over 15 rights relative to environmental quality. Some of these include:

- a) the right to freedom from pollution, environmental degradation and activities which threaten life, health or livelihood;
- b) protection and preservation of the air, soil, water, flora and fauna;
- c) Healthy food and water; a safe and healthy working environment.

The first principle of the 1972 Stockholm Declaration declares that: “*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.*” Almost twenty years later, in resolution 45/94 the UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment.

In the mid 1990s, recognizing the urgent need and importance of deepening the link between human rights and the environment, and of exploring ways to achieve a better collaboration, harmony, and complement the agendas of different United Nations institutions working on both subjects, the UN created the position of Special Rapporteur on Human Rights and Environment. The Rapporteur prepared an important report, the Ksentini Report, which offered a theoretical, thematic, and practical framework to address the linkages between human rights and the environment.

- **International Judicial interventions**

If we look at the developments that are taking place through the intervention of national Courts in various parts of the world, we come to note several things: *first*, the courts are moving the right to a healthy environment up the hierarchy of human rights by recognising it as a fundamental right; *second*, the courts are defining the content and nature of the right to a healthy environment through landmark decisions.⁶

- In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment.
- In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the Court observed that “side by side with fundamental rights such as liberty, equality and necessary conditions for people’s life, there is the right to the environment. The right to a healthy environment cannot be separated from the right to life and health of human beings. In fact, factors

⁶ Article written by C.S.Chakravarthy,, titled Human Rights and Environment: An Analytical Study, Published in International Journal of Academic Research: Vol.2, Issue-3(1), July-September, 2015

that are deleterious to the environment cause irreparable harm to human beings. If this is so we can state that the right to the environment is a right fundamental to the existence of humanity.”

- In the same year, the Supreme Court of Costa Rica affirmed the right to a healthy environment in a case concerning the use of a cliff as a waste dump. In the case of *Carlos Roberto García Chacón*, the Supreme Court stated that life “is only possible when it exists in solidarity with nature, which nourishes and sustains us – not only with regard to food, but also with physical well-being. It constitutes a right that all citizens possess to live in an environment free from contamination.”
- Guatemala too has seen the environmental ombudsman note in a 1999 case⁷ that “lack of interest and irresponsibility on the part of authorities in charge of National Environmental Policy amounts to a violation of human rights, considering that it impairs the enjoyment of a healthy environment, the dignity of the person, the preservation of the cultural and natural heritage and socio-economic development.”⁸

The question of human rights and the environment has also come up for consideration in our neighboring countries.

- **The contribution of the Supreme Court of India**

The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen “to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures.”

One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the Constitution, this allows an adjudicating body such as the Supreme Court to find a breach of this article, without the need for a definition of an environmental right as such. All that the Court needs to do is what it must in any event do; namely, define the Constitutional right before it. Accordingly, a Court prepared to find a risk to life, or damage to health, on the facts before it, would set a standard of environmental quality in defining the right litigated. This is well illustrated by the cases that have come before the Supreme Court, in particular in relation to the broad meaning given to the Right to Life under Article 21 of the Constitution. The right to life has been used in a diversified manner in India. It includes, *inter alia*, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. However, it is a negative right, and not a positive, self-executory right, such as is available, for example, under the Constitution of the Philippines. Section 16, Article II of the 1987 Philippine Constitution states: ‘The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature’. This right along with Right to Health (section 15)

⁸ In the case of *Concesiones otorgadas por el Ministerio de Energía y minas a Empresas Petroleras* (1999).

ascertains a balanced and healthful ecology.⁹ In contrast, Article 21 of the Indian Constitution states: ‘No person shall be deprived of his life or personal liberty except according to procedures established by law.’ The Supreme Court expanded this negative right in two ways. *Firstly*, any law affecting personal liberty should be reasonable, fair and just. *Secondly*, the Court recognised several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to the environment.

Rural Litigation and Entitlement Kendra v. State of U.P. was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Coralie Mullin v. Union Territory of Delh*¹⁰ where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life. The importance of this case lies in the willingness on the part of the Court to be assertive in adopting an expanded understanding of human rights. It is only through such an understanding that claims involving the environment can be accommodated within the broad rubric of human rights. The link between environmental quality and the right to life was further addressed by a constitution bench of the Supreme Court in the *Charan Lal Sahu*. Similarly, in *Subash Kumar*, the Court observed that ‘right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.’ Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution. It has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community. The courts have taken a serious view of unscientific and uncontrolled quarrying and mining, issued orders for the maintenance of ecology around coastal areas, shifting of hazardous and heavy industries and in restraining tanneries from discharging effluents.

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees

Matters involving the degradation of the environment have often come to the Court in the form of petitions filed in the public interest. This mode of litigation has gained momentum due to the lenient view adopted by the Court towards concepts such as *locus standi* and the ‘proof of injury’ approach of common law. This has facilitated espousal of the claims of those who would have otherwise gone unrepresented. It is interesting to note that, unlike Indian courts, the Bangladeshi and Pakistani courts apply an ‘aggrieved person’ test, which means a right or recognised interest that is direct and personal to the complainant.

The importance of democratic and individual participation

A development strategy which does not take into account the human, social and cultural dimension could have only adverse repercussions on the environment. A national development strategy is viable from the economic, social and ecological standpoint only if it gains the active adherence of the various social strata of the population. The United Nations Conference on Environment and Development was of the view that that one of the fundamental prerequisites for the achievement of sustainable development was broad public participation in decision-making. Furthermore, the Conference recognized, in the specific context of environment, "the need for new forms of participation" and "the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in (pertinent) decisions."¹¹ The Conference implicitly linked the notion of real participation in the right of access to information by noting that "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures". The link between participation and information can also be found in Principle 10 of the Declaration of Rio.

Recommendations

The environment should be considered as a third generation fundamental right, also “*solidarity right*”. This category of rights is complementing the civil and political rights of the first generation, and also the economic and social rights of the second generation. The fundamental freedoms or fundamental rights legally represent all the overarching subjective rights for the individual, which are partly covered by the rights of man. They are thus rights of particular importance for humans, so they enjoy a special status.

It is apparent that environmental and human rights are inextricably linked. As we increasingly recognize the serious impact of a degraded environment on human health and well being, we are better placed to adjust our policies and cultural practices to reflect our enhanced understanding. As a result, we should be able to protect human rights and human dignity within its broader social, economic and cultural context by drawing from and contributing to those who are actively engaged in the environmental and public

health arenas. This should also facilitate those who are working in the environmental and conservation fields to develop a better working relationship with those in the human rights arena. This will eventually lead to the articulation of a more integrated approach to dealing with socio-economic and environmental problems, encouraging the development of a sustainable model for the preservation of biological resources and natural ecosystems, for the use and enjoyment of both present and future generations.

However, unlike other fundamental rights, the environment is a living part of our planet, which has an independent existence. It is not just a concept created by man, such as freedom of expression that does not exist by itself. The environment thus has two facets, which are not mutually exclusive but which are complementary. Therefore this feature of the environment must be transcribed into law. It is therefore legitimate to assume, that we can really talk about the fundamental right of the environment when these two aspects will be protected. And this will remain generally consistent with the theory of human rights, because this will mean that the man will have reached a high level of environmental consciousness, and he considers reasonable to have the right to protect the environment itself.

