

Environmental Justice: Linking Human Rights and the Environment

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Abstract

This study outlines the international legal regime on environmental protection and then examines the link between the environment and human rights by reference to the application of human rights law as a legal remedy for environmental issues.

Several decades ago, Public International Law was not concerned with environmental protection. The Stockholm conference of 1972 and subsequent international instruments have enriched the international community on the subject. Undoubtedly environmental rights are self executing and they need positive State intervention for their fulfillment.

The human rights both procedural and substantive human rights, found in the international Bill of Rights are being applied in relation to environmental issues. The procedural rights must be distinguished from substantive rights recognized in international human rights instruments such as the right to life, the right to health or the right to decent standard of living. The invocation of substantive human rights in relation to environmental issues has become popular at the national level. The efforts made by Sri Lanka and several South Asian countries are of considerable value.

The right to a healthy environment on the other hand denotes the identification of a separate independent human right not dependent on existing human rights in the international human rights instruments. This study recommends the incorporation of a human right to healthy environment into the fundamental rights chapter of our Constitution.

1. Objective of the Study

The objective of this study is to outline the international legal regime on environmental protection and to examine the link between the environment and human rights law by reference to the application of human rights law as a legal remedy for environmental issues in the international and national context.

2. Introduction

Today society's interaction with nature is so extensive that environmental issues have assumed proportions affecting all humanity. With the industrial and technological development mankind have not only improved economic conditions but also altered the natural ecological balance. Industrialization, urbanization and poverty among others have resulted in the erosion of biodiversity and thus affected natural environment adversely.

Today the State is no longer a mere umpire and an indifferent spectator. It has become the positive State. A State acts by its legislature, its executive and its judiciary. Under Chapter VI of the 1978 Constitution of Sri Lanka, it is under duty to bring about a welfare state in Sri Lanka. As the welfare State of modern times moves into its stride, there is scarcely any aspect of activity law does not take within its province¹. This move has increased the indispensability of the law for the regulation of such activities in the public interest. The international legal regime in the global sense, and national legal regime in the national context are therefore essential for achieving environmental justice.

The concept of justice is one of the important ideals of man developed initially by philosophers and later by the judiciary. Justice broadly encompasses general justice and particular justice. In the general sense justice is the sum of all the social virtues. In the particular sense, it means equality. Environmental justice is a facet of justice.

3. International Concern for Environmental Protection.

International concern for environmental protection is of comparatively recent origin. The United Nations Conference on Human Environment and Development Stockholm 1972² is considered to be the major event bearing on environmental protection together with the concept of sustainable development. The Conference resulted in the Stockholm Declaration on the Human Environment. The Declaration besides the preamble consists of seven universal truths and 26 principles. The concern for environmental protection and sustainable development receives further boost in the "World Conservation Strategy" which was prepared in 1980 by the World Conservation Union with the advice and support of the United Nations Environment Program. It was endorsed by the governments of the various nations at the General Assembly in 1980. It was also recognized by the South Specific Commission of 1980. The next milestone in the evolution of international environment law is the World Charter for nature which was adopted in 1982. This instrument is unique in that it is the first of its kind which recognizes the rights of Nature, distinct from the rights of human

beings. Most other instruments recognize the need for environmental protection because of its utility to man, not because it needs protection in its own right. In other words, most instruments approach environmental protection in an anthropocentric manner while the World Charter for Nature is the first instrument - to adopt an ecocentric approach. It endorses the right of every form of life, "warranting respect regardless of its worth to man". The World Charter also endorses environmental procedural rights and recognizes a fundamental right to a healthy environment. The term "sustainable development" was brought into common use by the World Commission on Environment and Development ("the Brundtland Commission") in its seminal 1987 report on "Our Common Future"³. The World Commission on Environment and Development was set up by the General Assembly of the United Nations in 1983. The United Nations Conference on Environment and Development popularly known as the *Earth Summit* was held in June 1992 at Rio de Janeiro⁴. The Documents of the *Earth Summit* included the following: The Rio Declaration, Agenda 21, Forest Principles and two legally binding Conventions on Climate Change and Bio Diversity. In 1997 delegates from a large number of nations attending the World Climate Conference in Kyoto in Japan reached a historic accord calling for mandatory cuts in emission of green-house gases by industrial nations in the 21st century to help to save the planet from potentially devastating global warming.

4. Link between the Environment and Human Rights.

The realization that environmental problems have serious consequences for human health and well-being and could even threaten the very existence of human life on earth, had led to the dialogue on a right to a healthy environment. While the highest human right accorded to a human being is the right to life, that right could become meaningless if the environment in which he is living is degraded. The right to life does not mean the right to any kind of life. There is no doubt that there is a clear relationship between certain human rights and environment protection. An important development in the present context, although not necessarily recent, is the convergence of the environmental movement with the human rights movement at the national level, particularly in developing countries. Many environmental problems give rise to human rights violations, like the right to health, livelihood, and in extreme cases, the right to life itself. Thus, right to life and right to health are frequently invoked in relation to environmental issues. This inter-relationship often means that one cannot be discussed without reference to the other. This does not mean that all environmental problems lead to human rights abuse or that every human rights abuse is caused by environmental problems or that economic development necessarily leads to environmental degradation or human

rights abuse; what it does mean is that environmental problems can give rise to human rights abuse; economic development can, give rise to environmental problems. Thus, human rights, environmental protection and economic development are inextricably inter-linked so that, very often, they have to be discussed together. Unlike human rights issues which are often individual in nature (except, of course, issues like genocide, apartheid and slavery), environmental violations often involve groups and communities and sometimes even future generations. It also involves the right of other species to survive called the "ecocentric approach". Furthermore, some environmental issues may be global in dimension affecting the entire international community, and their consequences, it is predicted, could affect generations to come. Given this inter-relationship, it is not surprising that it has also received the attention of the World Court. Justice Weeramantry, the then Vice President of the Court, not only recognized the link between environmental protection and human rights, but also placed environmental protection *within* human rights doctrine: in his separate opinion in the *Case Concerning the Gabcikovo Nagymaros Project*, Justice Weeramantry⁵ noted:

"The Protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments."

While there is an obvious convergence between the two, there is no doubt that environmental protection encompasses a much wider group of actors and consequences than the human rights movement. The procedural rights must be distinguished from substantive rights recognized in international human rights instruments such as the right to life, the right to health or the right to an adequate standard of living. In other words, it is the violation of an existing substantive right *as a result of an environmental problem* that sets the human rights machinery in motion. Here too, reliance is placed on existing human rights and does not denote the acceptance of a new right to a clean environment. The right to a healthy environment, on the other hand, denotes the identification of a separate, independent human right, not dependent on the existing protected rights recognized in the International Covenants. Thus, for example, a victim does not have to prove that his right to life (or any other right) has been violated as a result of an environmental problem. A victim should be able to proceed for the vindication of a violation of a right to a clean environment, assuming however, that the parameters of this right can be laid down.

The Stockholm Declaration adopted in 1972 recognizes the link between environmental protection and human rights in several of its provisions. The Preamble, for example, states that both the natural and man-made environment are “essential to his [man's] well-being and to the enjoyment of basic human rights even the right to life itself”. This is a clear recognition of the fact that, in order to enjoy human rights, the natural and man made environment is essential. The Hague Declaration on the Environment⁶ adopted in 1989 also recognizes the link between human rights and the environment and explicitly endorses the right to live in dignity in a viable environment. Its preamble provides that : The right to live is the right from which all other rights stem. Guaranteeing this right is the paramount duty of those in charge of all States throughout the world. In 1990, the UN General Assembly, welcoming the decision of the Commission of Human Rights and of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the problems of the environment and its relation to human rights, explicitly endorsed that “all individuals are entitled to live in an environment adequate for their health and well-being”. The General Assembly resolution refers to the right of everyone to an adequate standard of living for their own health and well-being enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, and points out that “a better and healthier environment can help contribute to the full enjoyment of human rights by all”. Moreover, it emphasizes that environmental degradation can endanger the very basis of life.

5. Application of Human Rights for Environmental Issues

5.1. Procedural Rights

- Several recognized procedural rights are increasingly applied in relation to environmental issues and are generally considered as forming part of environmental rights. These rights are found in international human rights law and reflected for most part in national constitutions. These rights include: the freedom of information, right to participate in the decision-making process which is transparent and participatory and which holds the government entity in question accountable for its action. In other words, they promote the principles of transparency and accountability, essential for democratic governance. Applied in relation to environmental issues these mean the right to have access to information affecting one's environment, the right to participate in decisions affecting one's environment, the right to participate in decisions affecting the environment and the right to seek redress in the event one's environment is impaired. While the former two rights are clear cut, it is in relation to the latter that a separate right to a healthy environment can be invaluable. Granted recourse may be available at the national level to deal with public nuisance

and damage caused by pollution etc., the acceptance of a distinct right to a healthy environment would elevate it to the status of other fundamental rights, according it with the same importance and allowing the victims to resort to the same machinery. Without such a right, victims have to rely on existing human rights such as the right to health, the right to an adequate standard of living and the right to privacy, and the tribunal in question may or may not make connection between the alleged human rights violation and the environmental problem in question. Several international instruments, both binding and non-binding, endorse environmental procedural rights. The Rio Declaration contains several provisions on these rights.

The Declaration contains a provision on environmental impact assessment (Principle 17) for activities that are likely to have a significant adverse impact on the environment. The EIA process is important as it provides access to information, and is transparent and participatory in nature. Thus, the right to receive information relating to the environment, the right to participate in the decision-making process and the right to seek redress for the vindication of environmental rights are recognized rights under international environmental law. These rights, particularly, the right to information and the right to participate promote principles of transparency and accountability which are essential in a democratic society. It is nothing but fair that those who are going to be affected by a particular activity be informed of such activity and their voices heard. The government then cannot be accused of taking decisions behind closed doors and indeed, as the Sri Lankan Supreme Court pronounced in a recent case, public participation and transparency are essential if sustainable development is to be achieved⁷. In other words, sustainable development cannot be achieved where secrecy and anarchy reign and where the fundamental rights of people are not respected.

5.2. Substantive Rights

Several existing substantive human rights have been used in relation to environmental issues, notably, the right to life, right to health and the right to an adequate standard of health in the absence of a specific environmental right or right to a healthy environment. The drawback of this approach is that the victim has to prove that the environmental issue in question has violated one of his human rights. If this link cannot be established, then the action would fail: Thus, for example, a victim of pollution caused by an industrial establishment has to prove that, as a result of suffering pollution damage, his health has been impaired or his standard of living has been affected. It may not be easy to establish this link in every case. On the other hand, the recognition of a distinct right to a healthy environment would allow a victim to establish that the pollution level in his neighbourhood has

increased as a result of the industrial establishment and exceeds the permissible level for that particular pollutant/s (assuming, of course, that such levels have been laid down). In such a situation, it is not necessary to establish individual injury which may be long term anyway, as the victim would be in a position to establish that the environment he is living in has been polluted by the activity of the industry in question. He only needs to establish that because of the emission of a pollutant above a certain threshold, the environment is no longer healthy for him to live in. In order to proceed on this basis, however, thresholds and standards for the emission of pollutants have to be laid down. This approach thus circumvents one major problem inherent in the litigation process, namely establishing injury to oneself and establishing causation. The other advantage of this approach is that timely action can be taken to remedy the environmental problem without having to wait until significant injury to people has manifested itself. In some instances, establishing injury is not a problem, but by then, the environmental problem has persisted for so long that remedial action has become either impossible or too expensive.

5.3 National Level

The convergence between the human rights movement and the environmental protection movement was noted above. This is particularly apparent in relation to developing countries which have had to grapple with a host of problems ranging from poverty to environmental degradation and from hunger and malnutrition to corruption and civil strife. Severe food shortages exacerbated by extreme weather conditions, human rights and humanitarian law violations associated with civil strife, malnutrition and hunger, an aging population, acute environmental problems associated with development projects, and international trade and globalization, are some of the challenges facing these countries. While many States do not embody a specific right to a healthy environment, they do have mechanisms in place in relation to human rights violations. These mechanisms have been used by environmentalists and victims of environmental injustices to vindicate their rights. Though not without its own problems, these human rights mechanisms have played an invaluable role in protecting environmental rights.

5.3.1 Sri Lanka

The 1978 Constitution of Sri Lanka does not guarantee the right to life. It also does not specifically endorse the right to a clean environment. Although the fundamental rights Chapter III of our Constitution is silent on these matters, the directive principles of state policy and fundamental duties in Chapter VI of the 1978 Constitution specifically refer to the protection of the environment and provides in Article 27(14) that :”The State shall

protect, preserve and improve the environment for the benefit of the community". These directive principles "shall guide the Parliament, the President and the Cabinet of Ministers in the enactment of laws and the government of Sri Lanka for the establishment of a just and free society". According to Article 28(f) of the 1978 Constitution among the fundamental duties of every person in Sri Lanka is the duty "to protect nature and conserve its reaches". Article 29 of the 1978 Constitution, however, mandates that the constitutional provisions in the Chapter VI on directive principles of state policy and fundamental duties do not confer legal rights or obligations on or upon the state and are thus not enforceable in any court or tribunals. The most significant judgment in the area of environmental protection and sustainable development was delivered by our Supreme Court *Bulankulama and others v. the Secretary of Internal Defence and Others* (2000)⁸ which is commonly referred to as the *Eppawala judgment* the discussion of which is essential in this context.

Seven petitioners, six of them being farmers and a monk from a temple in the vicinity of the Eppawala Phosphate deposits claimed that the proposed agreement between the government of Sri Lanka and Freeport MackMoran Resources Partners of USA, a multinational mining company to whom the right to exclusively mine the phosphate deposits was to be given, would result in the violation of those fundamental rights to equality (Article 12), the right to engage in an occupation of one's choice (Article 14(1)(g)) and freedom to movement and choosing one's residence within in Sri Lanka (Article 14(1)(h)) of the 1978 Constitution. Justice Amarasinghe, on behalf of the Supreme Court, in a lengthy judgment took the parameters of the discourse of constitutional protection of rights to new heights. His lordship held that the proposed agreement indeed violate the rights of the petitioners under Article 12(1), 14(1)(g) and 14(1)(h) of the 1978 Constitution. The argument raised by the petitioners that the State is under an obligation to utilize national resources in a sustainable manner was discussed in length in the judgment. The Supreme Court referred to both the Stockholm (1972) and the Rio (1992) Declarations on Environmental Protection and highlighted the principles relating to sustainable development, according to which the proposed agreement must be reviewed. The Court noted that human beings are at the centre of the concept of sustainable development and that they are entitled to a healthy and productive life in harmony with nature. The Court stated that in order to achieve sustainable development environmental protection shall constitute an integral part of the development process. The Supreme Court also emphasized that Sri Lanka as a member of United Nations could "hardly ignore" environmental requirements in the Stockholm and the Rio Declarations.

5.3.2 India

In India, the concern for environment protection has not only been raised to the status of fundamental law of the land, but also is wedded to the human rights approach and it is now well settled that it is the basic human right of every individual to live in a pollution free environment with full human dignity. This is mainly due to the creative judicial approach. The Constitution of India obligates the State as well as citizen to protect and improve the environment. Article 21 of the Indian Constitution guarantees a fundamental right to life, a life of dignity to be lived in a proper environment, free of danger of diseases and infection. The talk of human rights and maintaining the dignity of every person would become meaningless unless they are secured with the minimum livable environment. *Ratlam Municipality v. Vardichand*⁹ is a monumental judgment where the India Supreme Court followed the activist approach and provided flesh to the dry bones of statutory provisions. In this case the residents of a locality within the limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum-dwellers moved the Magistrate under the law to require the Municipality to do its duty towards the members of the public. In appeal the Supreme Court also affirmed this order. The Supreme Court also rejected the plea of the municipality of insufficiency of funds. The Court pointed out that the financial inability cannot validly exonerate the Municipality from statutory liability and it has no juridical base. The Court further observed “even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provisions. Decency and dignity are non negotiable facets of human rights and are a first charge on local self governing bodies”. In *MC Mehta v. Union of India*¹⁰, the Supreme Court rightly pointed out that law is a regulator of human conduct, but no law can indeed effectively work unless there is an element of acceptance by the people in society. For this, the dissemination of information, which is the foundation of a democratic system is necessary. It is therefore necessary to keep the citizens informed about their duty on the obligations of the State. Accordingly the Court directed (a) to enforce as condition of license of all cinema halls touring cinemas and video parlours the duty to exhibit free of cost at least two slides messages on environment in each show undertaken by them. (b) to show daily by cinema halls information films of short duration on environment and pollution. (c) to telecast and broadcast interesting programs of five to seven minutes duration every day and a longer program once a week on the matter of environment and pollution (d) to make environment a compulsory subject in schools and universities for general growth of awareness. It is submitted that these directions are in consonance with Principle 10 of Rio Declaration of 1992 which calls on States to make information widely available so as to

facilitate and encourage public awareness and participation. In *KC Malhotra v. State*¹¹ once again the Indian Supreme Court reiterated that the right to life under Article 21 includes right to live with human dignity, health and bear necessities of life. To ensure public health and safety is the duty of State under the constitutional mandates of Articles 21, 39 and 47. In this case open drainage was endangering public health and the petitioner sought enforcement of measures to ensure public health and safety against the Municipal Corporation. The Court directed the Corporation to take necessary measures to eradicate the menace caused by the open drainage. Thus, from the perusal of the above mentioned cases it is evident that judicial activism has led to the development of a new “environmental human rights jurisprudence” in India.

5.3.3 Other Countries

The Supreme Court of the Philippines also had the occasion to pronounce on this issue. In the celebrated *Minors Oposa Case*¹² the plaintiffs, all minors, filed action against the government requesting an order to discontinue existing and future timber license agreements. They contended that deforestation is causing environmental damage not only to themselves, but also to generations yet unborn. The Supreme Court, deciding that the plaintiffs had established *locus standi*, stated: *The complaint focuses on one specific fundamental legal right - the right to a balanced and healthful ecology which, for the first time in our nation's constitutional history, is solemnly incorporated in the fundamental law. (Section 16, Article 11 of the 1987 Constitution)*. The Court further noted that the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment and the right implies, *inter alia*, the judicious management and conservation of the country's forests. Without such forests, the ecological or environmental balance would be irreversibly disrupted. It was also held that “the petitioners had the right to sue on behalf of succeeding generations because every generation has a responsibility to the next to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthy ecology. “ This is a clear articulation of the inter- generational equality principle, widely accepted as a component of sustainable development”.

In Bangladesh, too the judiciary has extended the right to life to encompass the right to environment.

In *Dr Mohiuddin Farooque v. Bangladesh, Represented by the Secretary, Minister of Irrigation, Water Resources and Flood Control and Others*¹³, the Supreme Court of Bangladesh stated: *Although we do not have any provision like Article 48A of the Indian Constitution for protection of environment, Articles 31 and 32 of our Constitution protect right to life as a*

fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which, life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life. The Court also gave an expansive interpretation to *locus standi* and stated that the test of “any person aggrieved” would be satisfied if the petitioner demonstrates sufficient interest in the matter being litigated. The Supreme Court of Pakistan has also dealt with the issue. In *Ms Shehla Zia and Other v. WAPDA*¹⁴, the Court stated that the word “life” in the Constitution does not mean only a vegetative or animal life. It was held that a wide meaning should be given to it to be enable a man not only to sustain life, but also to enjoy it. It further noted: *Where life of citizens is degraded, the quality of life is adversely affected and health hazards are created affecting a large number of people, the Supreme Court in exercise of its jurisdiction under Art. 184(3) of the Constitution of Pakistan may grant relief to the extent of stopping such activities which create pollution and environmental degradation.* While many national Constitutions recognize the importance of environment protection, these are mainly confined to the Directive Principles Chapter. The new South African Constitution adopted in 1996, a remarkable document adopted through an even more remarkable process of public participation, is one of the few Constitutions which embodies a specific right to environment in its Bill of Rights. (Article 29), it is also noted that a human rights approach to environment protection is not proposed to the exclusion of other approaches or species within an ecology. Rather, it is proposed as a tool to complement other approaches and mechanisms on environmental protection. Its advantage lies on the fact that individuals would have an additional tool to seek redress for wrongs committed on them.

Conclusions

1. Several decades ago, public International Law was not concerned with environmental protection. The Stockholm Conference of 1972 succeeded in putting environmental issues on the international agenda and the *Earth Summit* held in 1992 and subsequent international instruments have enriched the international community on the subject. International Declarations reveal an intimate relationship between environmental protection and enjoyment of the human rights. While the highest human rights accorded to a human being is the right to life, that right could become meaningless if the environment in which he lives is degraded.
2. It is clear that an intimate relationship exists between human rights an environmental protection an economic development. This does not mean that all environmental problems lead to human rights abuse or

that every human right abuse is caused by environmental problems or that economic development necessarily leads to environmental degradation or human rights abuse.;what it does mean is that environmental problems can lead to human rights abuse

3. Human rights, both procedural and substantive, found in the international Bill of Rights are being applied in relation to environmental issues. Thus, procedural rights such as the freedom of information, the right to participate in decision making process and other due process rights are being increasingly used in relation to environmental issues.
4. The invocation of substantive human rights in relation to environmental issues has become popular at the national level. The efforts made by Sri Lanka and some Asian countries are of considerable value.
5. The right to a healthy environment on the other hand denotes the identification of a separate, independent human right not dependent on existing human rights in the international human rights instruments. This study recommends incorporation of a human right to healthy environment into the fundamental right chapter of our Constitution.
6. Undoubtedly, environmental rights are not self executing and they need positive State intervention for their fulfillment. This characteristic of the right to environment may cause some difficulties in its full realization and enforcement as there is no identified, specific formula to carry out this process. A holistic approach to the subject through an innovative method based on the legal system would ease such difficulties in the process of executing environmental right.
7. A human rights approach to environmental protection is not proposed to the exclusion of other approaches or species with and ecology. Rather, it is proposed as a tool to implement other approaches and mechanisms on environmental protection.

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