

The interconnection between environment and human rights: An overview on legal context

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ABSTRACT

Every year more than two million people meet the tragic end of their lives across the world for different causes. Thousands of individuals suffer from pollution-related illnesses. Ecosystems, for water scarcity, improper management of natural disasters, and disposal of toxic and hazardous products are degrading across the world due to environmental pollution. Climate change has an adverse impact on human health. These facts indicate that environmental and human-rights are closely related. The UN attempts to tackle environmental issues-the Stockholm and Rio Declaration—illustrate the importance of the link between human rights and dignity, and the environment. Already 69 years of the Universal Declaration of Human Rights have been passed but human rights are still facing serious crisis. This crisis impacts on environment and human right to the environment. The article aims to focus the environmental concerns in human rights discourse; to explore the relationship between human rights and environmental rights in light of the worsening global environmental situation, and to encourage the excellent practices pertaining to implementation of human rights obligations and responsibilities for informing and strengthening the development of overall environmental issues. The article makes use of secondary data, i.e. books, articles, different national and international law reports.

Key words: *Environment, Pollution, Human rights, Environment protection, Human health*

Introduction

There is a strong and undeniable connection between environment and human rights. The survival of people relies on a healthy and secure system. For example, serious pollution of the environment may influence the well-being of people and can stop them from enjoying their fundamental rights. Melissa Thorm (1991), an author has indicated this symbiotic relationship as follows:

‘Human life and the human environment are inseparable. To survive, humans must have air to breathe, water to drink, foods to eat, and a place in which they can live and sleep. If these elements be-

come polluted, contaminated, or eliminated or destroyed, life will cease to exist. To protect human life, our environmental life support system must be maintained and protected. One way to accomplish this protection is through the enactment or recognition of a legal human right to environment’.

In global legislation, the relationship between the environment and human rights is now well created. Actually, human rights cannot be protected without the protection of the environment in which people live, and environmental rights can often be properly implemented only if human rights have been respected at the same time (Lador, 2004). Thus, the two regions inherently connected with human

rights and environmental rights should be approached in a consistent manner. The right to a healthy environment is essential to the right to life and the integrity of people.

Rights to safe environment as a human right

The recognition of the right to the environment has two significant objectives: firstly, to enhance the life quality and secondly, to provide the remedy to people suffered by pollution (Gormley, 1988). The breach of both types of civil and political rights, and financial, social and cultural freedoms could be related to the environmental degradation. According to Philippe Sands, environmental degradation could be linked to the violation of both categories of rights - civil and political rights, and economic, social and cultural rights.

On the other side, certain civil and political freedoms can also create practical and enforceable environmental and associated commitments. The rights to life, freedom, right to property etc. are the most significant civic and political rights relating to environmental protection (Sands, 2004). There are three wider categories of rights articulated by academics in the expansive exposure to the environment: substantive rights and environmental law, eco-centric rights and procedural laws. Thus, the substantive elements of the right to the environment and the procedural safeguards given by recognized environmental rights are covered in the expansive formulation of human rights to the environment.

Substantive right to environment: There have been many adjectives used for describing and providing the word 'correct' to the environment with a substantial quality standard, which humans are entitled to live in accordance with global and national legislation (Thorne, 1991). Safe, satisfying, healthy, decent, proper, tidy, pure, natural, feasible, ecologically sound and environmentally balanced adjectives are the most common. The right to the environment as a human right means the right to live in a minimum quality setting that enables a life of dignity and well-being to be achieved.

What are the contents of the right to environment? The determination of such a precise minimum standard of environmental quality is often a difficult task. According to Birnie and Boyle, the right to environment includes the following elements:

- (1) Freedom from pollution, damage to the environment and activities which influence or

threaten the environment, life, health, livelihood, well-being or sustainable growth;

- (2) Protect and preserve the fauna, flora and wildlife of the atmosphere, water, sea ice and all required procedures and regions for preserving biological diversity and ecosystems;
- (3) The highest achievable health level,
- (4) A safe and healthy environment for food, water and work;
- (5) Adequate housing and land tenure in a safe, healthy and environmentally sound setting and living circumstances;
- (6) Ecologically sound access to nature, and natural assets preservation and sustainable use;
- (7) Distinctive site preservation;
- (8) Traditional life and livelihood should be enjoyed by native people (Birnie and Boyle, 2002).

The right of the environment: This philosophic concept articulates that the environment has privileges based on its own inherent value, which is separate and different from those which it can be ascribed to by human use (Rivera, 2006). It implies that if a product is worthy and not merely for its uses, it has an intrinsic value (Jardins, 2001). Many environmental concerns have a moral, spiritual, symbolic, esthetic or cultural meaning. The two competing concepts -

The human right to the environment and the right to the environment are hard to balance as the former is anti-prop-centric and the latter is environmentally friendly. Professor Kiss and Shelton, however, resolved this issue by suggesting that environmental right is, in reality, a key component in the building of environmental rights: "Intrinsic value" can be grasped in this respect. Viewing people and nature as interrelated enables us to conclude that both of them have to be preserved. The right to the environment as a substantive part of the expanding right to the environment should, therefore, be incorporated (Kiss and Shelton, 1991).

Linkages between human rights and environment

There is a great relationship between the environment and human rights. Shelton finds four 'primary and complementary methods' that define the human rights-environment relationship:

- (1) Selected human rights, such as the emphasis on procedural rights (freedom of association and right of access to data on the future environmental threat) are used by global legislation on the

environment for the protection of the environment;

- (2) Human rights regulations interpret human rights to include environmental protection if environmental degradation prevents human rights, including the right to life, health, culture, a family and personal life, from being exercised;
- (3) A fresh substantive human right is now emerging to a secure and healthy setting;
- (4) As a matter of human responsibilities rather than rights, environmental protection has to be resolved (Shelton, 2004). Connections have been created by domestic and international courts and tribunals under foreign soft law standards, treaties on human rights, environmental conventions, domestic constitutions and judicial interpretations.

(a) International soft law norms

Many UN resolutions and works have discussed and developed linkages between human rights and the environment. The 1972 Stockholm Declaration was created at the UN Conference on Environment and Development which acknowledges the environment as a human rights element. According to principle 1 of that Declaration (See the Declaration of the UN Conference on Human Environment, 1972):

“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 wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

The UN Conference on Environment and Development 1992 followed up the Stockholm Declaration with the Rio Declaration which declares “Human beings are entitled to a healthy and productive life in harmony with nature”.

(b) Human rights treaties

In International Human Rights Instruments (IHRI), the right to the environment is not explicitly acknowledged. The IHRI have made only some implicit references. The Universal Statement of Human Rights, for instance, declares that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing and housing.” The term ‘standard of living’ also means the presence of environmental quality that is vital to every individual’s life. The

International Pact on Economic, Social and Cultural Rights 1966 offers for the right to ‘improving the environmental and industrial hygiene in all aspects of health rights’ as set out in the reference to human rights to the environment [Article 12 (2)(b)].

Some regional human rights tools specifically include the right to a secure setting. Article 24 of the African Charter on Human and Peoples Rights 1981 for instance states, “All people shall have the right to a general satisfactory environment favorable to their development”. Initially, the 1969 American Convention on Human Rights made no reference to environmental rights but in its 1988 Additional Protocol, Article 11 states, “Everyone shall have the right to live in a healthy environment. The States Parties shall promote the protection, preservation, and improvement of the environment.”

(c) Constitutionalization of environmental rights

In the constitutional regulations on the right to the environment, there is a further link between the environment and human rights (Sabsay, 2004). The constitutions of 118 countries around the globe recognize the right to a healthy environment in different formulations. For example, Article 24 of the Constitution of South Africa states that, ‘Everyone, by means of reasonable legislation and other actions to prevent pollution and degradation, has the right to an environment that is not detrimental to health and well-being, and to have an environment safeguarded in the interests of the present and future generations.’ Moreover, the right of all citizens to “a good, equitable setting appropriate for human development and productive activity that is capable of meeting current requirements without compromising that of the future generations” are provided for in Article 41 of the Constitution of Argentina. However, some environmental constitutional provisions stay mainly inspiring and express domestic objectives rather than legitimate rights. The Constitutions of nations such as Cameroon, Ghana, Namibia and Tanzania, for instance, have clauses of this kind that are laws and policy goals rather than enforceable laws.

(d) Judicial interpretation and environmental rights

International and national authorities and courts have freely interpreted the current human rights corpus to include the right to a secure setting. In 1997, the ICJ specifically acknowledged the human

right to environmental protection in line with contemporary international law as regards the Gabčíkovo-Nagymaros Project. The ICJ in the 1997 Case Concerning that Project expressly recognized the existence of a human right to environmental protection under modern international law (See the Gabčíkovo-Nagymaros Project).

Right to environment in judicial cases

The judiciary has embraced a liberal and harmonious interpretation of some fundamental rights to guarantee environmental protection in the lack of express constitutional provision on environmental rights in Bangladesh (Faruque, 2017). At the moment, most Bangladeshi environmental activities are covered by the Bangladeshi Constitution on the right to life. The method of writing is preferred rather than the standard case because it is quick, fairly cheap and gives immediate access to the highest judiciary of the country. In the case of *Dr. Mohiuddin Farooque Vs. Bangladesh and others* (See 48 DLR), judicial recognition for protection of environment was first recorded by the High Court in a case that challenged nuisance during election campaign. The judiciary disposed of the case on assurance from the Attorney General to take measures against defacing of public and private property in the name of election campaign.

In the case, *Hatton and others v. the United Kingdom* (Bhardwaj, 2108) the European Court of Human Rights was asked to decide whether the government policy on night flights at Heathrow airport gave rise to a violation of the applicants' rights under articles 8 and 13 of the Convention. In its judgment, a chamber of the Court noted that a fair balance had to be struck between the competing interests of the individual and the community as a whole and that in both contexts, the State enjoyed a "certain" margin of appreciation in determining the steps to be taken to ensure compliance with the Convention.

Conclusion

Although the discourse on human rights cannot include all environmental issues, at least environmental protection should be based on a right-based strategy. This trend is also indicated by the current global standards. However, insufficiencies in the existing worldwide system of human rights to tackle the problems of the environment, the right to a secure environment, and access to human rights

tribunals and processes should be explicitly integrated into the international tool of human rights such as International Covenant on Civil and Political Rights or International Covenant on Economic, Social and Cultural Rights in order to agree to environmental allegations. In such cases, an existing structure can be used to implement the right to environment. The development of a new environment protection scheme is another proposal for better environmental protection. To this end, a distinct convention could be enacted which would include environmental freedoms both substantive and procedural. The principal reason for the adoption of a distinct tool is that the right to the environment is classified as a right of solidarity and consequently, must be improved by its own oversight and enforcement structures and mechanisms.

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