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RIGHT TO A HEALTHFUL ENVIRONMENT: FLAGSHIP OF FUNDAMENTAL HUMAN RIGHTS – AN INTERNATIONAL PERSPECTIVE

Abstract:

The right to a healthful environment gained global recognition with the growing trend in environmental consciousness and development of human awareness over the past decades. This human right is interlinked to our environment because an ecosystem which is otherwise will affect all living organisms to the very root of their existence. It is said that the right to a healthful environment is the flagship of all fundamental human rights. This stems from the indubitable fact that the survival of mankind is totally dependent on a clean, healthy and pollution-free environment. This paper delves into the constitutions of 23 nations in 6 different continents, with the right to a healthful environment as the central theme. It also explores the status, adequacy and enforcement of this basic human right as a constitutional right. To what extent Mother Nature is protected and how effective our environmental safeguards are, directly and indirectly, have reciprocal effects on the sustainable development of a country. In the midst of facing today's global environmental challenges, it is the fervent hope of every citizen to live a decent life with reasonable living conditions for survival, and preservation of human dignity and sanity. This can only be achieved if the greed of the developed countries gradually erodes in the face of abating the sufferings of mankind by having a heart for humanity. Going back to basics, the right to a healthful environment actually relates to the sustainable survival of the humankind because it encompasses fresh air to breathe, safe and clean drinking water, sufficient nutritious food, proper homes for shelter and adequate sanitation facilities for the sustenance of all biota. Without securing and maintaining a healthful environment for present and future generations to come, mankind will drastically be deprived from enjoying the fundamental human rights that make life worth living.

Keywords:

Constitution, human rights, environment, fundamental liberties, anthropogenic, right to health, judicial activism, enforcement

JEL Classification: Q51

Introduction

The numerous horrendous violations of human rights during World War II called for the protection of human life and dignity. These atrocities, which occurred especially around the European scene, carved grim stories of how far states would go to show off their political strength and what price they placed on human worth. Disheartenment ebbed away when the second half of the twentieth century welcomed the advancement of legal instruments to safeguard human rights and saw the growth of international law. Before long, the close of the century envisaged an interesting development in international law, namely the acknowledgment of the necessity to protect the natural environment from man's deleterious activities. Hence, with the advent of the twentieth-first century, there was clear manifestation of human rights law and international environmental law making an impact in the international arena. Further, a substantive human right to the environment and procedural environmental rights "offer citizens an extra tool to enforce lax environmental legislation and address lenient executive enforcement of such laws." A rights structure would provide more thrust to the environmental discourse, which was distorted many a time to suit the rapacity of "financially powerful individuals and corporations" (Pedersen, 2008).[1]

The author argued that a substantive right to the environment currently did not prevail under international law and efforts to breathe life into it have stalled to a great extent.[2] Nonetheless, within Europe itself, there has been wide acceptance of procedural and substantive environmental rights. Firstly, the procedural environmental rights constitute a right to have access to information, a right to participate in decision-making and a right to have access to justice in regional customary law via espousal of some legal instruments, agreements and initiatives. Secondly, the European scenario has witnessed developments at both regional and national levels that support the justification of a substantive right to the environment under international law.

In the international scene, the Universal Declaration of Human Rights (UDHR) endorsed by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot in Paris, France was followed by the proclamation of Human Rights Day on 10 December 1950 via the passing of resolution 423 (V) at the World Conference on Human Rights in Vienna, Austria.[3] Commemorating this meaningful day after 2

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[1] O.W. Pedersen, "European Environmental Human Rights and Environmental Rights: A Long Time Coming?", (2008) 21 (1) Georgetown International Environmental Law Review 73-111.

[2] See, for example, M. Soveroski, *Environment Rights versus Environmental Wrongs: Forum over Substance?*, 16 Review of European Community & International Environmental Law 261, 261 (2007).

[3] The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. The United Nations Secretary-General Boutros Boutros-Ghali, in a message to the Conference, told the delegates that by adopting the Vienna Declaration and Programme of Action, they had renewed the international community's commitment to the promotion and protection of human rights. He saluted the meeting for having forged "a new vision for global action for human rights into the next century." The UDHR is not only the most translated document in more than 380 languages and dialects: from Abkhaz to Zulu, but

decades in 2013, it comes with the theme, “20 Years Working for Your Rights,” in recognition of the 1993 Vienna Declaration and Programme of Action.[4] The objective of the UDHR is to have the backing of the international community to help protect human rights and show due respect by actively supporting the furtherance of its cause globally. Although paradoxically the observance of Human Rights Day may question the weak state of our human rights protection practices currently, it also marked the course for positive winds of change taking place from the historical times of wars and colonialism that prevailed previously.

In addressing the issues of protecting human rights and safeguarding environmental rights, it all boils down to the question of how people worldwide are able to embrace law and order so as to enjoy sovereign protection in their respective states, where the core source of their protection comes from at the national level and where their unfailing attempts to seek redress exist on a guaranteed basis. Such assured protection can only be found in a prime legal instrument of paramount importance in every country, namely its constitution. The map of the world is clear evidence that all nations are basically neighbours near and far, and whatever action one undertakes is likely to have an impact upon the others politically, financially, socially, economically and in terms of international trade. This means that strict observance of and adherence to international rules and regulations is essential to set the balanced platform for global peace and harmony among these states.

The role of international law and conventions have had an impact on the local legislation of a nation through the concensus of ratifying states in ensuring a smooth execution of their regulatory requirements to avoid unnecessary violations and paving the way for global harmony. Local legislation in turn gets its force from the highest law in the land, which is generally contained in a legal document known as a constitution. What then is the constitution?

Mitchell (2012)[5] aptly described that “a constitution is nothing short of a reflection of a nation’s soul.”[6] The Dictionary of Law defines the word “constitution” as “the body of

also the most “universal” one in the world. See http://www.ohchr.org/en/udhr/pages/introduction.aspx.

[4] This mandate marked the commencement of a revived effort to promote and protect human rights. Aptly, the United Nations Secretary-General Ban Ki-moon reiterated: “As we commemorate the 20th. anniversary of the Vienna Declaration and Programme of Acttion, let us intensify our efforts to fulfil our collective responsibility to promote and protect the rights and dignity of all people everywhere.” Article 5 of the Vienna Declaration also states: “All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities, and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.” See http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx.

[5] K. Mitchell, “The Need for Constitutional Environmental Rights in Canada”, Volume 21, No. 4, May 2012, Environmental Law Section, Ontario Bar Association, Canada.

[6] *S v. Acheson*, 1991 (2) SA 805 (NM).

fundamental doctrines and rules of a nation from which stem the duties and powers of the government and the duties and rights of the people."[7] The Macquarie Australian Encyclopedic Dictionary defines "constitution" as "the system of fundamental principles according to which a nation, state or body politic is governed."[8] According to the Collins Cobuild English Language Dictionary, "the constitution of a country or organisation is the system of laws and rules which formally states people's rights and duties."[9] These definitions clearly denote that the constitution is a good reflection of the rights and duties expected of, by and for the people in order to live a reasonable life of continuous comfort, happiness, sense of security, sustenance and human dignity. They also indicate that the laws made parliament, the legislative body, vest the government with powers to carry out its executive functions, which in turn, automatically give rise to rights and duties of citizens in a country.

A constitution can be either written, as in Canada and Malaysia, or unwritten, as in England and New Zealand. Its significance is that constitutional rights accord legal status to the authorities concerned and citizenry to be aptly protected within the boundaries of law. The fundamental laws in a country should be enacted in line with its constitution, otherwise, its supremacy will be questioned and undermined.[10] No doubt the constitution is generally comprehensive in nature and means well for the ultimate good of the masses, it may not cover every intricate detail of today's dynamic changes and challenges of modern life. In short, it is a legal cloak that helps, wherever possible, to prevent interpretative arbitrariness and constitutional instability.[11]

To date, there are about 147[12] constitutions worldwide. This goes to show that countries acknowledge the importance of having a constitution for the people and give due respect to its legal supremacy in advocating peace and order, enforcing rules and regulations, and imposing penalties and punishment as and when the need arises with the passage of time. This paper will delve into the constitutions of 23 nations in 6 different continents, namely Malaysia, India, Republic of the Philippines, Islamic Republic of Iran and Republic of Turkey [straddles two continents] (Asia); Kingdom of Belgium, Republic of Belarus, Republic of Hungary, Portuguese Republic and Kingdom of Spain (Europe); Australia (Australia); Republic of Angola, Federal Republic of Nigeria, Republic of South Africa and Republic of Cameroon (Africa); Canada and

[7] L.B. Curzon, *Dictionary of Law*, Sixth Edition, Kuala Lumpur: International Law Book Services, 2007 at 89.
[8] *Macquarie Australian Encyclopedic Dictionary*, New South Wales: The Macquarie Library Pty. Ltd., Macquarie University, 2006 at 258.
[9] *Collins Cobuild English Language Dictionary*, London and Glasgow: Collins Publishers, University of Birmingham, 1987 at 301.
[10] B.P. Sharma, "Constitutional Provisions Related to Environment Conservation: A Study", Policy Brief, International Union for Conservation of Nature (IUCN), Nepal, September 2010, p 1.
[11] R. Alexy, *A Theory of Constitutional Rights*, (trans. Julian Rivers), New York: Oxford University Press Inc., 2010.
[12] D.R. Boyd, Appendix 2 of *Environmental Protection and Enforceability: Excerpts from 147 National Constitutions*, UBC Press, 2012. For information on the methodology used to identify these provisions, see D.R. Boyd, Appendix 1 of *The Environmental Rights Revolution*, UBC Press, 2012.

United States of America (North America); and Republic of Chile, Argentina, Federative Republic of Brazil, Republic of Colombia, Republic of Costa Rica [Central America] and Republic of Ecuador (South America), with the right to a healthful environment as the central theme.

Like Malaysia, India does not have an explicit provision to the right to a healthful environment in its constitution. Instead, India has Article 21, that is, the duty not to pollute the environment. However, duties give rise to rights and vice versa. When there is a right, there is a duty to adhere to and fulfil the obligaton. Rights and duties complement each other.

Therefore, the fact that there is such a duty denotes that the right exists. The jural[13] correlation between right and duty[14] empowers the constitution to protect and support the right to a healthful environment as the flagship of fundamental human rights. Thus, rules are associated with government-made priniciples, which in turn are connected to the rights and duties of the people. Alexy (2010)[15] opined that just because there are "unprotected legal liberties of constitutional status," that does not mean that protection is totally not accorded.

I. Status, adequacy and enforcement of constitutional provisions

Many constitutions worldwide, including those adopted since 1992, have an explicit provision on a clean and healthy environment, while others relate to a decent, healthy (Hungary, South Africa, Nicaragua, Korea, Turkey), pleasant (Korea), natural, clean, ecologically-balanced (Peru, Philippines, Portugal), or safe environment or one free from contamination (Chile).[16] Different countries have expressed their respective environment-related rights in many ways using various words and phrases, as observed by Sharma (2010),[17] such as:

- Right to live in a healthy environment;[18]
- Right to a pleasant environment;[19]

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[13] "Jural" means "pertaining to the rights and obligations sanctioned and governed by positive law or that law which is enacted by proper authority. Jural doctrines are founded upon fundamental rules and protect essential rights and duties." See http://www.legal-dictionary.thefreedictionary.com/jural.

[14] W.N. Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning", Yale LJ 23 (1913/14); id., "Fundamental Legal Conceptions as Applied in Judicial Reasoning", Yale LJ 26 (1916/17); reprinted in id., *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (New Haven, 1923).

[15] Ibid. Note 11.

[16] D. Shelton and A. Kiss, *Judicial Handbook on Environmental Law*, United Nations Environment Programme (UNEP), 2005, p 30.

[17] Ibid. Note 10, pp 3-4.

[18] Article 39, Constitution of the Republic of Azerbaijan, 1995.

[19] Article 46, Constitution of the Republic of Belarus, 1994.

- Everyone shall have the right to live a life with self-respect and prestige and this right, among others, shall also include the right to conserve and use a healthy environment and to fulfil cultural and social needs;[20]
- Citizens shall have the right to a healthy and favourable environment corresponding to the established standards and norms. They shall protect the environment;[21]
- Right to a healthy life, balanced environment;[22]
- Guarantee of the right to live in a pollution-free environment;[23]
- Right to a human, healthy, balanced environment;[24]
- Right to a clean, healthy environment;[25]
- Right to a safe environment for health and life;[26]
- Right to a healthy, pleasant environment; the state and all citizens have to make efforts to conserve the environment;[27]
- Shall have the right to a healthy, safe environment;[28]
- Right to a healthy, balanced, human environment;[29]
- Right to an appropriate environment;[30]
- All have the right to an environment not detrimental to health;[31]
- Right to an auspicious environment;[32]
- All have the right to use an environment for individual development;[33]
- Right to live in a healthy, balanced environment;[34] and
- Right to a healthy environment.[35]

As aforesaid, this paper will focus on the relevant provisions related to the right to a healthful environment as enshrined in 23 constitutions of different states in the world.

[20] Article 23, Constitution of the Kingdom of Belgium, 1994.
[21] Article 55, Constitution of the Republic of Bulgaria, 1991.
[22] Article 55, Constitution of Cape Verde, 1992.
[23] Article 69, Constitution of the Republic of Chile, 1980.
[24] Article 61, Constitution of the Republic of East Timor, 2002. See Note 27.
[25] Article 44, Constitution of the Federal Republic of Ethiopia, 1994.
[26] Article 30, Constitution of Kenya, 2005; Article 50, Constitution of Ukraine, 1996.
[27] Article 35, Constitution of South Korea, 1948.
[28] Article 35, Constitution of the Republic of Kyrgyz, 1993.
[29] Article 66, Constitution of the Republic of Portugal, 1976. See Note 22.
[30] Article 42, Constitution of the Russian Federation, 1993.
[31] Article 24, Constitution of the Republic of South Africa, 1997.
[32] Article 44, Constitution of the Republic of Slovak, 1992.
[33] Article 45, Constitution of the Kingdom of Spain, 1978.
[34] Article 56, Constitution of the Republic of Turkey, 1982.
[35] Article 52, Constitution of the Republic of Yugoslavia, 1992.

(a) Asia

(i) Malaysia

The Federal Constitution of Malaysia 1963[36] makes no mention about safeguarding the environment or utilisation of its natural resources. The Environmental Quality Act (EQA), 1974 was enacted by the legislature for the "prevention, abatement, control of pollution and enhancement of the environment, and for purposes connected therewith," and it established the Environmental Quality Council (EQC) to advise the Minister of Natural Resources and Environment on issues related to the EQA and guide the Department of Environment (DOE) in the creation of policies and strategies for effective management of the environment via a comprehensive approach.

There was an initial attempt to submit a proposal to enshrine the right to a healthful environment in the Malaysian Constitution by a government committe in 1993, opined Boyd (2011).[37] However, nothing has materialised to give the effect it rightly deserves until today.[38] The author also observed that the Court of Appeal appears to have a "mixed record" when dealing with cases concerning the right to a healthful environment and considering it as being part and parcel of the right to life. In fact, it has followed the Indian Supreme Court's footsteps in broadly construing the right to life in Article 5(1) of the Malaysian Constitution:

> "Article 5(1) does not refer to mere existence. It incorportes all those facets that are an integral part of life itself.... It includes the right to live in a reasonably healthy and pollution-free environment."[39]

In contrast to a later case related to a proposed hydroelectric project with serious environmental implications and deleterious effects on the indigenous people of Sarawak, the Court of Appeal took a narrower view of the constitutional right to life.[40] Ergo, there is inconsistency in the judicial decisions on the acknowledgment of the implicit constitutional right to a healthful environment.

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[36] See http://www.harmonywithnatureun.org/index.php?page=view&type. The Federal Constitution of Malaysia can be accessed through the Malaysian Attorney-General's website. More information concerning the environmental law in Malaysia can be found on the Food and Agriculture Organisation (FAO) Legal Office's website.
[37] D.R. Boyd, "The Implicit Constitutional Right to Live in a Healthy Environment", RECIEL 20 (2) 2011, Oxford, UK and Malden, USA: Blackwell Publishing Ltd., p 175.
[38] Ministry of Science, Technology and Environment (MOSTE), Malaysia, *The Report of the Environmental Law Review Committee* (MOSTE, 1993).
[39] *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan*, (1996) 2 CLJ 771 at 801 (Court of Appeal).
[40] *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors*, (1997) 3 MLJ 23.

Article 5(1) of the Federal Constitution of Malaysia under Part II on Fundamental Liberties is about liberty of the person and states, “No person shall be deprived of his life or personal liberty save in accordance with law.” This means that the right to a healthful environment is not explicitly enshrined in the constitution. The issue arises as to whether certain rights not expressly stated under the Part II provisions could be claimed. Bari (2003)[41] averred that there are 2 ways to look at it; one that those other rights should be included, and the other that since legislative amendments are too time-consuming to meet people’s growing needs that are dynamically evolving, such rights could be taken as part of the provisions. According to the author, both opinions hold water and have their respective valid justifications. If such is the case, then where does that leave the right to a healthful environment in the Malaysian Constitution? There is an obvious lack of clarity in Article 5(1) and this calls for a proposed amendment to the same, which will be discussed in depth under Chapter 3.

(ii) India

India made history when its Parliament passed the Forty-Second Constitution Amendment Act, 1976 with the enshrining of Articles 48A and 51A(g), which are related to the protection and improvement of the environment. This placed India on the world map as the first nation to contain provisions on the environment in the constitution via its 42nd. Amendment (Shastri, 2002).[42] Article 48A under Part IV on Directive Principles of State Policy focuses on protection and improvement of environment, and safeguarding of forests and wild life. It states, “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Further, Article 51A(g) under Part IVA on Fundamental Duties reiterates that it is the duty of every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

The author, however, averred that despite having Articles 12-35 under Part III on Fundamental Rights, words such as “environmental degradation,” “eco-imbalances” and the like are nowhere to be found in the Indian Constitution; what more the right to a healthful environment. To fill this vacuum, the Supreme Court of India and State High Courts played significant roles in giving a better insight into environmental litigation cases by referring to the Right to Equality (Article 14), Right to Life (Article 21), and Right to Freedom of Trade and Commerce (Article 19(1)(g)). The same could be said of Article 21, which is on protection of life and personal liberty. It states, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Again, it is the judgments of the judiciary that have evolved it to encompass the right to a healthful environment by implicitly taking various

[41] A.A. Bari, *Malaysian Constitution: A Critical Introduction*, Kuala Lumpur: The Other Press, 2003, p 160.
[42] S.C. Shastri, *Environmental Law in India*, First Edition, Lucknow: Eastern Book Company, 2002, p 41.

"unarticulated liberties"[43] under its wings. The Supreme Court has interpreted fundamental rights and constitutional guarantees broadly in practice by professing that:

> "The expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence of continued drudgery through life. It has a much wider meaning, which includes *right to livelihood, better standards of life, hygienic conditions in workplace and leisure*."

Further, the author stressed that the right to life includes the right to live with human dignity, and enjoying a rich and full *quality of* life, thereby making human life worthy of its name by experiencing a "living environment" congenial to the existence of mankind without destroying Mother Nature. In addition, the right to a healthful environment is a universal right because humankind needs a clean, healthy and pollution-free environment to ensure survival on a sustainable basis. Any deleterious human activities will not only jeopardise the eco-system, but will also breach this fundamental human right to its very core. This is in line with the Stockholm Conference 1972.[44] Watson (2009)[45] elaborated that the Indian Supreme Court's interpretation of Article 21 ("although a negative right and not a positive self-executory right") encompasses not only the right to life, but also includes the unarticulated rights to:

- a wholesome environment;[46]
- enjoyment of pollution-free water and air for full enjoyment of life;[47]
- "environmental protection and conservation of natural resources";[48]
- a "decent environment";[49]

[43] Ibid., p 46.
[44] Principle 1 of the Declaration of the United Nations Conference on Human Environment (UNCHE) states: "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. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression, and foreign domination stand condemned and must be eliminated."
[45] K. Watson, *Review of World Constitutions*, International Union for Conservation of Nature (IUCN), Thailand, (Unpublished) in IUCN Nepal files, 2009. See K. Watson, "Constitutional Rights to a Clean and Healthy Environment: Critical Elements", 2009. This research was conducted in support of IUCN Nepal's work and submissions to the Constituent Assembly regarding mainstreaming environmental rights into the new Nepalese Constitution.
[46] *Charan Lal Sahu v. Union of India*, AIR 1990 SC 1480 (1991) and *Bandhua Mukti Morcha v. Union of India*, 3 SCC 161 (1984).
[47] The Supreme Court was also of the view that governmental agencies have a positive duty to carry out measures for the reduction of pollution: *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420, 1991 (1) SCC 598; *M.C. Mehta v. Union Of India & Ors*, (1996) 4 SCC 750 and *Mehta v. Union of India* (Ganga Water Pollution Case), AIR 1988 SC 1037), wherein in these last two cases, the court issued orders to stop conducting operations based on the principle that health is significantly vital and further, residents are suffering health problems due to such pollution.
[48] *Intellectuals Forum, Tirupathi v. State of A.P. and Ors*, (2006) 3 SCC 549.
[49] *Shantistar Builders v. Narayan Khimala Totame and Ors*, (1990) 1 SCC 520, para. 9.

- a "living atmosphere congenial to human existence";[50]
- fresh air, clean water and a clean pollution-free environment;[51] and
- to live in an atmosphere free from noise pollution along with all permissible pleasures.[52]

Rajamani (2007)[53] reiterated that the Supreme Court's approach is an "all-inclusive" one, which interpreted the human health, pollution, conservation and ecological balance elements as falling under the confines of fundamental environmental right. The author criticised that such a mode "does not give rise to clear identifiable rights and obligations, offers limited guidance in making inherent and difficilt value-laden judgments, and leaves much to the discretion of the judiciary rather than the executive." Further, Bruckerhoff (2008)[54] observed that despite the Indian courts having expanded and enforced the right to life to a right to a healthful environment, they have merely "almost universally" utilised the right to protect the people from the ill effects of pollution and viewed such a right from an "anthropocentric"[55] perspective. According to the author, the judiciary has "interpreted the right to a healthy environment by interweaving constitutional directives on environmental policy with the right to life."

(iii) Republic of the Philippines

There are two main articles in the 1987 Constitution of the Republic of the Philippines[56] which effectively relate to the environment. One of them is Article II (Declaration of Principles and State Policies) wherein Section 16 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." Under Section 15, "The State shall protect and promote the right to health of the people and instill health consciousness among them."

The other is Article XII (National Economy and Patrimony) whereby Section 2 provides, "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna,

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[50] *Virender Gaur and Ors v. State of Haryana and Ors*, (1995) 2 SCC 577, para. 6.
[51] *Narmada Bachao Andolan v. Union of India & Ors*, (2000) 10 SCC 664, para. 244 and *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, paras. 16 and 17.
[52] In *Re: Noise Pollution – Implementation of the Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems*, (2005) 5 SCC 733, para. 9.
[53] L. Rajamani, "The Right to Environmental Protection in India: Many a Slip Between the Cup and the Lip?", (2007) 16 (3) RECIEL 274 at 279-280.
[54] J. Bruckerhoff, "Giving Nature Constitutional Protection: A Less Anthropocentric Interpretation of Environmental Rights", (2008) 86 Texas Law Review 615 at 633.
[55] "Anthropocentric" means "regarding humans as the central element of the universe; interpreting reality exclusively in terms of human values and experience." See http://www.thefreedictionary.com/anthropocentric.
[56] See http://www.harmonywithnatureun.org/index.php?page=view&type. The English version of the Constitution of the Republic of the Philippines is available on the government's website.

and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilisation of natural resources shall be under the full control and supervision of the State.[57] The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant. The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens. The Congress may, by law, allow small-scale utilisation of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons."

Hill, Wolfson and Targ (2004)[58] reiterated that in the landmark case of *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*,[59] children, via their parents, enforced their constitutional environmental rights and sued to set aside all existing timber license contracts on federal lands. According to the authors, the Supreme Court of the Philippines overturned the trial court's decision for want of *locus standi*[60] and remanded the case for reconsideration. The minors succeeded in their claim for equitable treatment and fortified their right to a clean and healthy environment in the constitution not only for their own interest, but also as representatives of future generations to come.

According to Watson (2009),[61] the Supreme Court held that Section 16, jointly with Section 15, sets a "*self-executing and judicially enforceable right*" to a balanced and healthful ecology, and that its consequences ought to be taken into account in prospective cases.[62] Davide, Jr. J opined that the grievance concerned a specific

[57] The Philippines Environment Code gives basic information on environmental law, in order to "provide the basics on the management and conservation of the country's natural resources to obtain the optimum benefits therefrom and to preserve the same for the future generations." More information concerning environmental protection in the Philippines is available on the Department of Environment and Natural Resources' website.

[58] B.E. Hill, S. Wolfson and N. Targ, "Human Rights and the Environment: A Synopsis and Some Predictions", (2004) 16 (3) Georgetown International Environmental Law Review 359.

[59] 33 I.L.M. 173 (1994).

[60] "*Locus standi*" means "the right of a party to appear and be heard before a court." See http://www.legal-dictionary.thefreedictionary.com/locus-standi.

[61] Ibid. Note 40.

[62] See also A.G.M. La Vina, "The Right to a Sound Environment in the Philippines: The Significance of the *Minors Oposa Case*", (1994) 3 (4) RECIEL 246 and M.S.Z. Manguiat, *et al*, "Maximising the Value of *Oposa* v. Factoran", (2003) 15 Georgetown International Environmental Law Review 488.

fundamental legal right, namely the right to a balanced and healthful ecology in accord with the rhythm and harmony of nature. Concurring, His Lordship averred that:

> "It is in fact very difficult to fashion language more comprehensive in scope and generalised in character than a right to 'a balanced and healthful ecology.' The list of particular claims which can be subsumed under this rubric appears to be entirely open-ended: prevention and control of emission of toxic fumes and smoke from factories and motor vehicles; of discharge of oil, chemical effluents, garbage and raw sewage into rivers, inland and coastal waters by vessels, oil rigs, factories, mines and whole communities; of dumping of organic and inorganic wastes on open land, streets and thoroughfares; failure to rehabilitate land after strip-mining or open-pit mining; kaingin or slash-and-burn farming; destruction of fisheries, coral reefs and other living sea resources through the use of dynamite or cyanide and other chemicals; contamination of ground water resources; loss of certain species of fauna and flora; and so on."

Although Feliciano J was in consensus that the right is fundamental and constitutionalised, His Lordship distinguished that it cannot be described as sufficiently specific to be the groundwork to file a suit and is not self-executing, and further advised against the judiciary embarking on a journey "into the uncharted ocean of social and economic policy-making" (Hill, Wolfson and Targ, 2004).[63]

(iv) Islamic Republic of Iran

Article 50 under Chapter IV (Economy and Financial Affairs) of the 1979 Constitution of the Islamic Republic of Iran[64] is dedicated to the environment.[65] It stipulates, "The preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden."[66] Under Article 22 of Chapter III (The Rights of the People), "The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases santioned by law."[67] Further, Article 40 provides, "No person may exercise his own rights as a means of constraining others or violating the public interest." This provision clearly

[63] Ibid. Note 49.
[64] The official translation of the Constitution of the Islamic Republic of Iran is provided by the Ministry of Foreign Affairs' website.
[65] More information relating to the Iranian environmental protection legislation is available on the Food and Agriculture Organisation (FAO) Legal Office's website.
[66] See http://www.iranchamber.com/government/laws/constitution_ch04.php#sthash.uR43pJZp.dpuf.
[67] See http://www.iranchamber.com/government/laws/constitution_ch03.php#sthash.hhKtcQF8.dpuf.

denotes that no individual is entitled to exercise his rights in a way that is injurious to others or detrimental to the common well-being of the people.

(b) Europe

(i) Kingdom of Belgium

Article 23 of the 1994 Constitution of Belgium under Title II – On Belgians and Their Rights – provides, “Everyone has the right to lead a life in keeping with human dignity” and this right expressly includes “the right to the protection of a healthy environment” under Article 23(4). Despite the explicit wording of this provision, the phrase “healthy environment”[68] is not defined in the constitution. According to Lavrysen (2012),[69] the term “healthy environment” has been given a wider meaning. Jadot (1995)[70] opined that the issuing of licenses for activities that are harmful to humans and damaging to the environment should be outrightly denied. In view of Article 23, the author reiterated that the right of action ought to be construed widely when the environment is faced with danger as a right to the protection of a healthy environment without a right of action is totally useless.

It is argued that the constitutional right to safeguard a healthful environment may have similar practical meaning to Article 8 of the European Convention on Human Rights (ECHR), namely the right to respect for private and family life. Although judicial decisions have made references to the subjective constitutional right, the “issue is not essentially the right to a healthy general environment but the right to respect for one’s own small piece of healthy environment.” In European case law, public *economic* interest is weighed against individual interest, unless a fundamental right is breached as in the *Lopez Ostra,*[71] *Guerra*[72] *and Fadeyeva*[73] *Cases*. At the local front, the judiciary has also followed suit by weighing economic interests against the constitutional right to a healthful environment. However, any action taken which leads to the destruction of the environment can be reexamined[74] against the ECHR and the Belgian Constitution (Lavrysen, 2012).

[68] See M. Martens, “Constituional Right to a Healthy Environment in Belgium”, (2007) 16 (3) RECIEL 287 for discussion on the nature of Belgian environmental right.

[69] L. Lavrysen, “The Right to the Protection of a Healthy Environment”, World Congress on Justice, Governance and Law for Environmental Sustainability, Rio de Janeiro, Brazil, 17-20 June 2012.

[70] B. Jadot, “Le droit a l’environnement >>, in *Les droits economiques, sociaux et culturels dans la Constitution*, R. Ergec (ed), Brussels, Bruylant, 1995, (p 257) p 263.

[71] *Lopez Ostra v. Spain*, 16798/90 [1994] ECHR 46 (9 December 1994).

[72] *Guerra v. Italy*, 14967/89 [1998] ECHR 7 (19 February 1998).

[73] *Fadeyeva v. Russia*, 55723/00 [2005] ECHR 376 (9 June 2005).

[74] A good example is the Court of Appeal’s decision in Brussels on night flights at Zaventem, wherein the Court initially denied the direct effect to Article 23(4) of the Belgian Constitution and then continued, in light of Article 8 of the European Convention on Human Rights (ECHR), to weigh the noise nuisance for the local Residents against the economic interests of the country. See Brussels, 24 January 1997, J.L.M.B., 1997, p 332. Cf. Brussels, 10 June 2003, R.A.B.G., 2004, p 63.

(ii) Republic of Belarus

According to the amended 1996 Constitution of the Republic of Belarus, under Section II on Individual, Society and the State, Article 46 states, “Everyone shall have the right to a conducive environment and to a compensation for the loss or damage caused by violation of this right. The State shall supervise the rational utilisation of natural resources to protect and improve living conditions, and to preserve and restore the environment.”

Under Article 34, “Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information on the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment.” Further, Article 44 provides, “The exercise of the right of property shall not be contrary to social benefit and security, or be harmful to the environment or historical and cultural treasures, or infringe upon the rights and legally protected interests of others.”

Commenting on the interrelated articles above, Watson (2009)[75] opined that every individual has a right to a wholesome environment, with compensation as redress for the breach of such a right. Clearly, the duty to protect and safeguard the environment lay on the shoulders of the state.[76] Added to this, any improper use of property that causes environmental degradation is not permitted,[77] and people have the right to procure and distribute full and accurate information on their environmental conditions.[78] Such are the rights and duties that are explicitly expressed in the Constitution of the Republic of Belarus.

(c) Australia

(i) Australia

The Australian Constitution, which is officially known as the Commonwealth of Australia Constitution Act 1900 (UK), affirms in its Preamble its “respect for [the] unique land and the environment.” There is neither an Environmental Charter nor is environmental protection written into its constitution.[79] Preston (2006)[80] averred that with the Commonwealth Constitution monitoring a representative democracy, political decisions are made by the ones chosen by the citizenry. Although Australians

[75] Ibid. Notes 34 and 13.
[76] Article 46, Constitution of the Republic of Belarus, 1996.
[77] Ibid. Article 44.
[78] Ibid. Article 34.
[79] Law Teacher, “Courts’ Role and Environmental Rights”, (Copyright © 2003-2012), pp 1-4.
[80] B.J. Preston, “The Role of Public Interest Environmental Litigation”, (2006) 23 EPLJ 337, 350.

embrace nature, their environmental rights have restricted legal protection.[81] According to Fisher (2003),[82] environmental rights can be found in legislation enacted in the state and territorial law together with those at the federal level, which "developed fragmented and ad hoc" as matters arose.

Environmental issues are governed by specific laws under the Common Law.[83] Under its 3rd. Article (a), the Environment Protection and Biodiversity Conservation Act 1999 (Cth)[84] states its objective "to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance." McGrath (2006)[85] commented that although the Act is not a cure-all legislation for environmental matters, it has, during its first 5 years, contributed towards Australia's environmental protection efforts and sustainable development initiatives. This is reflected in the good progress made in ensuring public accountability and access to information on proposed developments. To complement Australia's other greenhouse initiatives, the author suggested that a trigger for greenhouse gas emissions be included in the Act to avoid a vacuum in the regulatory framework on issues of national environmental significance.

The Australian Network of Environmental Defender's Offices (ANEDO)[86] has supported the notion of a separate and distinct right to a clean and healthy environment for better environmental outcomes. It advocated that many nations globally have spearheaded the task to explicitly recognise the "third generation" right to a healthful environment.[87] Further, it added that such a right becomes a unifying right; signifying the nexus between environmental health and fulfilment of the basic fundamental human rights. It also asserted that acknowledgment of a clean and healthy environment is crucial in ascertaining that human rights obligations are upheld accordingly.

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[81] Public Interest Advocacy Centre (PIAC), "Protecting Human Rights in Australia", fact sheet 6 written in collaboration with the Australian Network of Environmental Defender's Office (ANEDO), NSW, May 2004.

[82] D.E. Fisher, *Australian Environmental Law*, Sydney: Lawbook Co., 2003.

[83] See http://www.environment.gov.au for the Department of Sustainability, Environment, Water, Population and Communities.

[84] See http://www.environment.gov.au/epbc/about/index.html.

[85] C. McGrath, "Review of the Environment Protection and Biodiversity Conservation Act 1999", a paper prepared for the 2006 Australian State of the Environment Committee (Department of the Environment and Heritage, Canberrra, 2006). See http://www.environment.gov.au/soe/2006/publications/emerging/epbc-act/index.html.

[86] Australian Network of Environmental Defender's Offices (ANEDO), "The Right to a Clean and Healthy Environment: Do We Need a Stand-alone Right? (Forum)", Human Rights in Australia, Right Now, August 31, 2012, p 1.

[87] E.g. Article 24 of the African Charter on Human and Peoples' Rights reads: "All peoples shall have the right To a general satisfactory environment favourable to their development." Article 11 of the Protocol of San Salvador to the American Convention on Human Rights states: "Everyone shall the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation, and improvement of the environment."

It is suggested that Australia's National Human Rights Action Plan (NHRAP) ought to take effective steps, which safeguard and ensure a clean and healthy environment.[88] According to the World Health Organisation (WHO), "[t]he right to health and indeed to life cannot be achieved without basic rights to a safe and healthy environment, including water, air and land; and to the life-supporting systems that sustain life on earth for future generations."[89]

(d) Africa

(i) Republic of Angola

Article 39 under Title II (Fundamental Rights and Dutites), Chapter II (Fundamental Rights, Freedoms and Guarantees) and Section I (Indivividual and Collective Rights and Freedoms) of the 2010 Constitution[90] of the Republic of Angola relates to Environmental Rights. Article 39(1) provides, "Everyone has the right to live in a healthy and unpolluted environment and the duty to defend and preserve it." Article 39(2) reiterates, "The state shall take the requisite measures to protect the environment and species of flora and fauna throughout national territory, maintain the ecological balance, ensure the correct location of economic activities and the rational development and use of all natural resources, within the context of sustainable development, respect for the rights of future generations and the preservation of species." Article 39(3) states, "Acts that endanger or damage conservation of the environment shall be punishable by law."

(ii) Federal Republic of Nigeria

Article 33(1) of the Constitution of the Federal Republic of Nigeria 1999 under Chapter IV on Fundamental Rights states, "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. This provision clearly indicates the non-existence of an explicit environmental right or other ancillary rights to protect the Nigerian environment in its constitution. Ofuani (2012)[91] propounds that the right to a healthful environment must be enshrined in the supreme law of the land because it is a fundamental right. The author also highlights how crucial it is to constitutionalise environmental rights and recommends methods to amend the

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[88] Australian Network of Environmental Defender's Office (Victoria) Ltd., submission to the National Human Rights action Plan (NHRAP), 29 February 2012, p 6.

[89] Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment (2002) Background Paper No. 3, "The Intersection of Human Rights and Environmental Issues: A Review of Institutional Developments at the International Level" available at http://www2.ohchr.org/english/issues/environment/environ/bp3.htm.

[90] The 2010 Constitution of the Republic of Angola replaces the 1975 and 1992 Constitutions.

[91] A.I. Ofuani, "Constitutionalising Environmental Rights in the Nigerian Constitution: The Need for Reform", (July 6, 2012). 2 University of Benin Journal of Private and Property Law, pp 368-384. Available at SSRN: http://ssrn.com/abstract=2101136.

Nigerian Constitution to give effect to such rights. According to Boyd (2011),[92] the Nigerian courts, in executing their judicial functions, have turned their attention to the implicit right to a clean and healthy environment in the absence of a separate and distinct constitutional right. In the case of *Jonah Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others*,[93] the Federal High Court held that Shell's method of flaring gas from its oil operations in the Niger Delta "is a gross violation of the fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution."

(iii) Republic of South Africa

Article 24 (Environment) falls under Chapter 2 (Bill of Rights) in the 1996 Constitution of the Republic of South Africa. It provides, "Everyone has the right: (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that- (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

With the enshrining of the "environmental right" in the constitution, the South African government has been urged to play a vigorous role in exercising effective legislative measures to safeguard the environment and ensure that sustainable development was guaranteed.[94] Watson (2009)[95] averred that the constitution, however, did not define what is healthy environment. The author also added that the judiciary regarded this right to environment as "justiciable" under Article 24.

(e) North America

(i) Canada

The Canadian Constitution Act, 1982 does not provide for an explicit right to a healthful environment for its citizenry. The closest provision related to this is found in Section 7 (Legal Rights) under Part I on the Canadian Charter of Rights and Freedoms, which states, "Everyone has the right to life, liberty and security of the person and the right

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[92] Ibid. Note 33, p 176.
[93] (2005) AHRLR 151 (NgHC 2005). Judgment of 14 November 2005, Suit No. FHC/B/CS/53/05 (Federal High Court of Nigeria, Benin Judicial Division).
[94] A. Gilder and B. Dhladhla, "South Africa: The Evolution of the Business of South African Environmental Law". Last updated: 25 June 2013.
[95] Ibid. Note 36.

not to be deprived thereof except in accordance with the principles of fundamental justice."

The Act[96] also makes no references to natural resources, environment or sustainable development. This comes as a surprise for a modern and developed country like Canada. It is provided in the Canadian Environmental Protection Act, 1999 that "the protection of the environment is essential to the well-being of Canadians and that the primary purpose of this Act is to contribute to sustainable development through pollution prevention." This legislation gives the people of Canada the discretion to take part in environmental decisions by exerting pressure on the Minister of the Environment to examine any alleged breaches and undertake civil actions when the federal government fails to enforce the law. Mitchell (2012)[97] expressed her disappointment in that the constitution does not mention anything about safeguarding the environment, despite being a potent legal instrument to defend the fundamental human rights and quality of life of Canadians. The author anticipated that in light of the present Canadian federal political atmosphere, it is rather implausible to envisage a constitutional amendment to enshrine the right to a healthful environment as forthcoming for some years to come.

(ii) United States of America

There appears to be no information available on sustainable development and safeguarding of the environment in the Constitution of the United States, 1787.[98] It is the National Environmental Policy Act (NEPA) that provides a broad national framework for environmental safeguards and comes with a Declaration of National Environmental Policy, "which requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment."[99]

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[96] See http://www.harmonywithnatureun.org/index.php?page=view&type. The Canadian Constitution Act, 1982 is not available on the Supreme Court website. An English version can be obtained on the Canadian Department of Justice's website.
[97] Ibid. Note 1.
[98] See http://www.harmonywithnatureun.org/index.php?page=view&type. The Constitution and its amendments are available on the official archives of the United States government's website.
[99] More information about sustainable development strategy and environmental protection in every state of the United States of America is available on the United States Environmental Protection Agency website. Legal data regarding environmental protection and natural resources can be obtained through Ecolex, the database providing information on environmental law operated by the Food and Agriculture Organisation (FAO) and the United Nations Environment Programme (UNEP).

Mudd (2011)[100] explained that 4 American states have taken the lead to uphold the constitutional right to a healthful environment, namely Illinois, Pennsylvania, Montana and Hawaii. In the eyes of their respective local governments, safeguarding the environment is an official command to be enforced in the name of duty. Illinois became the pioneer state to include an environmental right in its constitution in 1970. Under Article XI (Environment) of the Constitution of the State of Illinois, Section 1 (Public Policy – Legislative Responsibility) states, "The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy." Section 2 (Rights of Individuals) provides, "Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assemby may provide by law."

Pennsylvania followed suit in 1971 by including an environmental rights amendment in its constitution. Section 27 (Natural resources and the public estate) under Article 1 (Declaration of Rights) of the Constitution of the Commonwealth of Pennsylvania states, "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

Section 3 (Inalienable Rights) under Article II (Declaration of Rights) of the Constiution of the State of Montana 1972 provides, "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognise corresponding responsibilities." Further, Section 1 (Protection and Improvement) under Article IX (Environment and Natural Resources) states: "(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (2) The legislature shall provide for the administration and enforcement of this duty. (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degardation of natural resources." The author commented that the Montana Constitution contains two distinct provisions that clearly denote the jural relationship between environmental rights and

[100] M.R. Mudd, "A 'Constant and Difficult Task': Making Local Land Use Decisions in States with a Constitutional Right to a Healthful Environment", Ecology Law Quarterly 38:1 (2011).

environmental duties.[101] While other states express a duty to maintain the environment, Montana is the only one which specifies “a duty to maintain *and improve* the environment,” that is, a duty reaching out not only to the government, but also to the people. The citizen’s right to a healthful environment was also emphasised as a matter of significant importance,[102] and words such as “clean” and “healthful” were chosen to depict the nature of the environment which its people are entitled to enjoy and live in.

The Constitution of the State of Hawaii 1978 has in its Section 1 (Conservation and Development of Resources) under Article XI on Conservation, Control and Development of Resources that, “For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilisation of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.” Under Section 9 (Environmental Rights), “Each person has the right to a clean and healthful environment, as defined by laws relating to emvironmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Anyperson may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulaton as provided by law.” Being the last of the American states, Hawaii followed Montana’s footsteps and has included the right to a clean and healthful environment in its constitution.

(f) South America

(i) Republic of Chile

Under Chapter III (Constitutional Rights and Obligations) of the amended 1980 Constitution of the Republic of Chile, Article 19(8) provides, “The Constitution guarantees to all persons the right to live in an environment free from contamination. It is the duty of the State to watch over the protection of this right and the preservation of nature. The law may establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment.” The Chilean Constitution under Article 19(24) specifically authorises the State to “establish the manner to acquire property and to use, enjoy and dispose of it” for the purpose of “conservation of the environmental patrimony.”

[101] Ibid. Note 9.
[102] Montana Constitutional Convention Commission, Study No. 10, Bill of Rights 250 (1971).

Article 20 states, "The appeal for protection in the case of Article 19(8) shall also be applied when the right to live in a contamination-free atmosphere has been affected by an arbitrary or unlawful action imputable to an authority or a specific person." This compelled the courts to undertake instant actions that were required to ensure protection for the affected individual. Watson (2009)[103] observed that the judiciary has taken a restricted view of the right and solely heard cases linked to the right to live in a pollution-free environment.[104]

Table 1[105] denotes the level of enforcement placed and/or exercised on the right to a healthful environment (RTHE) in the Constitutions of the following states:

State	Constitutional Provision(s)	Status of the RTHE	Adequacy	Enforcement
Argentina	**First Part, Chapter II (New Rights and Guarantees), Section 41 of the 1994 Constitution:** All inhabitants are entitled to **the right to a healthy and balanced environment** fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the	**Explicit**	**Yes**	**Enforceable** This is considered a "subjective right" as it makes it possible for an individual to commence litigation in order to safeguard the environment. **Cases**: - *Irazu Margarita v. Copetro S.A.*, Camara Civil y Comercial de la Plata, Ruling of 10 May 1993 (available at

[103] Ibid. Note 36.
[104] *Comunidad de Chanaral v. Codeco Division el Salvador, S/Recurso de Proteccion*, [Supreme Court] 28 July 1988 (as translated). See also *Pablo Orrego Silva y Otros v. Empresa Electrica Pange SA*, (Supreme Court, August 5, 1993); *Antonio Horvath Kiss y Otros v. National Commission for the Environment*, (Supreme Court, March 19, 1997).
[105] Source: Annexure 1 on Constitutional Provisions Relating to Environmental Rights. Ibid. Note 41.

	rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education. The Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions. The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.			www.eldial.com): "The right to live in a healthy and balanced environment is a fundamental attribute of people. Any aggression to the environment ends up becoming a threat to life itself and to the psychological and physical integrity of the person." - *Kattan, Alberto and Others v. National Government*, Juzgado Nacional de la Instancia en lo Contencioso administrativo Federal. No. 2, Ruling of 10 May 1983, La Ley, 1983-D, 576: "particularly upheld the right to enforce the constitutional environmental right without first having exhausted the administrative remedies." - *Asociacion para la Proteccion del Medio Ambiente y Educacion Ecologica '18 de Octubre' v. Aguas*

				Argentinas S.A. y Otros, Federal Appellate Tribunal of La Plata (2003).
Federative Republic of Brazil	**Title VIII (Social Order), Chapter VI (Environment), Article 225 [Environment Protection] of the Constitution as amended in 1998:** (0) All persons are entitled to **an ecologically balanced environment**, which is an asset for the people's common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations. (1) In order to ensure the effectiveness of this right, it is incumbent upon the Government to: I. preserve and restore essential ecological processes and provide ecological handling of the species and ecosystems; II. preserve the variety and integrity of Brazil's genetic wealth and supervise entities engaged in research and handling of genetic material; III. determine, in all units of the Federation, territorial spaces and components which are to receive special protection, any alteration and suppression only being allowed by means of a law, and any use which adversely affects the integrity of the attributes	**Explicit**	**No**	**Enforceability Unsure**

	which justify their protection being forbidden; IV. demand, according to the law, for the installation of works or activities which may cause significant degradation of the environment, a prior environment impact study, which shall be made public; V. control the production, marketing, and use of techniques, methods, and substances which represent a risk to life, to the quality of life, and to the environment; VI. promote environmental education at all school levels and public awareness of the need to preserve the environment; VII. protect the fauna and the flora, all practices which jeopardise their ecological function, cause the extinction of species or subject animals to cruelty being forbidden according to the law. (2) Those who explore mineral resources shall be required to restore the degraded environment according to the technical solution required by the proper government agency, according to the law. (3) Conduct and activities considered harmful to the environment shall subject the individual or corporate wrongdoers to penal and administrative sanctions, in addition to the obligation to repair the damage caused.			

	(4) The Brazilian Amazon Forest, the Atlantic Woodlands, the "Serra do Mar", the "Pantanal Mato Grossense" and the Coastline are part of the national wealth, and they shall be used, according to the law, under conditions which ensure preservation of the environment, including the use of natural resources. (5) Vacant governmental lands or lands seized by the State through discriminatory actions, which are necessary to protect natural ecosystems, are inalienable. (6) Power plants operated by nuclear reactor shall have their location defined in a federal law and may otherwise not be installed.			
Republic of Camero on	**Part XII (Special Provisions), Article 65 of the 1972 Constitution:** The preamble shall be part and parcel of this Constitution. **Preamble of the amended Constitution of 1996:** Every person shall have **a right to a healthy environment**. The State shall ensure the protection and improvement of the environment. The protection of the environment shall be the duty of every citizen.	**Explic it**	**No**	**Not Enforceable** Non-existence of a right of appeal to the Constitutional Court makes this right unenforseeable.

Republic of Colombia	**Title II (Concerning Rights, Guarantees and Duties), Chapter 3 (Concerning Collective Rights and the Environment), Article 79 of the 1991 Constitution:** Every person has **the right to enjoy a healthy environment**. The law will guarantee the community's participation in the decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, to conserve areas of special ecological importance, and to foster education for the achievement of these ends. Article 80 - The State will plan the handling and use of natural resources in order to guarantee their sustainable development, conservation or replacement. Additionally, it will have to prevent and control the factors of environmental deterioration, impose legal sanctions, and demand the repair of any damage caused. In the same way, it will cooperate with other nations in the protection of the ecosystems located in the border areas. **Chapter 5 (Concerning Duties and Obligations), Article 95:** The Constitution makes it a duty of each person and each citizen: 8. To protect the country's cultural and natural resources	**Explicit**	**Yes**	**Enforceable** Judiciary has accepted and approved the *enforceability* of such a right. **Cases**: - *Fundepublico v. Mayor of Bugalagrande and Others*, Juzgado Primero Superior, Interlocutorio # 032, Tulua, 19 December 1991: “It should be recognised that a healthy environment is a *sine qua non* condition for life itself and that no right could be exercised in a deeply altered environment.” - *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

	and watch over the conservation of a healthy environment.			cannot be separated from the right to life and health of human beings. In fact, factors 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." Despite Courts acknowledging and approving the *enforceability* of such a right, they have also held that it is simply an expansion of the right to life; ergo regarding humankind as the central most important element in the universe, and that the said right merely safeguards mankind from the deleterious effects of pollution.
Republic of Costa Rica	**Title V (Social Rights and Guarantees), Sole Chapter,**	**Explicit**	**Yes**	**Enforceable** **<u>Cases</u>**:

	Article 50 of the amended 1949 Constitution: The State shall procure the greatest welfare of all inhabitants of the country, organising and promoting production and the most adequate distribution of wealth. Every person has **the right to a healthy and ecologically balanced environment**, being therefore entitled to denounce any acts that may infringe the said right and claim redress for the damage caused. The State shall guarantee, defend and preserve that right. The Law shall establish the appropriate responsibilities and penalties.			- "The right to health and to the environment are necessary to ensure that the right to life is fully enjoyed and are self-executing and enforceable": *Presidente de la Sociedad Marlene S.A. v. Municipalidad de Tibas, Sala Constitucional de la Corte Supreme de Justicia* (Constitutional Chamber of the Supreme Court). Decision No. 6918/94 of 25 November 1994. - The Supreme Court held 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":

				Carlos Roberto Garcia Chacon, 1993.
Republic of Ecuador	**Title III (Of the Rights, Warranties and Duties), Chapter 5 (Rights Groups), Section Two (From the Environment) of the (repealed) 1998 Constitution:** Article 86 provides for **the right to live in an environment that is healthy and ecologically balanced**, and that guarantees sustainable development. The State is required to enact laws to preserve the environment, conserve ecosystems and biodiversity, prevent environmental pollution, restore degraded natural spaces, and establish a system of protected natural areas that will guarantee the conservation of biodiversity. Article 87 - The Constitution also requires the establishment of procedures for holding responsible those who harm the enivronment. Article 88 - The Constitution guarantees the prior informed participation of affected communities in governmental decisions affecting the environment. Article 90 - In case of doubt concerning the negative environmental consequences of an action or omission, the State is to implement preventive	**Explic it**	**No**	**Enforceability Unsure**

	measures even if there is no scientific evidence of harm. Article 91 provides for the right of any person to use legal actions to protect the environment. The State is also responsible for environmental damage caused by its agents or institutions. **Title II (Rights), Chapter Two (Rights of the Good Way of Living), Section Two (Healthy Environment) of the amended 2008 Constitution:** Article 14 - **The right of the population to live in a healthy and ecologically balanced environment** that guarantees sustainability and the good way of living (*sumak kawsay*), is recognised. Environmental conservation, the protection of ecosystems, biodiversity and the integrity of the country's genetic assets, the prevention of environmental damage, and the recovery of degraded natural spaces are declared matters of public interest. Article 15 - The State shall promote, in the public and private sectors, the use of environmentally clean technologies and non-polluting and low-impact alternative sources of energy. Energy sovereignty shall not be achieved to the detriment of food sovereignty nor shall it affect the right to water.			

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	The development, production, ownership, marketing, import, transport, storage and use of chemical, biological and nuclear weapons, highly toxic persistent organic pollutants, internationally prohibited agrochemicals, and experimental biological technologies and agents and genetically modified organisms that are harmful to human health or that jeopardise food sovereignty or ecosystems, as well as the introduction of nuclear residues and toxic waste into the country's territory, are forbidden. **Chapter Seven (Rights of Nature):** Article 71 - Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote			

	respect for all the elements comprising an ecosystem. Article 72 - Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems. In the cases of severe or permanent environmental impact, including those caused by the exploitation of non-renewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences. Article 73 - The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles. The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden. Article 74 - Persons, communities, peoples and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living. Environmental services shall not be subject to appropriation; their			

	production, delivery, use and development shall be regulated by the State.			
Republic of Hungary	**Chapter I (General Provisions), Article 18 [Healthy Environment] of the amended 1949 Constitution:** The Republic of Hungary recognises and shall implement **the individual's right to a healthy environment**. **Chapter XII (Fundamental Rights and Duties), Article 70/D:** (1) Everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health. (2) The Republic of Hungary shall implement this right through institutions of labour safety and health care, through the organisation of medical care and the opportunities for regular physical activity, as well as through the protection of the urban and natural environment.	**Explic it**	**No**	**Not Enforceable**
Portugu ese Republic	**Part I (Fundamental Rights and Duties), Section III (Economic, Social and Cultural Rights and Duties), Chapter II (Social Rights and Duties), Article 66 (Environment and Quality of Life) of the 1976 Constitution:**	**Explic it**	**Yes**	**Enforceable** Judiciary has approved and held that "everyone shall have the right to a healthy and ecologically balanced human

	(1) Everyone has **the right to a healthy and ecologically balanced human environment** and the duty to defend it. (2) It is the duty of the State, acting through appropriate bodies and by recourse to, or through support from, popular initiatives: a. To prevent and control pollution, and its effects, and harmful forms of erosion; b. To organise and promote national planning with the objectives of establishing proper locations for activities and a balance between economic and social development, and a countryside that is ecologically balanced; c. To establish and develop nature reserves and parks and recreation areas, and classify and protect the countryside in order to guarantee nature conservation and the preservation of cultural assets of historic or artistic interest; d. To promote the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability. **Fundamental Principles - Article 9 (Basic Responsibilities of the State):** e. To protect and enhance the cultural heritage of the Portuguese people, to protect nature and the environment, to conserve natural resources and			environment and the duty to defend it": Brandl *et al* at 65-69.

	to ensure the proper planning of the national territory. **Part II (Economic Organisation), Section I (General Principles), Article 81 (Primary Duties of the State):** In economic and social matters a primary duty of the State is: n. To adopt a national policy for energy that is in keeping with conservation of natural resources and a balanced ecology, while promoting international cooperation in this field.			
Kingdom of Spain	**Part I (Fundamental Rights and Duties), Chapter 3 (Principles Governing Economic and Social Policy), Section 45 of the 1978 Constitution:** (1) Everyone has **the right to enjoy an environment suitable for the development of the person**, as well as the duty to preserve it. (2) The public authorities shall watch over a rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on an indispensable collective solidarity. (3) For those who break the provisions contained in the foregoing paragraph,	**Not Explicit**	**No**	**Not Enforceable** This right to "enjoy an environment suitable for the development of the person" is beyond the ambit of the rights guaranteed in the Constitution and "is not actionable": Brandl *et al* at 61-63.

	criminal or, where applicable, administrative sanctions shall be imposed, under the terms established by the law, and they shall be obliged to repair the damage caused.			
Republic of Turkey	**Part Two (Fundamental Rights and Duties), Chapter Three (Social and Economic Rights and Duties), VIII (Health, the Environment and Housing), A (Health Services and Conservation of the Environment), Article 56 of the 1982 Constitution:** Everyone has **the right to live in a healthy, balanced environment**. It is the duty of the State and the citizens to improve the natural environment, and to prevent environmental pollution. **III (Public Interest), B (Land Ownership), Article 44:** The State shall take the necessary measures to maintain and develop efficient land cultivation, to prevent its loss through erosion, and to provide land to farmers with insufficient land of their own, or no land. For this purpose, the law may define the size of appropriate land units, according to different	**Explic it**	**No**	**Not Enforceable** Constitutional Court has held that “the right to live in a healthy, balanced environment permits only facial challenges to legislation notwithstanding its orbit with other social and economic rights and duties”: Brandl *et al* at 72-74.

	agricultural regions and types of farming. Providing of land to farmers with no or insufficient land shall not lead to a fall in production, or to the depletion of forests and other land and underground resources.			

Source: Annexure 1 on Constitutional Provisions Relating to Environmental Rights in K. Watson, "Constitutional Rights to a Clean and Healthy Environment: Critical Elements", 2009

Most countries have sound laws enacted by their respective legislative bodies for the general good, well-being, safety and security of its people. This comes in the shape of a national constitution followed by statutes passed by parliament; necessitated by compelling problems that mar national identity and result in the breach of the peace in the land, and subsidiary legislation in the form of bye-laws made by local authorities to facilitate management of the areas they govern. With all these powerful laws in place, why are there still numerous repeated incidences of individuals or companies beating the legal system? Is there no sufficient and effective condign punishment to be meted out? Regretfully, the answer is clear, namely weak enforcement on the part of the authorities. Whether they are states with specific provisions on the right to a healthful environment in the constitution, or whether they are nations with no such provisions because these are covered under the wide caption of right to life, or whether they are countries with duties to protect the environment, the resultant effect of such a fundamental breach is the outright violation of human rights and irreversible destruction to the environment, all in the name of greed. It is crucial to have executive accountability strongly in place whereby the government is duty-bound to make responsible decisions that are essentially fair in safeguarding our environment, and this can be achieved by following transparent and reasonable administrative procedures. It also has to revamp its current state of laxed enforcement strategies by implementing stringent punitive and preventive measures to instil fear among the polluting culprits and ensure deterrence of environmental crimes in the long run. This is possible by largely increasing the number of enforcement officers on active duty on the ground, appreciating the dangers they face on a daily basis by paying them higher remunerations, rewarding them handsomely with incentives in monetary form and promotions, and protecting them from any form of imminent harm in the strict execution of their duties and responsibilities.

Byrne (2009)[106] expressed that a survey on local judicial decisions from the civil and common law jurisdictions demonstrated that: "(a) even where the right to health is explicitly guaranteed under the constitution, courts will still have to wrestle with challenging issues, such as resource allocation and (b) by adopting innovative approaches, the lack of express constitutional entrenchment of the right to health in domestic law is not necessarily a bar to both consideration, and enforcement, by the courts." In the latter case, the judiciary acknowledged and made efforts to provide practical meaning to ideas of indivisibility and interdependence of rights because the right to health is related to economic, social, civil and political rights.

Under the former scenario of constitutional entrenchment of the right to health as in *Minister of Health v. Treatment Action Campaign (TAC)*,[107] the Constitutional Court held that failure of the state to give comprehensive anti-retroviral drugs to prevent mother-child HIV transmission violated their right to health. Further, since the drug was costless to the government, any justifications based on lack of resources were of no avail. Triumphant campaigning, which is very often a critical element in securing enforcement, also attributed to the success story behind this legal battle. The court also granted orders calling for the programme to have appropriate procedures for counselling and testing with some (albeit limited) financial implications, and unlike the way frequently adopted by the Indian Supreme Court and the Inter-American Court of Human Rights, it avoided talking about the precise methods of its implementation. Consequently, several months of campaigning and lobbying by *TAC* and others ensued in compelling the authorities to take necessary action and commence supply of the drugs to the mothers concerned. This ensured that effective enforcement ensued.

The author drew attention to *Soobramoney v. Minister of Health, KwaZulu-Natal*,[108] where the appellant suffered from chronic renal failure due to diabetes, an irreversible condition. Although his life could only be prolonged by ongoing dialysis treatment, the state hospital refused to admit him under a set policy. His contention was that he was entitled to receive treatment by virtue of Section 27(3) of the Constitution, which guarantees the right of everyone not to be denied emergency medical treatment, and also relied on Section 11, which guarantees the right to life. In examining the right to health claims under limited resources circumstances, the Constitutional Court held the hospital's standards to be reasonable and fairly applied in the appellant's case, and unanimously dismissed his appeal on grounds that his non-treatment did not constitute a violation of his rights. Whilst confirming the state's constitutional duty to provide care,

[106] I. Byrne, "Enforcing the Right to Health: Innovative Lessons from Domestic Courts", in A. Clapham and M. Robinson (eds), *Realising the Right to Health*, Swiss Human Rights Book, Vol. 3, Zurich: Rüffer & Rub, 2009, pp 525-538.

[107] (2002) 5 SA 721 (CC).

[108] 1997 (12) BCLR 1696 (CC).

it found that if the appellant was to be given the full benefit of this, then everyone else in his position would have to benefit as well; and that the state's limited resources could not accommodate such a burden because this would have a severe impact on the health budget and impinge on the state's other obligations. Justice Sachs went further, stating that: "In open and democratic societies based upon dignity, freedom and equality, the rationing of access to life-prolonging resources is regarded as integral to, rather than incompatible with, a human rights approach to health care."[109]

In addition, the author highlighted that despite remarkable resource implications for Latin American court decisions, the judiciary responded proactively to a great degree towards "systemic violations" in Peru,[110] Venezuela,[111] Argentina,[112] Brazil[113] and Ecuador.[114] Many a time, it reacted to *amparo*[115] actions and delivered landmark judgments assuring access to medicines and/or treatment to thousands of victims, and making it necessary for states to take solid and instant actions instead of embarking on a "progressive realisation" mode. Amongst the key cases is *Mariela Viceconte v. Ministry of Health and Social Welfare*[116] from Argentina, where several community groups sued to compel the state to manufacture a vaccine against Argentinian

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[109] Ibid., para. 52.

[110] *Azanca Alheli Meza Garcia*, Expedience No. 2945-2003-AA/TC: *Amparo* action seeking drugs needed to treat HIV/AIDS upheld by the Constitutional Court, which ordered full treatment to be provided regardless of resource implications, and subject to immediate and concrete state action. Consequently, the case is seen as a key precedent for the enforceability of social rights in the country.

[111] *Cruz del Valle Bermudez y Otros v. MSAS s/amparo*, Expedience No. 15.789, Sentencia No. 196: *Amparo* action to obtain supply of the drugs needed to treat persons living with HIV/AIDS upheld by the Supreme Court, which urged the Health and Assistance Ministry to deliver the drugs on a regular and reliable basis. The order also required appropriate budgetary allocation and to develop preventive policies including information, awareness, education and full assistance programmes. See also *Lopez, Glenda y Otros c. Instituto Venezolano de los Seguros Sociales (IVSS) s/accion de amparo*, Expedience No. 00-1343, Sentencia No. 487 and *Progama Venezolano de Educacion-Accion en Derechos Humanos (PROVEA) y Otros c. Gobernacion del Distrito Federal s/Accion de* Protection, Expedience No. 3174.

[112] *Menores Comunidad Paynemil s/accion de amparo* (2/03/1999): The Appeals Court upheld *amparo* action seeking protection for the health of indigenous children and youth due to consumption of water contaminated with lead and mercury. The state was found to have arbitrarily failed to diligently protect the right to health and was ordered to provide drinking water to the victims, to determine the existence of damages and, if required, to ensure adequate medical treatment. The case is considered as one of the most important Argentinian precedents on enforceability. See also *Quevedo Miguel Angel y Otros c. Aguas Cordobesas S.A. Amparo* (8/04/2002).

[113] *Estado do Rio de Janeiro AgR* No. 486.816-11: Duty of the state to supply medication to patients without the resources to afford the necessary medications. See also *Bill of Review* 0208625-3 (August 2002) in which the Special Jurisdiction Court of Parana held that an individual's disconnected water supply should be immediately reconnected to safeguard his constitutional rights particularly in light of the vulnerability of one of the residents due to sickness.

[114] *Mendoza & Ors v. Ministry of Public Health* Resolution No. 0749-2003-RA (28 January 2004): The Constitutional Court held that the Ministry of Public Health had failed in its obligation under Article 42 of the Constitution to protect the right to health by suspending a HIV treatment programme. The court also held that although the right to health is an autonomous right, it also forms part of the right to life. In so doing, it envisaged that a right to health entitled citizens not only to take legal action for the adoption of policies and plans related to general health protection, but also to demand that appropriate laws be enacted and that the government provide the necessary resources.

[115] A constitutional remedy providing individual relief.

[116] Case No. 31.777/96 (1998). For a further discussion of the case, see V. Abramovich, "Argentina: The Right to Medicines", in *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies*, Geneva: COHRE, 2003.

hemorrhagic fever, threatening 3.5 million people without adequate access to preventive medical services in affected areas. Having procured 200,000 doses of a vaccine from the United States and although 140,000 people were vaccinated in 1991-1995, it could not conduct any huge immunisation campaign because of insufficient quantity of the same. The judicial writ of *amparo* required the health ministry to produce and distribute more supplies of the vaccine. Despite its initial dismissal, the Court of Appeals decided in favour of the community groups, thereby establishing the state's responsibility to manufacture the said vaccine.[117] Unlike South Africa, the court also set a legally binding deadline to fulfil this obligation. However, just like the South African *TAC Case*, it needed additional action by the groups, including litigation, to secure effective enforcement. The *Viceconte Case* directly impacted the Argentinian social plan to be developed within a 5-year period to provide basic medicines.

According to the author, under the second category on the lack of express constitutional protection for health rights, it was not impossible for the judiciary to overcome obstacles in enforcement by employing "innovative approaches." These included using broad definitions of civil rights assured under domestic law, such as rights to life and not be subjected to cruel, inhuman or degrading treatment; taking into account matters of "due process" via judicial review; and applying "cross-cutting provisions" like equality and non-discrimination, which provide indirect protection to some extent. It is up to the courts to determine which creative yet legitimate methods to employ within their judicial capacity.

For over thirty years, the judiciary in India has taken the lead in lawsuits on issues of economic, social and cultural rights. The economic and social rights, including the right to health under Article 47 of the Indian Constitution,[118] are "consigned" under the Directive Principles of State Policy (DPSP) division and as reiterated by Article 37 of the Constitution, "shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws." This meant that the Indian Supreme Court was prevented from hearing and endorsing support for cases on health rights claims, and was only required to give non-binding guidelines on the execution of health policies, with the state making the final decisions. The turning point

[117] The Appeals Court drew on regional and international human rights standards, including the American Declaration on the Rights and Duties of Man, and the Universal Declaration of Human Rights, but particularly the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), all of the instruments having been incorporated into domestic law in Argentina and considered to form part of the Constitution. This was in direct response to the petitioners' assertion that where a state is facing a major health problem threatening significant numbers of lives, the legal obligation under Article 12 of the ICESCR is particularly strong.

[118] Article 47 states: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purpose of intoxicating drinks and of drugs which are injurious to health."

for Indian lawsuits advocating human rights came about with the *Fundamental Rights Case*,[119] which marked the start of an "unprecedented period of progressive jurisprudence" in the early 1970s. This was consequential to the judiciary's acknowledgment that the DPSP be afforded equal standing as "traditional" fundamental rights, together with the timely loosening of the strict rules on *locus standi* in increasing public interest litigation (PIL) and access to justice for aggrieved parties.[120]

The right to health gained from the wide-ranging definition of right to life when the Supreme Court capitalised on the latter to ensure the right to emergency medical care in the PIL case, *Paschim Bangal Khet Mazdoor Samity v. State of West Bengal*,[121] pronouncing that this crucial obligation cannot be overridden by the financial constraints argument. In awarding damages, it held that there was a blatant breach of the right to life under Article 21 because the right to emergency medical care was a vital element of right to health, a fundamental building block of the right to life. Further, the court reinforced the idea that right to life established a duty on the state to protect the lives of its citizenry by stating that "preservation of human life was of utmost importance" and that: "The Constitution envisages the establishment of a welfare state … Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the government in this respect [and it] discharges this obligation by running hospitals and health centres." This denoted that the judiciary provided the state with policy requisites and administrative procedures to promote public interest on a broader scope, and even ruled on the nature of the facilities to be granted. Although the Supreme Court was well aware of the limited resources and cost implications, it held that the national government and all other states ought to follow its decisions.

The author was of the view that although Indian courts became the epitome of judicial activism in the adjudication of PIL cases, and in so doing, strengthened the nexus between safeguarding environmental rights and the rights to health and to life, they have had to face recurring allegations that their judgments were not in accord with the operating laws and unlawfully encroached into the jurisdiction of the executive body. The Supreme Court retorted that it acted legitimately in undertaking key policy decisions because the protection of right to health of citizens must "trump" statutes. Judicial activism in India also influenced the Bangladeshi and Pakistani courts, which followed similar "progressive interpretations" on the significance of economic, social

[119] *Keshavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

[120] For a good overview of the Indian courts' approach to economic, social and cultural rights, see S. Muralidhar, "Justiciability of Economic and Social Rights: The Indian Experience", in *Circle of Rights*, Washington D.C.: International Human Rights Internship Program, 2000.

[121] (1996) 4 SCC 37.

and cultural rights.[122] In a similar vein, other nations like New Zealand, which has a restrictive Bill of Rights, have indirectly defended this right to health via the right to life axiom.[123] Despite no explicit provision to secure protection for right to health in the Canadian Charter of Rights and Fundamental Freedoms, the Supreme Court resorted to the equality provision under Article 15 to safeguard economic, social and cultural rights in the preservation of human dignity.[124] The duty falls on the government to see to it that disadvantaged Canadians have the means to fully enjoy the benefits granted to the general public and in relation to conveyance of medical services, effective communication was imperative, the lack of which was held to be a "thin and impoverished view … of equality."[125] Without any expressed right to health or other economic and social rights guarantees in the domestic law, English courts merely relied on the restricted set of fundamental civil and political guarantees available under the European Convention on Human Rights (ECHR) and embodied via the Human Rights Act 1998.[126] In the United Kingdom, and other states where the right to health is not enshrined, this is an area of law that is at the developing stage, with current cases reflecting a mixed record. It can be said that the foregoing reveal that creativity energises judicial enforcement of the right to health coupled with an extensive interpretation of available guarantees to manifest the essence of the elements of mutuality and indivisibility of rights.

According to Pedersen (2008),[127] the establishment of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

[122] In *Dr. Mohiuddin Farooque v. Bangladesh & Ors (No. 1)*, 48 DLR (1996) HCD 438, the Bangladeshi Supreme Court, upon finding that a consignment of powdered milk, imported by a company, exhibited in some cases a radiation level above the acceptable limit, upheld the claim that the actions of government officers in not compelling the importer to return it to the exporter had breached the constitutional right to life of people who were potentially consumers. See also *Sheila Zima v. WAPDA*, PLD 1994 SC 693, wherein the Supreme Court of Pakistan, relying on the rights to life and dignity, which included the right to live in a clean environment, held that the local power authority, before constructing a potentially health threatening electricity grid station, had to carry out a full consultation process with the affected community.

[123] In *Shortland v. Northland Health Ltd.*, [1998] 1 NZLR 433, the Court of Appeal, generously interpreting the right to life as protected by Article 8 of the Bill of Rights, and drawing on the equivalent international provision – Article 6 of the International Covenant on Civil and Political Rights (ICCPR) ratified by New Zealand – was able to assess whether a clinical decision to withdraw dialysis treatment amounted to a breach of the Bill of Rights. In so doing, it recognised that Section 151 of the Crimes Act 1961 placed a legal duty on the local health authority to supply the patient with "the necessities of life" and that a failure to perform that duty "without lawful excuse" could lead to criminal responsibility. The court held that Northland Health Ltd. could not be said to have violated its duty to provide the necessities of life, and thus, the decision to withdraw dialysis was not objectionable and would not deprive the patient of his right to life. It recognised that judges were concerned with the lawfulness of the decision to discontinue dialysis, and not with the likelihood of the effectiveness of the treatment (cf. South African decision of *Soobramoney* at Note 108).

[124] See, for example, decisions like *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 and *M. v. H.*, [1999] 2 SCR 3.

[125] *Eldridge v. British Columbia*, [1997] 3 SCR 624, para. 73.

[126] Having ratified the ICESCR, and several major United Nations human rights treaties, the United Kingdom has yet to incorporate this treaty into national law.

[127] Ibid. Note 1, pp 26-35.

(commonly referred to as the Aarhus Convention)[128] was a prominent move in the promotion of procedural environmental rights to the customary norms stature in the European region. As the first multinational environmental agreement (MEA), the Aarhus Convention particularly connects human rights with safeguarding the environment. Article 1 of this convention states that "in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making and access to justice."[129] This connotes that procedural rights under the convention elevate the right to a healthy environment. Moreover, the Aarhus Convention is also the first MEA that solely focuses on the states's obligations to their respective citizens. It provided non-governmental organisations (NGOs) with the opportunity to play a big role not only in the discussions and adoption of the convention, but also in its follow-up workings and processes. Further, the Compliance Committee's procedures engaged to ensure compliance with and oversight of the Aarhus Convention constitute a novel approach for MEAs. The convention[130] functions with three distinct, yet interlinked, sets of rights or pillars: access to environmental information in Articles 4[131] and 5;[132] public participation in Articles 6,[133] 7[134] and 8;[135] and access to justice in Article 9.[136]

The author reiterated that although the Aarhus Convention acknowledges the right to live in an adequate environment, it does not say where such a right exists in other international or European law. It is also apparent that despite its purpose to make

[128] The Aarhus Covention was adopted on 25 June 1998 in Aarhus, Denmark at the Fourth Ministerial Conference as part of the "Environment for Europe" process. It was signed by 39 countries in Europe and Central Asia, as well as the European Community, and came into force on 30 October 2001, ECE/CEP/43. See http://www.unece.org/env/pp/. It goes to the heart of the relationship between people and their governments, and is not only an environmental agreement, but also a Convention about government accountability, transparency and responsiveness. It also grants the public rights, and imposes on Parties and public authorities obligations regarding access to information, public participation and access to justice.

[129] The Aarhus Convention operates under the assumption that access to information and participation improves environmental protection. See generally, J. Steele, *Participation and Deliberation in Environmental Law: Exploring a Problem-Solving Approach*, 21 O.J.L.S. 415 (2001) (arguing that enhanced participation may lead to better environmental protection while emphasising the problem-solving benefits associated with this approach). But see, M. Lee & C. Abbot, *The Usual Suspects? Public Participation Under the Aarhus Convention*, 66 MOD. L. REV. 80, 86 (2003) (questioning whether public access to information and participation improves environmental protection).

[130] The Aarhus Convention specifically states that its provisions should not hinder contracting states in adopting measures that go beyond the convention, which has led to the notion that the convention operates as a "floor not a ceiling." J. Wates, *The Aarhus Convention: A Driving Force for Environmental Democracy*, 2 JEEPL 2 (2005).

[131] Article 4 of the Aarhus Convention sets out the obligations of contracting states to release information when requested by its citizens, without the person who seeks the information having to reiterate an interest (that is, passive release of information).

[132] Article 5 of the Aarhus Convention obliges states to collect and disseminate environmental information.

[133] Article 6 of the Aarhus Convention provides for participation in decisions of specific activities.

[134] Article 7 of the Aarhus Convention provides for participation in plans, programmes and policies.

[135] Article 8 of the Aarhus Convention facilitates participation in preparation of executive regulations.

[136] Article 9 of the Aarhus Convention allows for review procedures in relation to requests for information under Article 4, in relation to the procedures for participation in Article 6, and in relation to violations of environmental regulations in general.

available a substantive right to a healthy environment, the convention only "serves to further underline" the nexus between human rights and environmental protection.

The interweaving of environmental protection and human rights is vital in preventing any form of tear in the fabric of life. For this purpose, it is indispensable for an effective enforcement regime to be in place in every country. The fact that the right to a healthful environment is given due recognition in constitutions, legislation and national policies will not suffice to experience the true impact of keeping Mother Nature intact and in equilibrium, preservation of human dignity, food security, sustainability, tranquility, peace and harmony so

long as the ways and means to execute this right fail and no stringent enforcement systems prevail.[137] The pernicious effects of both poor implementation methods and weak enforcement mechanisms call for nothing short of life-threatening environmental disasters and environmental destruction of an irreversible nature. Depletion of natural resources as a result of rapid economic activities in the name of development often lead to infringement of civil and political rights as well, such as lack of public access to information and the right to know, limited right to participate in decision-making processes and the right to live in a healthful environment, and restricted freedom of speech and the likelihood of harassment by government or project authorities. The Brundtland Report[138] has even called upon heads of states to give due recognition to sustainable development by valuing citizens' rights and providing for a healthy environment in efforts to build a strong foundation to safeguard the welfare of the world. It explicitly asserted the need for national governments to acknowledge and give effect to "the right of individuals to know and have access to current information on the state of the environment and natural resources, the right to be consulted and to participate in decision-making on activities likely to have a significant effect upon the environment, and the right to legal remedies and redress for those whose health or environment has been or may be seriously affected."[139]

[137] M.A. Santosa, "The Right to a Healthy Environment", Using Module 15 in a training programme based on a Paper prepared for the meeting in Phi Phi Island, Thailand.

[138] The term, sustainable development, was popularised in *Our Common Future*, a report published by the World Commission on Environment and Development (WCED) in 1987. Also known as the Brundtland Report, *Our Common Future* included the "classic" definition of sustainable development: "Development which meets the needs of the present without compromising the ability of future generations to meet their own needs." (WCED, 1987:43). See J. Drexhage and D. Murphy, "Sustainable Development: From Brundtland to Rio 2012", Background Paper prepared for consideration by the High Level Panel on Global Sustainability at its first meeting on 19 September 2010 at the United Nations Headquarters, New York.

[139] L. Timberlake, "Freedom of Information on the Environment", *Index on Censorship* (London: Writers and Scholars International) 18, Nos. 6 and 7 (1983):7. The relationship between protection of the environment and the right to information and participation was extensively explored in this very interesting issue of *Index on Censorship*.

Enforcement of the right to a healthful environment is not impossible to be achieved with the proper practical execution of the three noble pillars of the Aarhus Convention. However, this is only possible administratively with the national and international cooperation of member states.

II. Right to a healthful environment as a human right

Tracing back history, pioneering the birth of the idea of a human right to a healthful environment attained its first spark at the United Nations Stockholm Declaration of 1972 (also known as the Stockholm Conference). It 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...."[140] This concept indicates that a clean and healthy environment is a vital supplement or pre-condition to the enjoyment of basic fundamental human rights. Such a nexus was accurately expressed[141] in the *Gabcikovo-Nagymaros Case*[142] before the International Court of Justice (ICJ), where it was stated that "[t]he protection of the environment is 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...." The Stockholm Conference was a decisive moment for the evolution of international environmental politics when it came under attack for taking a derivative approach by narrowly interpretating the right to a healthful environment as being an extension of or obtained from the broad parameters of the right to life (Hill, Wolfson and Targ, 2004).[143]

Two decades later, the 1992 United Nations Conference on Environment and Development (UNCED), otherwise termed the Rio Declaration or Rio Earth Summit, provides that "[h]uman beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."[144] At the same conference, governments endorsed Agenda 21, a "blueprint" to achieve sustainable development in the 21st. century.[145] According to the authors, this did not do enough justice to embrace the right to a clean and healthy environment

[140] Principle 1, Declaration of the United Nations Conference on the Human Environment (UNCHE). The Stockholm Conference was held on 5-16 June 1972 in Stockholm, Sweden.
[141] Separate opinion of Judge Christopher G. Weeramantry, former Vice-President of the International Court of Justice (ICJ).
[142] *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, 1997 I.C.J. 97, 97-110 (Sept. 25).
[143] Ibid. Note 54.
[144] Principle 1, Rio Declaration on Environment and Development. The Rio Earth Summit was held on 3-14 June 1992 in Rio de Janeiro, Brazil.
[145] Agenda 21 is a wholesome action plan for sustainable development and focuses on matters related to environment and development in an integrated way at the global, national and local levels. See http://www.sard@fao.org.

on an effective global scale. It only paved the way for sustainable development to take center stage, and the former directly came under the scope of the latter.

The significance and essence of the human environmental right was not given due recognition despite these developments taking place under the auspices of the United Nations Organisation (UNO). It is common sense that the right to a healthful environment is a basic fundamental human right. Each and every individual will certainly agree with that notion. Yet, the issue at the local, national and global arenas seems to be that it is NOT treated as a paramount right distinct on its own, and as a consequence, hitherto, has directly and indirectly given rise to a multitude of problems related to environmental degradation, pollution, deterioration of human health, depletion of natural resources and enduring the deleterious effects of climate change, among others. Despite such environmental threats on human sustenance and Mother Nature, the right to a healthful environment is not given top priority in international environmental conventions, conferences, declarations and instruments. Moreover, if trade and development projects are continously carried out on a massive scale without proper planning and without any regard for safeguarding the environment, then such business ventures over time will, slowly but surely, affect the very source of human existence and survival of all biota.

At the grassroots level, the grim reality in the absence of a clean and healthy environment would ultimately mean that there would be no fresh air to breathe because of poor air quality; no safe and clean drinking water as the source of life because of contamination and pollution; insufficient nutritious food to eat because of poor food security in terms of availability and accessibility; no proper homes to take shelter because of hostile weather conditions; no adequate sanitation for a decent living and preservation of human dignity; and finally, adverse poverty because of wars and environmental catastrophes. All these inadequacies not only kill the spirit and morale of an individual, but also add to the unimaginable immense pain, suffering, misery and agony of mankind. How then are we as human beings expected to live a life of decency and dignity without the general or reasonable expected standards? It defeats the whole purpose of living this life itself on Earth. Although development promises progress, better housing, modern infrastructures and fosters international trade, these activities should not be permitted at the expense of the environment and welfare of the common people.

Lewis (2012)[146] reiterated that the destruction of environmental quality breaches our human rights to enjoy the best possible standard of health achievable and to a reasonable standard of living. The poor, the indigent and the destitute in the developing and least developed countries mostly rely on the environment to feed the

[146] B. Lewis, “Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection”, MqJICEL (2012) Vol. 8 (1).

hungry mouths and environmental issues such as pollution and the impacts of global warming affect their fundamental human rights. The native people who totally depend on nature are not spared either. Ergo, the vital link between a healthful environment for the people and their enjoyment of basic human rights is very much valued and accepted. What is not given much recognition is the fact that mankind has environmental rights that go over and above what is required for our basic needs to ensure survival. The accurate reality of the nexus between the environment and human rights calls for greater scrutiny even though human rights law affirmatively supports environmental safeguards.

According to the author, generally there exists at least "two possible conceptualisations of the environment within a human rights legal framework." The first approach is that the environment is accepted as a "precondition" for enjoying human rights.[147] If the state of the environment is not clean and healthy, then the possibility of enjoyment of a particular assured human right is directly restricted. On that premise, international law construes some rights to encompass environmental aspects in them. General Comment No. 14 of the United Nations Committee on Economic, Social and Cultural Rights asserts that the environment remains a very important element in attaining a reasonable standard of health, and environmental issues like pollution stand as obstacles in the quest for a complete enjoyment of the right. Restraint on the enjoyment of human rights may also exist when an unhealthy environment indirectly impacts upon the people's ability to appreciate their human rights on the whole, or obstructs the authority's capacity to safeguard its citizenry's rights. This may take the form of serious natural catastrophes like floods, earthquakes or tsunamis demanding the channelling of resources on an urgent basis to address such environmental woes instead of developing human rights.

The second approach is that the environment is treated as an"entitlement" to which the human right to a healthful environment prevails. This simply means that humankind has a just claim to the right to a healthful environment, distinct and separate from other human rights. It has been indicated that this human environmental right is becoming apparent at customary law,[148] or that it should be put into the "catalogue" of rights in

[147] Numerous literature elucidating the connection between the environment and human rights are available. See S. Atapattu, "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", (2002-2003) 16 Tulane Environmental Law Journal 65; P. Sands, *Principles of International Environmental Law*, (Cambridge University Press, 2nd ed, 2003); P. Birnie, A. Boyle and C. Redgwell, *International Law and the Environment*, (Oxford University Press, 3rd ed, 2008); D. Anton and D. Shelton, *Environmental Protection and Human Rights*, (Cambridge University Press, 2011); W. Sachs, "Environment and Human Rights", (2004) 47 (1) *Development* 42.

[148] D. Shelton, "Human Rights, Environmental Rights and the Right to Environment", (1992) 28 Stanford Journal of International Law 103; W.P. Gormley, "The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms", (1990) 3 Georgetown International Environmental Law Review 85; S. Marks, "Emerging Human Rights: A New Generation for the 1980s?", (1980-81) 33 Rutgers Law Review 435.

international human rights agreements.[149] In light of the connection between the environment and human rights, people view it is vital that they have a right to stake a claim on the reasonable healthy state of the environment. The author, however, cautioned that the proposition to accept the human right to an environment of a certain quality would still face "practical and theoretical" barriers in its path.

Turner (2004)[150] opined that the "strong" nexus between the environment and human rights justifies that international human rights law must explicitly honour the right to a healthful environment. Further, not only would this new environmental right boost its effectiveness currently prevailent in certain domestic legal mechanisms and augment the "positive duties" that consequently develop, but also support available systems in safeguarding the environment. A stand-alone human right to a healthful environment would certainly be advantageous in terms of redress for grievances suffered by victims of environmental harm. The enshrinement of this right to a clean and healthy environment in international human rights agreements also means that safeguarding environmental needs is given the same standing as other human rights, therefore, creating a balanced harmony between them.

However, Handl (2001)[151] questioned the difficulty in accurately interpreting what the proper standards of a healthful environment would be when making decisions against prospective breaches of the said right. Despite the fact that presently there is non-availability of any multilateral agreement which provides for the right to a clean and healthy environment, certain regional treaties, soft-law instruments and an increasing number of national constitutions still draw their attention to it. Some human rights regimes uphold the same, including the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")*,[152] which provides that "Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation and improvement of the environment." On a similar note, the *African Charter on Human and Peoples' Rights*

[149] K.E. MacDonald, "A Right to a Healthful Environment – Human and Habitats: Rethinking Rights in an Age of Climate Change", (2008) 17 European Energy and Environmental Law Review 213; J. Lee, "The Underlying Legal Theory to Support a Well-defined Human Right to a Healthy Environment as a Principle of Customary International Law", (2000) 25 Columbia Journal of Environmental Law 283; F. Ksentini, Special Rapporteur for Human Rights and the Environment, *Final Report to Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities: Human Rights and the Environment*, UN Doc E/CN.4/Sub.2/1994/9, 6 July 1994.

[150] S. Turner, "The Human Right to a Good Environment – The Sword in the Stone", (2004) 4 Non-State Actors and International Law 277.

[151] G. Handl, "Human Rights and Protection of the Environment", in A. Eide, C. Krause and A. Rosas (eds), *Economic, Social and Cultural Rights: A Textbook 303*, (Martinus Nijhoff Publishers, 2nd ed, 2001) 303, 313; P. Taylor, "From Environmental to Ecological Human Rights: A New Dynamic in International Law?", (1998) 10 Georgetown International Environmental Law Review 309, 361.

[152] *Protocol of San Salvador*, opened for signature on 17 November 1988, 28 ILM 156 (entered into force on 16 November 1999), Article 11(1) and (2) (Right to a Healthy Environment).

(also known as the Banjul Charter)[153] states that "All peoples shall have the right to a general satisfactory environment favourable to their development."

In an in-depth study carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) regarding the link between the environment and human rights, the Dutch Section of the International Commission of Jurists (NJCM)[154] suggested, among others, that major progress over twenty years has led to the adoption of a distinct substantive human right to environment by numerous legal regimes globally. Shelton (2006)[155] stressed that the presence of the the right to a healthful environment cannot be disavowed any more, especially after the 1990s where nearly all countries have endorsed or made changes to enshrine this right into their respective constitutions. The growing trend of "human duties to protect the environment as such" is relevant because human rights and the environment are "interrelated" in the sense that they not only bring anthropocentric gains to current and future generations, but also ecocentric benefits to Mother Nature itself.[156]

III. Human rights as constitutional rights

According to Barnett (2011),[157] some rights are recognised as constitutional rights as they rank higher than the common ones in a system of legal rights, thereby creating the prospect that they are pertinent to law in its entirety. The author reiterated that "Constitutional rights are defensive rights of the citizen against the state, designed to protect the freedom of the individual from infringements by public bodies." This denotes that constitutional rights are are framed to give due protection to the people of a nation. It is certainly not possible to gather all the rules of a state and have a complete set of provisions that can be written into one single document known as a constitution. This is simply not feasible as the needs and requirements of the citizenry are always changing with the times and dynamically challenged in the modern era. In the words of Paine (1792),[158] "A constitution is not the act of a government, but of a people constituting a government, and a government without a constitution is power without right ... A constitution is a thing antecedent to a government, and a government is only the creature of a constitution." It is the constitution that sets the boundaries in terms of the extent of the legitimacy of the power that is discharged and the way it is

[153] *African Charter on Human and Peoples' Rights*, opened for signature on 27 June 1981, 21 ILM 58 (entered into force on 21 October 1988), Part I (Rights and Duties), Chapter I (Human and Peoples' Rights), Article 24.
[154] Report cited as: "Stakeholder Input by the Dutch Section of the International Commission of Jurists (NJCM) in Response to the 2011 Office of the United Nations High Commissioner for Human Rights (OHCHR) Study on Human Rights and Environment", report drafted by M.M.E. Hesselman and J.I. van de Venis, June 2011, available from: http://www.njcm.nl/site/english/english_reports.
[155] D. Shelton, "Human Rights and the Environment: What Specific Environmental Rights Have Been Recognised?", Denver Journal of International Law and Policy, Vol. 35, 2006, p 116.
[156] Ibid. Note 111, pp 130-132.
[157] H. Barnett, *Constitutional and Administrative Law*, Eighth Edition, Oxon: Routledge-Cavendish, 2011.
[158] T. Paine, *Rights of Man*, [1792, Pt II, p 93].

to be conducted for the benefit of the people. Aristotle (350 B.C.E.)[159] opined that "Where laws do not rule, there is no constitution." This signifies that the rule of law is the foundation and cornerstone for a sound constitution in any country.

The end of World War I (1914-1918) saw the formation of the League of Nations[160] and efforts were underway to oversee that human rights were included in peace treaties at the international stage. More importantly, after World War II (1941-1945), governments realised the urgency to safeguard and further the cause of human rights as a vital condition for concerted world peace and harmony. The Universal Declaration of Human Rights (UDHR) 1948 together with both the 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights symbolised an international Bill of Rights, which encouraged the establishment of regional conventions such as the European Convention on Human Rights and Fundamental Freedoms 1950, the American Convention on Human Rights 1969 and the African Charter of 1987.[161]

Boyd (2012)[162] was of the view that since the early 1960s, three saliently-connected flow of events have opened the eyes of the people across the globe. The first is the growing trend taken by new and amended constitutions of rising and recognised democracies; the second is the evolution of the "human rights revolution" for the past five decades; and the third is the increase in the extent and consciousness raised towards environmental dangers on the face of this Earth. It is said that the constitutional right to a healthful environment stands precisely at the meeting point of the aforesaid events. When the notion of a right to a clean and healthy environment was initially advocated, it neither received the expected applause nor the immediate support needed to adopt it in international environmental treaties. The situation today, however, is quite different because of its universal acceptance by a multitude of states. In fact, the right to a healthful environment has now been mainstreamed into the constitutions of more than 90 countries. As a consequence, not only have effective environmental legislation been made, but also milestones in judicial decisions have been achieved by compelling unscrupulous environmental culprits to unpollute the polluted and make safe the current unsafe state of drinking water for consumption.

[159] Aristotle, *The Politics*, Book IV, para 1292a31.
[160] The League of Nations was replaced by the United Nations Organisation (UNO) in 1945.
[161] See also the Hong Kong Bill of Rights 1991 based on the United Nations Covenant on Civil and Political Rights.
[162] D.R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, Vancouver: University of British Columbia Press, 2012. See D.R. Boyd, "The Constitutional Right to a Healthy Environment", in *Environment*, Philadelphia: Taylor & Francis Group, July-August 2012.

In *Silent Spring*, Carson (1962)[163] pioneered the idea that there exists a human right to a healthful environment by saying:

> "If the Bill of Rights contains no guarantees that a citizen shall be secure against lethal poisons distributed either by private individuals or by public officials, it is surely only because our forefathers, despite their considerable wisdom and foresight, could conceive of no such problem."

Paving the way for the first legislation on the control of pesticides, the author gave evidence in 1963, before President John F. Kennedy's Scientific Advisory Committee and recommended Congress to think carefully about:

> "a much neglected problem, that of the right of the citizen to be secure in his own home against the intrusion of poisons applied by other persons. I speak not as a lawyer but as a biologist and as a human being, but I strongly feel that this is or ought to be one of the basic human rights."[164]

Boyd (2012) revealed that out of the UNO's 193 member States, 177 have accepted the right to a healthful environment via their "constitution, environmental legislation, court decisions, or ratification of an international agreement" (see Figure 1),[165] and, as of 2012, there were 16 "holdouts" which still refuse to accept this environmental right. These comprised of the United States of America, Canada, Japan, Australia, New Zealand, China, Oman, Afghanistan, Kuwait, Brunei Darussalam, Lebanon, Laos, Myanmar, North Korea, Malaysia and Cambodia. Even then, certain "subnational governments" have come to terms in acknowledging the right to a clean and healthy environment as a fundamental human right. The dawdlers consist of "six American states, five Canadian provinces or territories, and a growing number of cities," among others.[166]

[163] R. Carson, *Silent Spring*, Boston: Houghton Mifflin, 1962, pp 12-13. This book is lauded because it revealed the dangers of DDT, a pesticide; questioned the repercussions of mankind's technological progress on nature; and played a key role in propelling the current environmental movement in the United States of America.

[164] Carson was quoted in J. Cronin and R.F. Kennedy, Jr., *The Riverkeepers: Two Activists Fight to Reclaim Our Environment as a Basic Human Right*, New York: Scribner, 1997, p 235.

[165] Ibid. Note 124, p 93.

[166] The six American states are Hawaii, Illinois, Massachusetts, Monatana, Pennsylvania and Rhode Island. The Canadian provinces and territories are Ontario, Quebec, the Yukon, Nunavut and the Northwest Territories. The cities include Pittsburgh, Santa Monica and Montreal.

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Figure 1: Map showing nations which recognise the right to a healthy environment in constitutions, laws or international agreements as of 2012

Although 130 countries or more from the European, Asian, the Americas, the Caribbean, African and the Middle East regions have accepted the right to a healthy environment as signatories to international human rights treaties, greater efforts to safeguard rights take place at the local level. This is where the national constitution plays a crucial role in concretising basic human rights for the citizenry. The supreme law of the land in any state is its constitution with all legislation, rules, regulations and policies being compatible with it. A constitution provides legal safeguards for human rights, spells out the duties of the state for the benefit of the public and exercises control over the executive organ of the state. In fact, it has been said that "A constitution is a mirror of a nation's soul"[167] because it manifests and embraces the important values of society for continued sustenance of life, preservation of human dignity, environmental security, sustainable development, and peace and harmony (Boyd, 2012).

[167] *State v. Acheson*, 1991 (2) SA 805 (Namibia).

The author also observed that from the mid-1970s onwards, 92 nations have endorsed a constitutional status to the human right to a clean and healthy environment (see Figure 2).[168] A study on what they have undergone in their "cause-and-effect relationship" denotes two direct legitimate consequences, namely more effective environmental legislation in 78 states[169] and judicial pronouncements which are against breaches of human rights as constitutional rights.

Figure 2: Map showing nations which recognise the constitutional right to a healthy environment as of 2012

Even though this environmental right has been empowered with a constitutional standing, there is continuous discord on the extent and usage capacity of the right to

[168] Ibid. Note 124, p 61.

[169] Strengthening of legislation via amendment was seen after the right to a healthful environment was incorporated into the constitution; with more attention directed toward environmental laws, access to environmental information, participation in decision-making and access to justice. This included all countries under study in Eastern Europe (19 out of 19); nearly all states in Western Europe (8 out of 9), Latin America and the Caribbean (16 out of 18), and Asia (12 out of 14); and a clear majority in Africa (23 out of 32).

healthful environment. Proponents of constitutional environmental rights are of the view that with human rights as constitutional rights, there will be:

- stronger environmental laws and policies.
- improved implementation and enforcement.
- greater citizen participation in environmental decision-making.
- increased accountability.
- reduction in environmental injustices.
- a level playing field with social and economic rights.
- better environmental performance.

Conversely, opponents of constitutional environmental rights argue that such rights are:

- too vague to be useful.
- redundant because of existing human rights and environmental laws.
- a threat to democracy because they shift power from elected legislators to judges.
- not enforceable.
- likely to cause a flood of litigation.
- likely to be ineffective.

According to Shelton (2002),[170] the issue of health appears to be the connecting element between human rights and efforts to safeguard the environment. Resolutions reached by the human rights organisations and international legal instruments indicate that they are viewing them through the rights-based lens. Under the first rights-based approach, to be assured of an efficacious enjoyment of human rights globally, protection of the environment from harm is, therefore, a key factor. In the words of Klaus Toepfer[171]:

> "Human rights cannot be secured in a degraded or polluted environment. The fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water. .... Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture. It is time to recognise

[170] D. Shelton, "Human Rights, Health and Environmental Protection: Linkages in Law and Practice", A Background Paper for the World Health Organisation (WHO), Health and Human Rights Working Paper Series No. 1, 2002.

[171] Executive Director of the United Nations Environment Programme (UNEP) expressed this approach in his statement to the 57th. Session of the Commission on Human Rights in 2001.

> that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well."

In fact, the General Assembly in the United Nations has referred to the conservation of nature as "a prerequisite for the normal life of man."[172] As for the second rights-based mode, as found in international environmental treaties since 1992, some human rights are considered as important elements for safeguarding the environment with the main purpose of protecting human health, and further expresses the idea that "environmental issues are best handled with the participation of all concerned citizens, at the relevant level." The third rights-based perspective, (as found in current domestic law, and in the regional human rights and environmental agreements), considers the nexus as "indivisible and inseparable" and, ergo, postulates the "right to a safe and healthy environment as an independent substantive human right."

With constitutional environmental rights swiftly gaining pace worldwide, the stage has been set where the right to a clean and healthy environment cannot be ignored anymore, be removed from agendas in environmental conventions or be treated as an insignificant matter to be addressed at national and international discourses. Securing human dignity through the force of the highest, strongest and most powerful law in the land by means of giving constitutional status to the right to a healthful environment encapsulates human rights as constitutional rights.

What condition our environment is in has an impact on our daily lives irrespective of which part of planet Earth we are busily engaged in economic activities for survival.[173] Treating the environment like our home is, therefore, vital because if the home front crumbles, then the basic family unit falls apart. Similarly, if the environment is continuously degraded by depletion of natural resources and deleterious activities, then the entire ecological system will be placed in jeopardy and helplessly head toward the road to destruction; eventually causing disastrous repercussions for man, flora and fiona. That will lead to the harsh reality of the end of the world and see the end of life in worst case scenario. Hence, environmental rights cannot be viewed separately and differently from human rights.[174] They are one and the same in terms of realising man's very existence and quality of life for a healthy living, which are totally dependent on what the environment has to offer. Humankind's access to Mother Nature for a reasonably sustainable livelihood as a whole, not to mention, the enjoyment of the

[172] GA Res. 35/48 of 30 October 1980.

[173] See http://www.etu.org.za/toolbox/docs/government/environmental.html on "Government Programmes and Policies: Environmental Health and Safety", Economics and Trade Unit, United Nations Environment Programme (UNEP).

[174] Friends of the Earth (FoE) Australia is a federation of grassroots community groups working for a socially equitable and environmentally sustainable future. See http://www.foe.org.au.

rights to information, participation in decision-making, access to justice, safety and security, and compensation for violation of fundamental human rights must be made available and guaranteed to the citizenry.

Environmental rights are important because they fortify the nexus between human rights (of the people to live with dignity) and the environment (to sustain their survival through its collective use). The empowerment of authority in national constitutions to serve the people in the spirit of righteousness and good governance is a concerted call on all governments to work jointly and severally to ensure that environmental rights are well protected and firmly secured in local legislation, regional agreements and international conventions. The right to a healthful environment, which is the flagship of fundamental human rights, must be given due recognition and distinctly entrenched as a basic constitutional right in being the beacon of hope for guaranteeing environmental justice and standing tall as defender of environmental human rights.

Lador (2004)[175] held the view that safeguarding the environment and protecting human rights go hand in hand in reality. The link between them was a hot topic for deliberation at the 2002

World Summit on Sustainable Development (WSSD)[176] in Johannesburg, South Africa and has now reached a stage where it has nurtured into "an issue in its own right," and cannot be excluded in the environmental agendas of national authorities and international organisations because "this linkage challenges how today's societies are organised as well as the legitimacy of their authorities." Zarsky (2002)[177] added that it is difficult to portray an environmental matter that comes without a 'human rights dimension" in it. More often than not, overriding the interest of the latter and not providing the needful attention it rightly deserves give rise to disastrous conditions:

[175] Y. Lador, "The Challenges of Human Environmental Rights", in "Human Rights and the Environment: Proceedings of a Geneva Environment Network Roundtable", Geneva: Switzerland, United Nations Environment Programme (UNEP), 2004.

[176] Also known as the Johannesburg Summit 2002, it took place from 26 August to 4 September 2002 and was instrumental in bringing together tens of thousands of participants, including heads of state and government, national delegates and leaders from Non-governmental Organisations (NGOs), businesses and other major groups to focus global attention and direct action toward meeting difficult challenges such as improving people's lives and conserving our natural resources in a world that is growing in population, with ever-increasing demands for food, water, shelter, sanitation, energy, health services and economic security. See http://www.un.org/jsummit/html/basic_info/basicinfo.html.

[177] L. Zarsky, *Human Rights and the Environment, Conflict and Norms in a Globalising World*, Earthscan, London, 2002.

> "In 1984, nearly 400 Maya Achi Indians were tortured, raped and slaughtered by the Guatemalan army for resisting a World Bank-financed dam that ultimately flooded their homeland. During the same year, a Union Carbide chemical plant in India released a toxic cloud, killing more than 3,000 people and maiming hundreds of thousands. Two years later, in Chernobyl, Ukraine, a nuclear power plant disaster left more than 1.5 million people with radiation-related illnesses. Ranching interests murdered trade union leader, Chico Mendes,[178] in 1988 because he spearheaded a campaign of rubber tappers to safeguard the Amazonian rainforest that is essential to the tappers' lives and livelihoods. In 1995, Nigeria's military regime executed Ogoni environmental activist, Ken Saro-Wiwa,[179] for protecting his people's health and food resources for oil pollution by Shell and other oil corporations."

According to Lador (2004), taking the human rights issue into account when applying environmental laws in practice is imperative because the very same laws ensure that the former is safeguarded and not violated. The time has come for the judicial system to provide solutions when confronted with the fundamental environmental rights issue of people's access to justice. In his dissenting opinion in *Sierra Club v. Morton*,[180] Blackmun J averred that:

> "The case poses (...) significant aspects of a wide, growing and disturbing problem, that is, the nations' and the world's deteriorating environment with its resulting ecological disturbances. Must our law be so rigid and our procedural concepts so inflexible that we render

[178] Brazilian rubber tapper and land rights leader, Chico Mendes ("The Gandhi of the Amazon"), pioneered the world's first tropical forest conservation initiative advanced by forest peoples and his work led to the establishment of extractive reserves protected forest areas inhabited and managed by local communities. As political activist, he struggled to protect the rights of rubber tappers against the invasion of cattle ranchers and caught the attention of international environmentalists, who saw his resistance movement as a fight to save the rainforest. Chico worked with the ecologists for a short period before he was murdered by ranching interests in late 1988.

[179] Nigerian writer and environmental activist, Kenule Beeson Saro-Wiwa, protested against the military regime and Anglo-Dutch petroleum company, Royal Dutch Shell Plc, for causing environmental damage to the Ogoni people's land in his native Rivers state. Since the 1950s, Ogoniland in the Niger Delta has been targeted for crude oil extraction and suffered extreme environmental damage from decades of indiscriminate petroleum waste dumping. As leader of the Movement for the Survival of the Ogoni People (MOSOP), Ken Saro-Wiwa led a non-violent campaign against environmental degradation of the land and waters of Ogoniland by operations of the multinational petroleum industry, especially the Shell company. He was an outspoken critic of the government, which he viewed as reluctant to enforce environmental regulations on the foreign petroleum companies operating in the area. He was arrested and charged with the murders of four elders of his ethnic minority because of their moderate stance on Ogoni issues. Despite an international outcry, he was hanged in late 1995, following a sham trial described by the then British Prime Minister, John Major, as "judicial murder."

[180] United States Supreme Court ruling on April 19, 1972.

> ourselves helpless when the existing methods and the traditional concepts (...) do not prove to be entirely adequate of new issues?"[181]

Is his Lordship's dissenting judgment not intense enough to jolt our minds into attention and bring about positive changes for the better in saving the environment from further harm? Should we remain complacent and be a yes-man all the time for fear of rocking the boat and creating realistic changes when environmental justice is denied from all angles? The time has come for states to wake up fully to direct their thoughts, be honest with each other, cooperate without egocentric tendencies, come out strong in pooling their technical knowhow and financial resources together, and collaborate on a global scale to keep Mother Earth on course via efficient corporate management and effective legal enforcement for the sake of humanity.

IV. Malaysian position

As mentioned under 2.2.1 (a), the first initiative to sow the seeds of constitutional change in the early 1990s was an endeavour to give a distinct and explicit recognition to the right to a healthful environment in the Federal Constitution of Malaysia. Such a worthy effort stayed buried under the ground as witnessed until the present day, with no fruits to reap because all efforts to do so were in vain and did not materialise in reality. The whole idea to entrench the right to a healthful environment inadvertently remained abandoned for two decades, and with the passing of time, constitutional enthusiasm dwindled along with it as more attention gradually diverted toward people busily engrossed in chasing the materialistic rat race. Today that leaves the right to a healthful environment as only implicitly recognised under the broad category of the right to life in the constitution. Hence, the Malaysian position is now back to square one.

The Malaysian Charter on Human Rights, as adopted by the Non-Governmental Organisations (NGOs) in December 1994, in its Article 7 (Environment) states, (1) "Everyone is entitled to live in a clean, healthy, safe, and sustainable environment free from agricultural and industrial pollution" and (2) "All peoples and nations have a right to participate in decisions regarding local, regional, and global environmental issues such as nuclear arsenals, storage, transportation, and dumping of toxic wastes, pollution, and location of hazardous industries." Despite the Charter having explicitly engraved the right to a healthful environment as a human right, no effective steps have

[181] T. Turner, *Wild by Law, The Sierra Club Legal Defence Fund and the Places it has Saved*, Sierra Club Legal Defence Fund, San Francisco, 1990, p 154.

been taken to tread along similar paths on the part of the government to make this environmental human right a constitutional right.

Under the Millennium Development Goals (MDG) 7,[182] efforts to sustain the environment included targets to "integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources," and to "halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation." Athough the overall idea of the national initiative in eradicating poverty is noble, the emphasis seems to be more on sustainable development. There is no direct support for and recognition of the right to a healthful environment as a basic and fundamental human right.

Since 1956, Five-Year Plans were introduced to promote economic development for the nation. As part and parcel of this venture, the Ninth Malaysia Plan (2006-2010) and the Tenth Malaysia Plan (2011-2015) came into force in continuing to pave the way for Vision 2020 to materialise in enabling Malaysia to attain its developed-country status by the year 2020. The former is the "blueprint" for the Economic Planning Unit (EPU),[183] which provides that "environmental stewardship will continue to be promoted to ensure that the balance between development needs and the environment is maintained. Greater focus will be placed on preventive measures to mitigate negative environmental effects at source, intensifying conservation efforts and sustainably managing natural resources." The latter expresses that the government's agenda[184] "will be one of protecting the environmental quality of life, caring for the planet, while harnessing economic value from the process. In achieving this, among others, the government will be guided by sustainable production practices to decouple economic growth from environmental degradation." Further, the National Policy on Environment 2002 and the National Physical Plan 2005 were put in place, with the policy being implemented "to enable continued economic, social and cultural progress and to enhance Malaysians' quality of life through environmentally sound and sustainable development."

Numerous environmental programmes and development targets were carried out and are still in progress for the continued enhancement of sustainable economic growth and preservation of environmental health at the same time. Yet, destruction of the environment is blatantly on-going all around us while mega development projects are still operating in full bloom. The question then is whether these two fields oppose each

[182] *Malaysia: The Millennium Development Goals at 2010*, Economic Planning Unit, Prime Minister's Department, Malaysia, Malaysia: United Nations Country Team, 2011, p 102.
[183] See http://www.epu.gov.my/en/ninth-malaysia-plan-2006-2010.
[184] Sustainability is one of the three pillars of the New Economic Model (NEM) launched by the Prime Minister in March 2010, with the objective of driving Malaysia to achieve the "fully developed country" status. See http://www.nitc.mosti.gov.my/nitc_beta/index.php/national.../tenth-malaysia-plan-2011-2015.

other or are they at the crossroads or worse still, are they heading for a head-on collision course? Sinnathamby and Mohammad Hanifa (2008)[185] asserted that a "proper balance between both realms ought to be the order of the day as they are inter-dependent on each other for human survival for generations to come, which, therefore, calls for careful planning in the monitoring of and calculated navigating in the development projects with great caution, skill and precision." They are like two sides of a coin – you cannot have one without the other. Thus, both sectors are required to play their respective significant roles in the ultimate appreciation of human worth and preservation of human dignity, without causing drastic disruption to the ecosystem that supports life on Earth.

At the national level, Article 5 of the Federal Constitution needs to be amended to ensure that more clarity prevails in the law of the land. The Malaysian perspective will be discussed in further detail under Chapter 3 of my thesis.

Conclusion

As Commonwealth countries once under colonial rule and having gained independence from Great Britain a decade apart (India in 1947 and Malaysia in 1957), and geographically located near to each other in the Asian continent, constitutional developments in Malaysia can be aptly compared with India. In essence, both nations have similar provisions in their Article 5 and Article 21 respectively, which generally relate to the right to life and personal liberty in the broad sense. In fact, there is no explicit provision on the right to a healthful environment in India, just like Malaysia. However, India is different because its constitutional amendment in 1976 via Articles 48A and 51A(g) breathes fresh air into the constitution and gives life to its unarticulated constitutional guarantees, and further, to give legal enforcement to this amendment with the help of its robust and articulative judiciary that takes a broad view of *locus standi*, it allows aggrieved and concerned thrid parties like individual citizens and NGOs to bring environmental issues to the fore, and to the extent that even the courts are at liberty to move the matter on their own motion on behalf of the poor, the needy, the destitute and the illiterate through public interest litigation (PIL). To date, numerous Indian cases justify this as India imposes a duty on its people not to pollute their environment.

Malaysia has a lot to learn from India and other countries, and must take greater efforts to be brave and courageous in amending its own Article 5 so that better clarity is reflected and maintained in the constitution, and its judiciary ought to take a bolder and positive step forward in its interpretation of *locus standi*, following the footsteps of its Indian counterpart, and give priority and support to its citizenry's initiatives to protect

[185] S.Y. Sinnathamby and S. Mohammad Hanifa, (2008). *An Introduction to Trade Law and Environmental Law*. First Edition, IIUM Press (viii + 81 pp). Ideas taken from my previous jointly-written book at page 75.

the environment and Mother Nature as a whole against excessive, unplanned, unreasonable and unnecessary deleterious acivities in the name of trade and development.

When it comes to the issue of a clean and healthy environment for a reasonably sustainable and dignified life, the national constitutions of the world can be divided into 3 categories. Firstly, there are some states that have specific provisions in their constitutions on the right to a healthful environment. An example of this is the Federal Republic of Ethiopia. Secondly, there are some other countries that do NOT have such provisions because these are covered under the broad ambit of right to life. Malaysia clearly falls under this classification. Thirdly, there are still other nations that have duties to protect the environment. A classic case of this is India. Despite rapid progress and advancement in technology, so much time has been wasted over the past decades on endless debates and intellectual discourses in earnest attempts to incorporate the right to a healthful environment in the constitution and to endorse this human right as a constitutional right. Why are such noble efforts to have it enshrined in national constitutions moving at a snail's pace? Even some developed countries have turned a deaf ear or a blind eye to countless appeals in the wake of numerous environmental cases affecting this basic and fundamental human right. Where do we go from here then? Why is there such arrogance, and an oblivious and lackadaisical attitude toward the enshrinement of an explicit right to a healthful environment, especially when such a human right, when adopted and embraced as a constitutional right, aims to protect the environment with effective legal enforcement and ensures efficient human sustenance? If the stand taken is that this constitutional environmental right is redundant in the wake of other human rights, then it is going to be a stumbling block to preserve human dignity in a healthful environment, more so when it is a known fact that the lives and health of all biota are dependent on the physical state of the environment.

Lewis (2012)[186] avers that the backlash to adopting the right to a healthful environment is its "anthropocentric" nature as it is intricately connected to and for the advantage of human beings. In that sense, it is said that this human right refuses to acknowledge "animals, plants, species and ecosystems as rights-holders," and safeguarding them is conditional upon "establishing some other human interest."[187] In the same light, Gibson (1990)[188] opines that by calling the right to a healthful environment a "*human*" right, Mother Nature's worth is measured based upon "human values and needs" with mankind ranked as the highest in the hierarchy. Devall and Sessions (1985) argue

[186] Ibid. Note 108, p 45.
[187] Taylor, note 113, p 346; A. Boyle, "The Role of International Human Rights Law in the Protection of the Environment", in A. Boyle and M. Anderson (eds), *Human Rights Approaches to Environmental Protection*, (Oxford University Press, 1996) 43, 48-9.
[188] N. Gibson, "The Right to a Clean Environment", (1990) 54 Saskatchewan Law Review 5.

that this totally goes against the deep-rooted view of ecologists that “all organisms and entities in the ecosphere, as parts of the interrelated whole, are equal in intrinsic worth.”[189] According to Taylor (1998),[190] advocating the human right to a healthful environment simply extends the “values and attitudes’ that cause nature’s destruction to the very core because harmful aspects of human activities take priority over everything else, thereby overriding the health of the biophysical environment.

It appears that the word “*human*” is interpreted literally, which attracts an adverse reaction to the worthy cause of the right to a healthful environment. Although Gibson (1990)[191] and MacDonald (2008)[192] agree that a rights-based argument for a healthful environment has its benefits, they reiterate that it moves away from the ecocentric purpose. Yet again, the latter acknowledges that human rights law recognises environmental concerns and makes available for use practical systems to realise improved end results in safeguarding the environment.[193] In the same tune, Taylor (1998)[194] added that environmental human right can contribute in creating ecological awareness that will “foster the adoption of a new environmental ethic” despite being anthropocentric in nature.

It is submitted that the right to a clean and healthy environment is a phenomenon, which has slowly but surely gained recognition in the international arena because of the growing trend in environmental consciousness and development of human awareness over the past decades. This human right is interlinked to our environment because an ecosystem which is otherwise will affect all living organisms to the very root of their existence. Going back to basics, the right to a healthful environment actually relates to reasonable living conditions for the survival of God’s creatures in the universe because it encompasses fresh air to breathe, safe and clean drinking water, sufficient nutritious food, proper homes for shelter and adequate sanitation facilities for the sustenance of all biota, and preservation of human dignity and sanity. Without securing and maintaining a healthful environment for present and future generations to come, mankind will drastically be deprived from enjoying the fundamental human rights that make life worth living. Protection of the environment is, therefore, crucial in various respects and the concerted efforts of all nations, government agencies, NGOs, companies and individuals globally is a matter of urgency for ensuring human well-being and a better life on this Earth. All these can be achieved if this human right to a healthful environment is given priority and explicitly enshrined in the constitutions of the world, making it a constituional right fortified with effective legal enforcement. Constitutional protection of the right to a healthful environment will not only function as

[189] B. Devall and G. Sessions, *Deep Ecology*, (Gibbs Smith, 1985).
[190] Taylor, note 113, p 351.
[191] Ibid. Note 141, p 14.
[192] MacDonald, note 111, p 216.
[193] Ibid., p 217.
[194] Taylor, note 113, p 311.

the prime legal instrument for any country, but will also be the beacon of hope for the entire human race to embrace a healthier and greener future.