



The Need to Identify the Right to a Healthy Environment under Constitutional Reforms

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1 INTRODUCTION

The emergence of a new generation of human rights, known as ecological/environmental rights has become a focal point of interest among the global community. “Environment” means the natural, cultural and social systems, economic and human activities and their components and the interactions and interrelationships between these components (Belbase, 2009). Freedom of living in a clean and healthy environment is an essential realization of human rights norms. Every individual has a right to enjoy the highest attainable standard of the living environment.

There are two types of environmental rights identified by countries, i.e. substantive and procedural environmental rights. The right to a clean and quality environment is a substantive ecological right, whereas the right to participate in environmental decisions and right to environmental information are procedural ecological rights. Even though more than ninety (90) countries have guaranteed substantive ecological protection, only around thirty-fourty (30-40) countries have recognized procedural rights (Daly, 2012). Thus substantive and procedural environmental rights are being identified for the sake of protecting natural and environmental heritage. These environmental rights are still in the process of development and are being shaped and moulded in international as

well as domestic socio-legal systems. A growing number of international human rights instruments have acknowledged that the right to live in a clean and healthy environment is a basic human right. Further, some national constitutions have set forth ecological rights of the people. According to Alan Boyle, in the absence of constitutionally protected environmental rights, many jurisdictions have allowed the liberal use of other constitutional rights and public interest litigation for environmental cases (Boyle, 2009).

Chapter III of the Sri Lankan Constitution has failed to give due recognition to any of the ecological rights. Therefore the main objectives of this paper are to recognize the recent environmental pollution and degradation incidents that adversely impacted the community and to evaluate the possibility of resolving such chaos by the inclusion of environmental rights into the Fundamental Rights chapter of the Sri Lankan Constitution in the light of other jurisdictions.

2 METHODOLOGY

This research study is solely based on a literature review with special reference to foreign jurisdictions in order to understand the significance of the right to a healthy environment for the citizens of



Sri Lanka. Therefore attention is drawn to a comparative analysis with some other jurisdictions. Reference is made to a huge collection of secondary sources such as published text books, local and foreign journal articles, recent international and local judgments with regard to the research issue and electronic based resources, on the following lines.

- Identification of the significance of the right to clean and healthy environment in the society
- Lack of provisions to address ecological rights in the existing Fundamental Rights Chapter under the Constitution of 1978.
- How the Sri Lankan Courts have identified the significance of the right to a healthy environment through judicial activism.
- Analyzing the paramount interest given to this right in the International documents and National legislations
- Whether improvements need to be in place for introduction of the ecological Fundamental Rights in Sri Lanka.

3 RESULTS AND DISCUSSION

Before globalization and industrialization, human desires were relatively narrow; therefore the drafters of the 1978 Constitution had focused only on civil and political rights and there was no paramount necessity of guaranteeing environmental rights. Since then, the standard of the global environment has degraded where a healthy environment is at stake. Environmental degradation such as deforestation, rising of temperatures, rising of sea level, climate change and depletion of ozone layer has become major issues to every nation. Due to the lack of Constitutional protectionism, ecological rights were protected through a process of judicial activism.

According to the opinion of the Supreme Court of Sri Lanka in the case of

Bulankulama and others v. Secretary, Ministry of Industrial Development and others (2000), “the principles set out in the Stockholm and Rio de Janeiro Declarations are not legally binding in the way in which an Act of our Parliament would be. It may be regarded merely as “soft law”. Nevertheless, as a Member of the United Nations, they could hardly be ignored by Sri Lanka. Moreover, they would, in my view, be binding if they have been either expressly enacted or become a part of the domestic law by adoption by the superior Courts of record and by the Supreme Court in particular, in their decisions” In this meticulous judgment, the Supreme Court endorsed that environmental rights held in common by all citizens can be vindicated through other provisions of the Constitution. Since this judgement, the right has been directly and indirectly accepted by the superior Courts of Sri Lanka, in a collection of recent reported cases. (*Heather Therese Mundy v Central Environmental Authority* (SC Appeal 58/2003))

The first international instrument to acknowledge the right to a healthy environment was the Universal Declaration of Human Rights (1948). International Covenant on Economic, Social, and Cultural Rights (1966) also set forth this right as a human right that should be protected. Outputs of the landmark environmental law conferences held in 1972 and in 1992, Stockholm Declaration and Rio Declaration, adopted the right to live in a healthy environment as a basic human right.

When it comes to national legislation, Portugal was the first country to guarantee that “*everyone shall possess the right to a healthy and ecologically balanced human living environment....*” (The Constitution of Portuguese Republic, 1976). Article 24 of the South African Constitution protects the Right to healthy environment of the present as well as future generations. Since 1976 the world had witnessed a rapid growth in the recognition of the right



to clean and healthy environment as a fundamental right. More than ninety five (95) countries in the world had specifically recognized ecological rights such as live in a clean and healthy environment, access to justice to environmental justice, participation in decision-making and access to environmental information. (Daly, 2012)

4 CONCLUSIONS AND RECOMMENDATIONS

The right to healthy environment is a universally accepted norm, which is guaranteed by the constitutions of civilized nations. Therefore, recognition of ecological rights under the Sri Lankan Constitution has become a well-timed requirement. The fundamental rights chapter of our Constitution is neither comprehensive nor up to date and it guarantees only a small number of rights. Due to the rapid improvement of the environmental education, the amount of Petitions filed in the superior Courts concerning environmental matters are dramatically increasing. Therefore, inclusion of the right to healthy environment as a fundamental right would be a significant milestone in the development of Constitutional rights in Sri Lanka, which would also create a bilateral benefit to both present and the generations yet unborn.

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