

# GREENING THE CHAPTER III OF THE CONSTITUTION OF SRI LANKA: A LEGAL PERSPECTIVE IN THE LIGHT OF RIGHT TO HEALTH

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## Abstract

‘Right to a clean and healthy environment’ is a predominant legal entitlement of the world nation and the protector of basic human rights including ‘Right to health.’ This is basically due to the fact that, there is interdependence between the rights. The paper emphasizes the importance of incorporating the ‘Right to clean and healthy environment’ as a fundamental right in the constitution of Sri Lanka. The recognition as a fundamental right gives the specific right an enforceability. This is an advantage to the public as they are granted with an opportunity to have access to the apex court of the country, at an infringement or an imminent infringement of their environmental rights. The methodology adopted in the paper is normative in nature which involves with a discussion of different jurisdictions in the world including India and European countries. The discussion further extends to the regional and international conventions in the world which emphasize the right to health and the necessity of protecting right to clean and healthy environment. The author has focussed on the international legal regime namely, the Stockholm declaration on the United Nations, Rio Declaration, International

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Covenant on Social, Cultural and Economic Rights 1966, Convention of the Rights of the Child to analyse how the interdependency between the right to clean and healthy environment and right to health is internationally recognized.

**Key Words:** Constitution, Environment, Health, International Conventions, Right,

## Introduction

Inclusion of a specific right in a Constitution of a country as a fundamental right is important owing to the reason that, such an inclusion gives that right a nature of enforceability. A specific right being granted with enforceability demarcates that, the right deserves the obedience of the community and at a violation the intervention of the judiciary is predominant. The chapter III of the Constitution of Sri Lanka is the place where the fundamental rights have been given protection. As per the Article 126 of the Constitution of Sri Lanka, Every citizen has an access to the Supreme Court and has a right to petition the court about an infringement or an imminent infringement of a fundamental right.

‘Right to a clean and healthy environment’ is generally recognized as a social right which is not enforceable in nature. Sri Lanka with its advancements in technology and industries currently confront the dilemma of environmental degradation, and the trends of

development have been given the prominence over the matters of environmental protection. This paper predominantly focuses on the importance of incorporating the 'Right to clean and healthy environment' in the constitution of Sri Lanka as a fundamental right which is enforceable nature and further a deep emphasis has been positioned on the significance of the Right to health. 'Right to health' is protected through the protection which is given to the 'Right to clean and healthy environment'. There is interdependence between these two rights. The paper justifies the recognition of right to clean and healthy environment as an enforceable right which facilitates people to vindicate their right related to health.

## **Methodology**

Methodology is normative in nature and involved with a documentary analysis. The paper further involved with a case study. The data has been gathered from texts, journal papers, International and regional instruments of law namely International Covenant on Social and Economic Rights 1966, International Covenant on civil and political Rights 1966, Convention on the Rights of the child, African Charter of Human Rights and American Convention on the rights of the people dealing with human rights and environmental rights.

## **Results and Discussion**

### **Constitutionalizing the 'Right to a Clean and Healthy Environment'**

'Constitution of the Democratic Socialist Republic of Sri Lanka 1978' is the parent law of the country and the fountain of rights entitled to by the citizens. Chapter III

of the constitution has recognized the civil and political liberties of the people which are enforceable in nature. Chapter VI of the constitution is enshrined with the 'principles of state policy' which provide the government with proper guidance. If a fundamental right included in the chapter III of the constitution is breached, the citizens have an access to the judiciary to vindicate the right. 'Right to environment' has not been accepted as an enforceable legal entitlement of the citizens of Sri Lanka. It is evident that, right to environment is a constitutionalized fundamental right in majority of jurisdictions in the world. The importance of incorporating Right to environment as a fundamental right is felt to the developing countries as they have faced the challenge of 'Sustainable Development'.

'Sustainable Development' balances the aspects of development and industrialization with the environmental concerns. Thus, Sustainable Development and Right to environment are depicted as two sides of the same coin.

'Right to environment' does not totally stand to a surrounding to live in. People need a 'clean and healthy' environment to live. As per the contention of the Stockholm Declaration 'All humans are in need of a quality environment to live in'. South Asian countries namely India, Pakistan and Bangladesh have recognized 'Right to a clean and healthy environment' as a component of Right to life, which implies the fact that, Humans are incapable of surviving, without the support of the quality environment. 'Right to clean and healthy environment' gives birth to basic human rights. 'Right to a clean and healthy environment' is interconnected with the human life and incorporating as a fundamental right to the constitution

protects a bundle of rights which is naturally entitled by humans.

## **Right to a clean and Healthy Environment protects the Right to Health**

Article 12 of the International Covenant on Social and Economic Rights 1966 and Article 24 of the Convention on the Rights of the Child 1989; have given

International recognition to Right to health. Right to health is a basic human right. In Buddhism, 'Health' is considered as the 'great profit' in human life; '*arogya parama laabha*'. 'Healthiness' is of a significant purview. It includes disease resistance and wellbeing of humans physically and mentally. Man interacts with the environment, and human health is basically determined by the environment he/ she lives in. A quality environment provides a good health. The physical, chemical and biological changes in the environment bring repercussions on human health. Improvement of health in a community is effected by both natural and man-made environments. It is evident, that positivity in an environment affects the human health in an optimistic manner. When the environment degrades, human health is at a stake.

## **An international Case study: Indian and European Perspectives.**

Decisions of the cases before Indian judiciary and the European Court of Human Rights clearly depict the judicial perspective on the Right to a clean and healthy environment and Right to health. India has asserted the fact; Industrial Pollution results in the water, soil and air pollution. The industrial pollution in India has aggravated to the extent that,

agricultural chemicals in the environment affected the safest food for infants; breast milk. Breast milk contents have shown high concentration of DDT contamination. Female workforce in India is under the threat of reproductive incapacity (infertility) and foetal damage, as consequences of industrial pollution. Female workers in asbestos sheets and balloon making industries expose to the threat of infertility due to the fumes such as chromium, and mercury which are emitted. In *Ajith Mehta v. State of Rajasthan (1990)*, Rajasthan court confirmed the order of removing a fodder business due to the health hazards. As per the contention of the Indian Judiciary, the environment is contaminated with chemicals which cause diseases such as allergies, and damages to the vital organs such as eye, brain, liver, kidneys, genetic disorders and carcinogenic diseases.

Water pollution is a violation of 'Right to a clean and healthy environment'. It has caused mercury poisoning, chronic accumulation in the human brain and nervous system. In *Tartar v. Romania (2009)*, the European court of Human Rights held that the release of cyanide contaminated water by the gold mines as gravely affecting the human health. Skin damages, liver damages are caused by the arsenic poisoning. In *Guerra and Others v. Italy (1998)*, European Court of Human Rights confronted a case in which hundreds of people were hospitalized due to the arsenic poisoning by fertilizer producing chemical factories.

The diseases affecting lungs, eyes, throat including cancers and respiratory disorders are caused due to the polluted air in the environment. In *Madhavi v. Thilakan (1989)*, Indian judiciary identified the impact of automobile workshops which

result in health hazards. The European Court of Human Rights held in *Giacomelli v. Italy*(2006), that harmful emissions from the plants which have been established for the treatment of hazardous wastes are gravely affecting the human health. *Union Carbide Corporation v. Union of India* (1992), it was discovered that, gas emissions affect the generations of humans and the impacts are long lasting. The repercussions of gas emissions are severe in nature. There are damages to the genetic intelligence, foetal damages, gas related ailments of the children and lacking immunization to fight against infections, bacteria, and viruses. *Lopez Ostra v. Spain* (1994), it was the opinion of the European Court, that the plants treating leather industrial wastes emit gases which create grave health problems such as nausea, vomiting, anorexia. Thus, both the Indian and European legal perspective is that, violation of Right to clean and healthy environment amounts to the violation of Right to health of humans.

### **The context in Sri Lanka**

The context in Sri Lanka is the same as India and Europe. Sri Lanka does not have a large land mass as in India and not reached the zenith of development as the European countries, but confront the dilemma of environmental issues. There is industrial pollution in Sri Lanka which has not remedied.

In Sri Lanka, Air pollution has caused numerous health problems to the people in urban areas and suburbs. The particle pollution is of imperative concern among the scientists. The air pollutants Carbon monoxides, Sulphur Oxides, Nitrogen Oxides, lead contain in air cause serious health problems. The health problems which are caused by the air pollutants depend on the factors such as the amount

of the pollutant exposed to, duration and the frequency of exposure, toxicity of the specific pollutant. The air pollution Sri Lanka is coexisted with the health problems such as communicable diseases, vector borne diseases, malnutrition and poor sanitation. In Sri Lanka, the air pollution is mainly caused by the vehicle emissions. As the vehicle emissions result in a higher degree of outdoor air pollution, the National Policy on urban air quality management was adopted in year 2000. The indoor air pollution is an environmental issue which creates serious health problems. The indoor air pollutants are predominantly seen in the urban areas. The substances such as varnish, paints, polymers, incense sticks, and mosquito coils mainly cause the indoor air pollution. The disease conditions such as nausea, vomiting, dizziness, and respiratory disorders are caused by the indoor air pollutants. In *Keanagama Enterprises Ltd v. E.A.Abeysinghe and eleven others* (1994), it was held that, the quarry blasting with dust pollute the air in a great deal, resulting cancer and respiratory disorders.

‘Water pollution’ is another severe problem in Sri Lanka. Pollutants in the water cause changes in the water quality. In Sri Lanka, majority of complaints have been lodged by the victims of chronic kidney disease and diarrhoea. The water sources in Sri Lanka are contaminated with the pollutants and metals. Arsenic and cadmium concentrations in the water involve in the creation of victims of chronic kidney disease which is fatal in nature.

The cases in relation to ‘Public nuisance’ are reported from the urban areas of the island. The main problem which is confronted by the urban people is the dumping of garbage. In *M.M. Khalid and*

*three others v. Chairman, Sri Jayawardenapurakotte urban council (1996)*, it was held that, the disposal of waste in residential areas resulted in the aftermath of unhygiene, mosquito and insect breeding with vector borne diseases. 'Soil pollution' is one of the repercussions of the disposal of waste. The materials containing polythene, plastics and the fertilizers intermixed with Benzene, Chromium pollute the soil resources in Sri Lanka with serious health problems such as Cholera, skin infections, Dysentery. Noise pollution in urban areas has caused severe health issues such as brain inactivity.

### **International Law on Right to Health and Environment**

Stockholm Declaration of the United Nations Conference on the Environment, 1972, in Principle 1 specifies 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 wellbeing'.

The Stockholm Declaration is apparently an important international instrument as it depicts the product of the first International Conference on human environment in 1972. In this event, the 'health' was given an epithet as a 'bridge' between environmental protection and human rights. The resolution 45/94, of the general assembly stated that 'all individuals are entitled to live in an environment adequate for health and wellbeing. In an essence, the Stockholm declaration and the related instruments emphasized that the environmental protection is prerequisite to the protection of internationally recognized and guaranteed human rights. In addition to

the Stockholm declaration adopted in 1972, the Rio Declaration on Environment and Development adopted by the Conference of Rio de Janeiro on Environment and Development in 1992 has participated in the protection of environmental and human rights.

Rio Declaration has contributed in the development of environmental and human rights in a different way. The approach adopted was procedural in nature. The principle 10 of the declaration states, that 'access to information, public participation and access to effective judicial and administrative proceedings, including redress and remedy, should be guaranteed because environmental issues are best handled with the participation of all concerned citizens, at the relevant level'. The procedural advancements are directed towards the environmental decision making and enforcement. What is believed in this international instrument is that, the handling of environmental issues can be handled with the participation of all citizens. The principle 14 of the Rio Convention stipulates that, 'the cooperation among the states is essential to discourage or prevent the relocation or transfer to other states of any activities and substances which are harmful to human health'.

Current international, regional and domestic legislations have adopted the Right to environment as a fundamental component of law and recognized that the basic human rights including right to life and right to health. The link which has been created between the environmental protection and right to health is not completely based on human rights jurisprudence. The link is further explained by the theories of criminal justice, and civil justice which keeps a considerable

importance on the private liability of the people.

Majority of the international instruments are dealt with the protection of the right to health and emphasized the importance of the environment to humans. International Covenant on Economic, Social and Cultural Rights (1966), in Article 7b states that, every person has a right to safe and healthy working conditions. Further the Article 10 specifically states the right of children and young persons to have freedom from work which are harmful in nature. Article 12 of the covenant emphatically states the right to health as an essential entitlement to a human and also it encompasses the necessity for the governments to pay attention to the 'environmental and industrial hygiene'. The environmental and industrial hygiene is extended to the steps for prevention of epidemic, endemic and occupational diseases. This impliedly denotes the fact that, Right to environment is a precondition to assert the health rights of the people.

The universal rights which are entitled by the children are enshrined in the Convention of the rights of the child 1989. 'Right to health' is prominent among the rights which have been recognized by the Convention of the rights of the children. Article 24 of the convention is predominantly dealt with the combating against diseases and malnutrition, and further insisted that it includes the provision of adequate food and drinking water while concerning about the dangers and risks of the environmental pollution. Article 24 addresses the importance of educating the segments of the society on environmental hygiene. The articles which are enshrined in the Convention of the Rights of the children clearly depict that, there is a link between the environmental

hygiene and the rights of children which have been universally recognized. The Children are capable of enjoying their rights only if the government authorities ensure that they are gifted with an environment which is clean and safe.

ILO Convention No: 169 concerning Indigenous and Tribal Peoples in Independent Countries 1989 is an international instrument which asserts the environmental rights of the indigenous people. The principles which have been declared by the ILO Convention have a valuable application to the Sri Lankan context as Sri Lanka is blessed with indigenous communities. The convention specifically addresses land issues which related to the natural resources.

As a regional instrument on human rights, African Charter on Human and People's rights 1991 guarantees the right to health and right to environment. Article 16 of the African Charter states that, 'every individual has a right to enjoy the best attainable state of physical and mental health'. Simultaneously, Article 24 upholds that, the 'people have a right to a general satisfactory environment which is favourable to their development'. This clearness is further adopted by the American Convention on Human Rights (additional protocol). There is a clear recognition to both rights pertaining to health and environment. As per the article 10 of the convention, every person is entitled to the right to health, encompassing the mental, physical and social wellbeing. According to the American Convention, the right to health is a public good. Under the right, the convention has recognized criteria such as primary health care, extension of the benefits of health services to all who subjected to the state jurisdiction,

immunization against infectious diseases, prevention and the treatment of endemic, occupational and other diseases, educating the people on prevention and treatment of health problems and satisfying the health needs of the vulnerable groups. Article 11 deals with the right of the people to environment.

## **Conclusion**

The concepts of environmental protection and development resemble the two sides of a coin. There must be a balance between the environmental protection and trends of development which finally leads to the 'sustainable development'. In Sri Lanka, the trends of development have been given prominence than keeping a weight age on the environmental issues. This has caused negative impacts on the basic human rights of the people such as right to life, right to health, right to water etc. There is a direct and clear relationship between the right to a clean and healthy environment and right to health. 'Right to health' is dependent on the Right to a clean and healthy environment. That implies the fact that, it is essential to give a value to 'Right to a clean and healthy environment' in the constitution of the country. The Republican Constitution of Sri Lanka is the parent law of the country and chapter III of the Constitution is endowed with the fundamental rights. The recognition of right to a clean and healthy environment as a fundamental right gives the former an enforceability. Thus, the people whose basic rights have been violated due to the improper environment have the access to the apex court of the country. The problem of environmental degradation is not an issue pertaining to the Sri Lankan context only. The issue is common to all the people around the world.

The Indian judiciary and the European court of justice have clearly elaborated the pollution centred issues in relation to the environment. In Sri Lanka, air, and water pollution is at the zenith and seriously causing hazards to the health of human beings. The international conventions related to the environment namely the Stockholm Declaration and Rio Convention have prioritized the link between the man and environment. The international instruments such as International Covenant on Social, Economic and Cultural Rights 1966, and the Convention of the Rights of the child 1989 have specified the link which exists between the right to health and right to a clean and healthy environment. The regional legal regimes namely the African Charter on Human and People's rights and American Convention on Human Rights give separate, individualistic recognitions to the right to health and right to a clean and healthy environment. The American Convention identifies right to health as a 'public good'.

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