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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE CONSTITUTIONAL RIGHT TO A HEALTHY ENVIRONMENT**

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## **Abstract:**

The Right to a healthy environment is the core of the Right to life. It is in many ways connected to the Right to clean drinking water and the right to health. It also prevents humans from damaging flora and fauna. This right has been recognized and advocated by the United Nations and was accepted as a global human right at Stockholm Conference also known as Magna Carta of human environment. It provides a much-required basis for environmental protection to environmental activists. Also, this linked with environmental protection with sustainable development. The Right to a clean environment has been adopted by the Indian Constitution under Article 21. The will of the Constitution to provide a clean and safe living environment is expressed in many acts.

## **Keywords**

Stockholm Conference, sustainable development, Magna Carta of human environment, clean environment, Indian Constitution

## **Introduction**

To understand the essence of the right to a healthy environment and guide us in analyzing the selected cases for this thesis, this will present the various definitions of the right to a healthy environment. These definitions will be connected with the scope and standards of a healthy, clean and sustainable environment which is relevant to the research questions if States comply with its duty to enforce and how national courts effectively protect the right a healthy environment.



## **Definitions and underpinnings of the right to a healthy environment**

There is no common description of the so-called ‘right to a healthy environment’ in the literature. The right to a healthy environment has been used interchangeably with the right to a clean and healthy environment, or the right to a safe, clean, healthy and sustainable environment, or the right to a safe and healthy environment, or the right to an adequate environment, or the human right to environment. For purposes of this thesis, these different terms will be understood in the same sense as referring to the ‘right to a healthy environment’.

While there is no agreement on a uniform meaning of this right, one author relates it with the concept of ‘environmental sustainability’, which signifies, to create and maintain conditions under which humans and nature can exist in productive harmony, ensuring a certain standard of environmental requirements to be met for the enjoyment of present and future generations. Another description elucidates the right to a healthy environment as belonging to the third generation of rights; differentiating it from the first generation of rights, i.e., civil and political rights, and to the second level which refers to social, economic and cultural rights. Similar with the first and second level of rights, the third generation of rights may be claimed against the State. Other authors explicate that the right incorporates both human and environmental aspects. For the human element, this includes individual and collective rights.

The UN Human Rights Council recognizes the right to a safe, clean, healthy and sustainable environment as a human right, that “human rights and the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation and development, among others.” The 2007 Malé Declaration on the Human Dimension of Climate Change refer to this right, as “the right to an environment capable of supporting human society and the full enjoyment of human rights”. Another author considers the right to a healthy environment as a fundamental right to life, representing the right of every citizen ‘to expect to live one’s life in a healthy, clean, unpolluted environment.’ It includes the corresponding duty to prevent harmful effects to the environment and the responsibility to eliminate the consequences of such harmful effects.

In the international level, the most distinguished manifestation of the right to a healthy environment



is Principle 1 of the Stockholm Declaration, "[m]an 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." The UN Declaration on the Rights of Indigenous Peoples likewise enunciates in Article 29, "indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories or resources."

At the regional level, the right to a healthy environment has also been recognized in various legal texts. First, in the African Charter, Article 24 states: "All peoples shall have the right to a general satisfactory environment favourable to their development." Article 38 of the Arab Charter on Human Rights recognizes that "every person has the right to a healthy environment. In Europe, the right is likewise acknowledged in Article 1 of the Aarhus Convention, "every person of present and future generations to live in an environment adequate to his or her health and well-being." Article 11 of the San Salvador Protocol states that "everyone shall have the right to live in a healthy environment." Significantly, in 2017, the Inter-American Court of Human Rights (IACHR) interpreted this article as (i.) protecting not only individuals, but also the right of collectivities (such as future generations) to a healthy environment, and (ii.) holding states responsible for cross-border violations of such rights. Escazú Agreement, "each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right".

Despite the legal recognition of the right to a healthy environment in the national, regional and international level, it remains to be given the status of a right in customary international law.

### **Countries with right to a healthy environment**

According to a 2019 UN Report, 156 States legally recognize the right to a safe, clean, healthy and sustainable environment, either in their constitutions or legislations.

The right is also explicitly included in regional treaties, i.e., the African Charter on Human and Peoples Rights, with 54 State-parties; the Aarhus Convention, with 46 State-parties; the San Salvador Protocol, with 16 State-parties; the Arab Charter on Human Rights, 16 State parties; and the Escazú Agreement in Latin America and the Caribbean, with 16 State parties. Ten States have also adopted

the non-binding Declaration on Human Rights of the ASEAN. The diversity of States recognizing the right vary from their geographical origin (Africa, Middle East, Western and Eastern Europe, Latin America, Asia and Oceania), their legal system (common law, civil law, Islamic law countries) or cultural tradition (presence of indigenous peoples, traditional societies or not).

## **The scope of the right to a clean, healthy and sustainable environment**

Similar to the lack of a universal definition on the right to a healthy environment, varied interpretations and illustrations are explained in the literature on what constitute a decent, healthy, or viable environment.

According to Cullet, two requirements are necessary, first, the preservation of life essential for the continued existence of humans, and second, the conditions of such life vital for a decent quality of life.

Hayward suggests that a 'right to an environment adequate for (human) health and well-being' has the following elements:

- 1) freedom from pollution, environmental degradation, and activities that adversely affect the environment, or threaten life, health, livelihood, well-being or sustainable development;
- 2) protection and preservation of the air, soil, water, sea-ice, flora and fauna and the essential processes and areas necessary to maintain biological diversity and ecosystems;
- 3) the highest attainable standard of health;
- 4) safe and healthy food, water, and working environment;
- 5) adequate housing, land tenure, and living conditions in a secure, healthy, and ecologically sound environment;
- 6) ecologically sound access to nature and the conservation and sustainable use of nature and natural resources;
- 7) preservation of unique sites;
- 8) enjoyment of traditional life and subsistence for indigenous peoples.

Other authors construe the right to a healthy environment with its aims and connection with the right to life and the right to health. Accordingly, they posit that the right to a healthy environment protects the right to life and the right to clean air, water, and food, which are all vital to the quality of life and human health, and important for the enjoyment and exercise of human rights. Another author adds, the concept of sustainability integrates the principles of the right to a healthy environment.

The interrelatedness of human rights and the right to environment was also elucidated by Judge Weeramantry in his separate opinion in the *Gabčíkovo-Nagymaros* case:

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

For the United Nations, it characterizes the right to a healthy environment with procedural and substantive elements. “The substantive elements include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements include access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.”

## **Obligations, the right to a healthy environment**

### **Duties of States**

The right to a healthy environment require from States positive and negative obligations. As a human right, the right to a clean and healthy environment entails the duty to respect, protect, promote and fulfil. “The obligation to respect requires the State to refrain from interfering directly or indirectly with the enjoyment of the right. The obligation to protect requires the State to prevent third parties such as corporations, from interfering in any way with the enjoyment of the right. The obligation to fulfil requires the State to adopt the necessary legislative, administrative and judicial measures to achieve the realization of the right.” The obligation to promote requires the State to ensure that individuals are able to exercise the right by promoting tolerance, raising awareness and creating institutions or

facilities to strengthen the enforcement of this right.

The UN Human Rights Council also released the human rights obligations relating to the environment, known as the Framework Principles on Human Rights and the Environment. The principles identify the basic obligations of States under human rights law pertaining to the enjoyment of a safe, clean, healthy and sustainable environment.

They are not new obligations but apply existing human rights obligations in an environmental context. While these principles require governments to comply with its legal standards, its effective application would depend on nation-states.

McClymonds advances an international perspective on this right to a healthy environment, citing the principles of intergenerational equity, the precautionary principle, and the principle of sustainable development. The principle of intergenerational equity imposes five obligations on the present generation: 1) a "duty to conserve resources," 2) a "duty to ensure equitable use" of resources,' 3) a "duty to avoid adverse impacts" upon resources, 4) a "duty to prevent disasters, minimize damage and provide emergency assistance," and 5) a "duty to compensate for" environmental harm[s].<sup>55</sup>In addition, the standards include obligations between States, such as the duty of equitable use of shared resources, the duty to prevent transboundary pollution, the responsibility to notify of transboundary harm, the obligation to incorporate environmental concerns into development policies, and the ban on hostile use of environmental modification.

### **Duties of private actors**

All persons, natural and juridical, local or foreign, are accountable for violations of the right to a healthy environment. They have the duty to refrain from activities that would result in intolerable levels of environmental risk.<sup>58</sup>At the same time, when environmental damage occurs, they have the duty to restore the environment and compensate the victims.

In the OECD Principles on Business and Human Rights, corporations have the direct obligation to respect human rights, which includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm and to address such impacts when they occur.



Under the UN Guiding Principles on Business and Human Rights, “businesses have a responsibility to avoid environmental and social impacts where they operate, regardless of their size or industry, and to address any impact that occurs; and, when environmental and/or social impacts occur, both governments and businesses have the duty/responsibility to support victims to access effective remedies through judicial and non-judicial grievance mechanisms.”

## Conclusion

The notion that the right to a healthy environment has no universal definition provides ample latitude for its interpretation. This can be crucial to either the applicants or the judiciary, as a restrictive or exact meaning will be limiting to the exercise and application of the right.

The standards of a healthy environment are important elements to consider on how a healthy environment can be achieved. These standards provide a set of guideposts which may be relevant in interpreting the State and/or private actor’s infringement of the right. In the same way, this is equally significant to ascertain the demands of environmental or social environmental justice are met.

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