Upholding the Right to Healthy Environment through Judicial Interpretation of the Right to Life

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The late twentieth century has experienced an unprecedented increase in legal claims for human rights and the environment. The correlation between the two subjects became apparent following the Stockholm Conference of 1972. The Stockholm Conference laid the foundation for the interconnectedness between protecting the environment and realizing the protected human rights in national and international human rights instruments. This is because it has since become obvious that environmental pollution can infringe on protected rights such as the right to life, the right to peaceful enjoyment of property, and the right to privacy, to mention but a view. Therefore, any attempt to ensure the protection of the environment will invariable and enhances the realization of basic human rights. Consequently, human rights have become a legal weapon in a claim to environmental protection through judicial interpretation and expansion of the existing human rights provisions in national and international human rights instruments. Although various fundamental rights have been interpreted to encompass the protection of the
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environment, this paper is limited in its scope to the concept of the right to life. Examining the two most important questions has been the purpose of discussion throughout this paper. First is the degree of willingness of the Court to adopt an extensive interpretation of the right to life to protect the environment. The other is whether the courts expand traditional human rights principles. In answering these questions, this paper looks into the courts' approach through case law for proper evaluation of the right to life in protecting the environment. Likewise, the paper adopts a doctrinal legal research method. The doctrinal legal method is issues-based and involves analysis of laws and conceptual clarifications of fundamental issues depending on the objective and purpose of a research work. Therefore, within the objective of this paper, the doctrinal research method is employed in analyzing the right to a healthy environment and the judicial approach to using the right to life in preventing environmental pollution and enhancing a healthy environment.

A. Introduction

Principle 1 of the Stockholm Declaration established a foundation for linking human rights, health, and environmental protection. Therefore, measures to protect the environment may be employed to protect human rights. In this circumstance, a claim for environmental protection may be an analogy to a claim for a human rights violation. Protecting the environment through the instrumentality of human rights serves two main purposes. First, it assesses the prospective for environmental protection through the protection of substantive human rights. That is, rights embedded in human rights instruments, both nationally and internationally. Secondly, it helps to give a synopsis of how the concepts of these rights relate to environmental protection. The lists of rights considered in this paper are not exhaustive, but limited only to the right to life, which appears to be the most favoured right that has frequently

5 Ibid.
been used in quest for environmental justice and protection. International and regional instruments on human rights such as the African Charter on Human and Peoples’ Rights, the American Declaration of Human Rights, the European Convention on Human Rights and rights provided in a national constitution of a state were drafted at a time when the protection of the environment was not in contemplation. Hence, they do not provide explicit provisions for the protection of the environment. However, there are no provisions in those instruments that limited their application and relevance to the time when they are made. Thus, in response to the dictate of time and empirical evidences, the need to frame the protection of environment under the purview of human rights became obvious. It is against this background that this paper examines how the right to life may be invoked in protecting the environment.

The novelty of this research will make a significant contribution to determining the imperative of the right to life in the pursuit of the right to healthy environment. On this note, this paper is divided into five parts and this introduction that set the tone of the paper is the first part. The second part examines the concept of the right to healthy environment with a view to underscore what the concept denote within the discourse of environment and human right. The third part examines the concept of the right to life both the narrow and broader perspective. The forth part examines judicial approach to the interpretation of the right to life in the context of the right to healthy environment. The last part is the conclusion.

B. Discussion

1. Unblocking The Concept Of The Right To A Healthful Environment

The issue of what constitute environmental rights has continued to be a subject of debates between human rights activists and environmentalists. The problem is not that of providing a working definition for the concept but one of agreeing to it. In addition, there has been a discrepancy as to whether the concept of environmental rights is for the benefit of mankind only or includes other ecological species. Therefore, a brief analysis of these two issues becomes paramount in order to ascertain which part of the environment should be accorded a right status.

   a. Definitional Problems

   Definitional problems are not unexpected in any effort to hypothesize the scope and content of environmental rights. The question however to ask is, should environment be accorded a right status? Or does an environmental issue possess the necessary criterion/criteria to qualify as a human rights? If this question is resolved affirmatively, the next question is why definitional problems to environmental rights or does it even necessary to give environmental rights a qualitative and substantive definition?

   With respect to the first, Alston has recommended a list of criteria probably appropriate to determining whether the claim meets the requirements of human rights. Alston argued that the proposed concept should among other things have a high level of consensus at the international level and must be able to asserting enforceable rights. Some authors, Alfredsson

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6 La Vina A.G.M., “The Right to a Sound Environment in the Philippines: The Significance of the Minor Oposa Case” (1994) 3(4) RECIEL, 246-252
8 Ibid.
and Alexander have recommended two stages of analysis in their definitions/his definition. That is, studying human rights from the origin of their source or on the premise of their nature and substance. The first has to do with the question: from where do we get human rights? The second has to do with the question: what kind of an interest should be considered as human rights? In this respect, it has been contended that for an interest to be accorded a right, it must, among other things, be of essential social importance, globally recognised, and it must be compatible with the existing human rights.

There are indeed more in environmental issues than the requirements stated by Alston and other authors to accord it a right protection. Since 1972, when the first conference on environment was held at Stockholm, environmental issues have grown sporadically and enjoyed universal recognition and acceptance even than any other aspects of international law which call for its human rights approach. The universal aspiration is indeed evident in the preamble to the Stockholm Declaration. If the assertions that environmental degradation poses negative impacts on the enjoyment of basic rights are true, then there is nothing inconsistent bringing environmental protection under the purview of human rights.

It is therefore contended that looking at the damage caused to the environment by human activities, the need to frame an environmental issue under the scope of human rights becomes necessary in order to control activities of the major actors involved in environmental destruction which have resultant effects on the enjoyment of basic human rights. It can be argued as well from another perspective that if matters like the right to die (Euthanasia), abortion, and same-sex marriage with no universal agreement can be accorded a right of protection in some jurisdictions what becomes of environmental issues which have over the years gain a wide spread recognition and acceptance. In this respect, the case of environmental protection should not be an exception.

The next question is the problem of definition or put differently, does it even necessary to provide a working definition for environmental right or how possible is it to delimit the scope and content of environmental rights? A complete definition of environmental rights must be able to encompass all the essential elements of what constitute environment. The word environment is a difficult word to define. If environmental protection exists only to promote human goods, a qualitative definition of environmental rights in this respect would be limited to the advantage of mankind. However, if environmental protection exists both for the benefit of mankind and non-human species, any qualitative definition of environment should be wide enough to embrace both mankind and non-human species. A cursory look at the existing literatures suggests that the term environment suffers from universal definition as various phrases have been used to explain the term. Therefore, this lack of universal definition of what environment is raises the question of which part of the environment is to be protected.

On this note, what connotes a satisfactory, decent, viable or healthy environment suffers from ambiguity and cultural relativism and lacks the universal notion usually attached to be

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14 See the Stockholm Declaration, 1972
16 Patricia Birnie, Alan Boyle and Catherine Redgwell, International Law and the Environment, Oxford University Press, 2009, 268-270
intrinsic in human rights. A survey of the existing constitutional and human rights instruments reveals that series of adjectives are given to the word environment in order to delimit what are actually being protected. Various adjectives such as clean, healthy, viable, decent, ecologically balanced, satisfactory, sustainable environment, environment free from contamination or suitable for the development of persons are envisaged in the various human rights instruments.

Merrills on this notes opined that to say that there are improper ways of ascertaining or depicting environmental rights is not to reject that such rights does exist. This suggests that to say that there are no universal agreements as to what constitute environmental rights is not to say that there is no such concept. On this note, Alan Boyle argued that environmental rights are not capable of an exact definition because domestic legal systems differ greatly in the extent to which they give priority to environmental protection. He maintained that the concept of environmental rights can best be tackled in the milieu of particular societies and of their distinctive legal systems. Robin Churchill sees environmental rights as general rights to a decent environment. He, however, did not provide or attempt to provide an operational definition of what a decent environment connotes. Douglass-Scott maintained that because of the difficult task that arises when trying to define the scope of environmental rights, it is preferable, according to him, to discard such notion and concentrate on procedural or participatory rights which may help in future to figure out substantive environmental rights in its qualitative contexts. Redgwell’s position was that delimiting the scope of environmental rights is needless so long that strategies designed to protect humans can also protect flora, fauna and other ecological species. Anderson’s view is sound, positive and persuasive when he said that the question of what environmental rights entail is basically no more than a jurisprudential discourse. According to him, the notion of human rights and environment has become widely acknowledged; therefore, defining its content and scope is uncalled for. One found reasoning in the view of Anderson. This is because the problem of defining the scope of environmental rights is not unexpected. First, failure to give the environment a qualitative definition would not defeat the existence of such concept as many terms are bound to suffer from indeterminacy. Also, the issue of definition may not even be necessary because the concept of human rights itself is yet to receive a universal acceptable definition. On this note, it is better to adopt the alternative approach as suggested by Kiss and Shelton. An alternative proposed by Kiss and

24 See for example, article 24 of the African Charter on Human Peoples’ Rights; article 7(b) of the International Covenant on Economic, Social and Cultural Rights 1966; article 24 of the Convention on the Rights of the Child; article 2, 6, 7, and 15 of the ILO Convention Concerning Indigenous and Tribes Peoples in Independent.
27 ibid
29 ibid
Shelton is to disregard the anxiety of defining environmental rights in abstract terms but to let the courts discover their own constructions as they have done for several other human rights.  

It is very obvious from the above discussions that virtually all writers avoid the problem of defining the scope of environmental rights. This is not due to lack of ideas but because of the problems of indeterminacy, variability and relativity that the concept is bound to suffer or encounter. However, one thing is clear; there is to some extent a general acceptance of the concept of environmental rights, but the problem has always been agreeing to its qualitative contents. Therefore, it is better to assume given that human rights are subject to the adaptation of changes in time and of a peculiar situation, the issue of what environmental rights depict be left to the interpretations as it will continue to be provided by the courts.

b. The Problem of Right Holder

If human rights in relation to the environment are to exist, the next question is identifying the rights-holders. That is, do environmental rights exist only for the benefit of mankind or extend to include other species? This, indeed, has generated an intense debate between environmentalists and human rights activists. Environmental concepts are frequently classified into two cerebral camps. Those that are considered anthropocentric or “human centre” in thought and those regarded bio centric or “life centre.” 29 This categorization has been termed in other vocabulary or slogan as “Shallow ecology” versus “deep ecology” or “technocentrism” versus “ecocentrism.” 30 Anthropocentric approach centres primarily on the adverse effects that environmental pollution and destruction have on mankind in which non-human beings are less regarded. 31 Critics of anthropocentrism are of the notion that other creatures are not to be seen as resources to be exploited for human purposes. A perception the critics argued is responsible for the decades of environmental destruction. 32

In contrast to anthropocentrism, ecocentrism claims that mankind has an obligation to protect and conserve non-human species. 33 Thus, it is the view of ecocentrism that humans are morally bound to safeguard and protect the environment as well as individual creatures and species towards ensuring their prudent use. 34 In this context, ecocentrics picture humans and other components of the natural environment, both living and non-living, as constituents of a single moral and ecological population. 35

By the 1960s and 70s, as scientists’ knowledge of the sources and effects of environmental degradation was becoming more complicated, there was indeed a growing and rising demands among scientists, scholars and activists concerning the planet’s capacity to


34 Ibid.

35 Ibid.
curtail the debris of human economic activities and indeed, to sustain human life.\textsuperscript{36} This concern prompted a debate as to whether rights can be extended to non-human species or remains exclusively for human benefits.\textsuperscript{37} Therefore, the question whether environmental rights exist only for the benefit of mankind or include non-human nature can be drawn by a brief examination of the legal frameworks on environmental law.

Looking at the present progress, it does appear that the existing instruments has given much attention to the natural ecosystems of the environment.\textsuperscript{38} For instance, the Stockholm Declaration places a great emphasis on the necessity to protect the natural eco-system for the benefit of the living generations and the generations to come. It saddles mankind with the responsibility to manage and safeguard the heritage of wildlife and its habitant.\textsuperscript{39} The World Charter for Nature adopted ten years after the Stockholm Conference requires in its principle that the eco-system and organisms as well as the land, marine and atmosphere resources used by mankind should be administered to attain a sustainable and favourable output and not in a way as to imperil the uprightness of other ecosystem(s) that co-exist(s) with man.\textsuperscript{40}

Furthermore, the Convention on International Trade in Endangered Species also prescribes regulations with regard to trade in specified species of both plants and animals. It places certain restrictions on regulating trading in plant and animal species through a permit system.\textsuperscript{41} The Biodiversity Convention which was concluded at the 1992 Rio Earth Summit explicitly addressed the need for the conservation and protection of the total variety of life found on Earth, and further expanded the scope of the International Convention on Trade in Endangered Species to include other species as a whole.\textsuperscript{42} In addition, the Convention on Wetlands of International Importance Especially Water Fowls Habitat simply called Ramsar Convention was the first global multilateral convention to regulate the conservation of a particular type of habitat namely, wetlands as opposed to the conventions on wildlife protection.\textsuperscript{43} It regulates both the protection of wetlands areas and wildlife.\textsuperscript{44}

It should be noted that though the International Environmental Law as a whole has been criticized by environmentalists as anthropocentric in focus.\textsuperscript{45} However, looking at the arrays of conventions examined above, it may by way of response to the critics that the contemporary international law recognizes the fundamental value of the environment and other ecological units. It has been noted that under the existing legal order, the fundamental value of the ecological units is incorporated with a belief that human beings cannot exist without conserving it. A change in perception attributed to wildlife from human hunting to human responsibility to preserve such species from extinction has been one of the most noteworthy recent developments in wildlife law. This swing in perception is perhaps greatly manifested by the shift in focus from viewpoint of resources for human consumption to resource exists for human protection.


\textsuperscript{38} See the preamble to the Stockholm Declaration 1972.

\textsuperscript{40} See article 2, 3 and 4 of the World Charter for Nature 1982.

\textsuperscript{41} See generally the provision of article II of the Convention on International Trade in Endangered Species 1973.

\textsuperscript{42} See article 6, 7 and 8 of the Biodiversity Convention 1992.

\textsuperscript{43} See article 1 of the Ramsar Convention 1971.

\textsuperscript{44} Ibid.

In summary, it is very obvious that environmental rights as envisaged in the modern day of environmental law is not for the benefit of man alone but also incorporate other species whose maintenance and conservation largely depend on human beings and this is evidence from the specific conventions examined above. Therefore, there is a positive duty imposed on man to ensure the continued existence of such species.

C. Right To Life In Narrow And Broad Perspectives

This aspect asks the question as to the precise scope and context of the right to life in order to know from which angle the protection of the environment relates. The international conventions which protect the right to life give no explicit definition or guidance on what it encompasses nor does the national constitution attempt to offer an operational definition of right to life. They refer simply to the right to life or the right of respect for life without more. For instance, the Universal Declaration provides that “everyone has the right to life, liberty and security of the person.”\(^{46}\) The International Covenant on Civil and Political Right adds that “every human being has the inherent right to life…..No one shall be arbitrarily deprived of his life.”\(^{47}\) The American Convention states, “every person has the right to have his life respected.”\(^{48}\) The African Charter also provides in explicit terms that “human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”\(^{49}\) The Nigerian Constitution also states: “everyone has a right to life, and no one shall be deprived intentionally of his life...”\(^{50}\)

None of the above instruments explained further what constitutes to unlawful deprivation of right. Therefore, the existing human rights instruments do not offer guidance as to what the right to life fully entails in scope and context. That is, they do not provide for list of situations that may amount to unlawful deprivation of life. Perhaps, right to life is the most fundamental of all human rights. It is perhaps the ground norm for all other rights.\(^{51}\) It has universally been acknowledged the fact that the degradation of the environment affects and usually endangers human life.\(^{52}\) However, despite the acknowledgement, the mere expression that environmental degradation affects the enjoyment of human rights does not depict the full correlation between right to life and the environment. Thus, it requires a detailed understanding of the precise concept of the right to life in this perspective. In view of this, it is crucial to draw a dichotomy between right to life in its narrow or strict sense and right to life in its wider or broad sense and to see from which perspective environmental protection fits.

Traditionally, the right to life is designed to typically protect ‘physical life’ and prohibit deliberate killing. Conversely, it has been contended that this description is too restrictive to depict the qualitative content of what the right to life entails.\(^{53}\) This may be obviously true if

\(^{46}\) See article 3 of the Universal Declaration of Human Rights 1948  
\(^{47}\) See article 6(1) of the International Covenant on Civil and Political Rights 1966  
\(^{48}\) See article 4 of the American Convention on Human Rights 1969  
\(^{49}\) See article 4 of the African Charter on Human and Peoples Rights 1981  
\(^{50}\) See section 33(1) of the Constitution of Federal Republic of Nigeria 1999 [as amended in 2011]  
we anticipate what is needed to uplift the existence or quality of life itself. Question may be asked as to whether the simple fact of survival as against death is the complete scope of the protection of the right to life. The relationship between the environment and the right to life from restrictive angle will thus be limited to protection against the physical death. Therefore, it demands additional analysis in order to appraise and evaluate the efficacy of the right to life in shielding the environment. A mere metaphorical statement that environmental damage endangers life is not sufficient. The vital question in this circumstance is whether the level of damage is such that hypothesizes any threat to human life in contravention of the right to life.

Thus, under the restrictive approach, the right to life primarily appears limited to the safety of individual against the physical death.\(^{54}\) In the opinion of one author, the notion of the right to life entails no more than deprivation of the physical life except where such deprivation is specifically authorized by law.\(^{55}\) For this reason, to assert environmental protection through the right to life in the narrow sense will pose difficulties because it requires “physical death.” However, in cases of environmental disaster, which often results into loss of lives, the right to life can easily be invoked where the cause of action is attributable to the State or corporate bodies.\(^{56}\) This is evident from Bhopal disaster in India. Thus, whether the right to life is looked at from a restrictive or extensive standpoint, it does impose positive duties on states to avert conditions that endanger life. That is, State should not by itself engineer such environmental destruction and must as well stop non-state actors from doing same. From a wider perspective, the right to life implies more than physical death and it entails everything likely to threaten or pose danger to the enjoyment of life.\(^{57}\) This suggests that the right to life does not only relate to physical existence, but also includes the quality and condition that guaranteed such existence.\(^{58}\) Commenting on the need to expand the existing human rights provisions to encompass environmental protection, NukhetYilma said\(^{59}\):

> “Human rights conventions, either regional or universal, are of great importance since they constitute a fundamental basis for the inclusion of rights into constitutions as well as for the proper implementation and application of them at the national level. Therefore the expansion of fundamental rights listed in these documents, through either the adoption of new protocols or the addition of new provisions to the present documents to include new rights which have emerged as a response to the latest developments and needs in societies, is of great value to all human beings.”

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\(^{56}\) This will not covered situation where the disaster is caused by natural occurrence.


This above reasoning has led to the emergence of innovative concepts such as the “right to survive as a species,” “the right to livelihood,” and “the right to quality of life.”60 In some jurisdictions, the right to life has been interpreted to include the right to a pollution-free environment and anything that can imperil life and public health.61 Also, the right to life has been given a definition to encompass the right to food, the right to clothing, the right to shelter, the right to health and the right to clean atmosphere and unpolluted environment.62 Therefore, environmental protection enjoins more flavour from the components of the right to life if construed in its wider sense to include anything likely to affect the enjoyment of life. It is on this premise that the right to life plays a fundamental role in the protection of the environment.

D. Analysis Of Judicial Decisions

Courts, both at the international and domestic levels, are more and more being asked to examine the correlation between the degradation of the environment and the enjoyment of the right to life. In some situations, the complaints instituted have not been based upon a particular right to a safe and clean environment but upon right to life. Judicial responses demonstrate a number of benefits of employing one or more of the rights-based approaches to the problems associated with the environment. At the domestic level, some constitutions of states now contain express provisions establishing the right to a safe and healthy environment.63 The main argument in favour of such a right is that it raises the entire field of environmental matters as an essential value of society to a level equivalent to other rights and enjoins priority over an ordinary legislation. In the absence of express provisions on the right to environment in the constitution, other rights predominantly the right to life has been invoked to protect the environment. The discussion here presents how the right to life has been interpreted by courts at various jurisdictions to protect the environment and prevent activities likely to affect the enjoyment of basic rights without formal inclusion of environmental rights in the constitution.

In jurisdictions like India, the right to life has been broadly interpreted to ensure the protection of the environment. India has by far generated the leading jurisdiction in the jurisprudence of the constitutional right to life in the protection of the environment. In spite of other provisions linking to health and environment, Article 21 of Indian Constitution is frequently invoked to protect and conserve environmental resources. The Article states, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Procedurally, the majority of cases under relating to the protection of the environment are brought in the Supreme Court by virtue of Article 32 which grants standing on to sue directly in the Indian Supreme Court for violations of constitutional rights. Indian courts have interpreted the scope of the constitutional right to life expansively, as forbidding all actions of both State and citizens that can harm the environmental balance. The courts have found violations of the right to life in a variety of factual contexts. For instance, in the case of T. DamodharRao v. Municipal Corp., Hyderabad, the Court found that a city’s failure to protect an area designated as recreational space from residential development violated the right to life.

63See for example, the Constitution of Angola, Argentina, Belarus, Belgium, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Ecuador, Finland, Georgia, Ghana, Hungary, India, Mexico, Niger, Namibia, Portugal, Russia, Romania, Sao Tome, Saudi Arabia, Slovakia, Ukraine, Zambia.
The issue before the Court was whether the Life Insurance Corporation of India and the Income-Tax Department of Hyderabad could legally use land owned by them in a recreational zone within the city limits of Hyderabad for residential purposes contrary to the city’s development plan. The city’s development plan restricted land use in certain areas, and the area in question had been designated for recreational use, not residential use. The Court held that the Hyderabad development plan prohibited respondents from using the land for any purpose except recreational uses. It also found that the state government is under an obligation to implement and enforce the development plan. The Court stated that Article 21:

Embraces the protection and preservation of nature’s gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Art. 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Art. 21 of the Constitution.  It therefore becomes the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance. In this case, the very purpose of preparing and publishing the developmental plan is to maintain such an environmental balance.

In the case of Charan Lal Sahu v Union of India, the issue was whether the escape of harmful substance from the “MIC Storage tank at the Bhopal plant”, which has resulted into death of about 3,000 people and caused injuries to numerous people, constitutes a breach of the right to life guaranteed under article 21 of the Constitution. The Supreme Court of India in its affirmative judgment held that the right to life under article 21 of the Indian Constitution has been breached because the escape of harmful substance has endangered human existence. It was further held that the right to life includes the right to a healthy environment and right to enjoy a polluted-free air and water. Similarly, in the case of Subash Kumar v State of Bihar, the Supreme Court of India interpreted the right to life to include the right of access to unpolluted water. Furthermore, in the case of Kirloskar Bros Ltd v ESI Corporation, the Indian Supreme Court went further and defined the phrase “right to life” guaranteed in the Constitution to include the “right to livelihood”, “clean and conducive working environment”, “improve standard of living”, and “eradication of any acts likely to cause illness and bodily injuries to a person”. Also, in the case of Murli S. Deora v. Union of India &Ors the issue for determination before the Supreme Court of Indian was whether smoking in public places is a violation of the right to life? It was held that smoking in public places violates the right to life because it may affect the health of “non-smokers.” By this, the right to life was interpreted to include the right to live a “healthy life” and freedom from activities likely to affect health.

Similar trends have been followed in Bangladesh where the right to life has been interpreted in a wider perspective to ensure the protection of the environment and enhance environmental justice. For instance, in the case of Dr. M. Farooque v Bangladesh, the Appellate Court gave a wider interpretation to the right to life guaranteed under article 31 and

64 [1990] AIR SC 1480
66 [1996] 2 SCC 682. Similar view was held in State of Punjab v Ram Lubhaya Bagga[1998] 4 SCC 117
67 [2002] AIR SC 40
68 [1997] 49 Dhaka Law Report (AD), 1
32 of the Constitution to encompass the right to unpolluted food, air and water necessary to sustain human life. The Court remarked as follows:\textsuperscript{69}

Article 31 and 32 of our constitution protect right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life\textsuperscript{70}

The Supreme Court of Pakistan has played a significant role in this respect. In the case of General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewara, Jhelum v The Director, Industries and Mineral Development,\textsuperscript{71} the Court considered the extent of the application of the right to life contained in article 9 of the constitution. In this case, the petitioner sought to enforce the right of the residents to have clean and pollution-free water. They contended that if the miners were allowed to continue their activities, which were extended in the water catchment area, the watercourse, reservoir and the pipelines would be contaminated. The Court held in favour of the petitioners and said that if the water becomes contaminated, it would cause serious threats to human existence and the public would be under serious threats. The Court gave a broad meaning to the word life and stated that:

The word ‘life’…cannot be restricted to a vegetative life or mere anima existence. In hilly area where access to water is scarce, difficult or limited, the right to have water free from pollution and contamination is a right to life itself. This does not mean persons residing in another part of the country where water is in abundance, does not have such right. The right to have unpolluted water is the right to every person wherever he lives.\textsuperscript{72}

Equally worthy of mention is the only Nigerian case of JohnahGbemre v Shell Petroleum Development Company of Nigeria Limited.\textsuperscript{73} The Federal High Court held that gas flaring is a violation of the right to life assured in section 33(1) of the Constitution of Federal Republic of Nigeria and article 4, 16 and 24 of the “African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.”\textsuperscript{74} By this, the Court interpreted the right to life to include the right to free and unpolluted air. In Nepal, the Supreme Court of Nepal has held in the case of Leaders, Inc. v. Godawari Marble Industries,\textsuperscript{75} that the right to life includes the “right to a clean and healthy environment” and “the right to unpolluted water”. The Pakistani Supreme Court in the case of In re: Human Rights Case (Environmental Pollution in Balochistan)\textsuperscript{76} initiated by itself a proceeding against industries attempting to dump radioactive wastes in a coastal area. Invoking the constitutional right to life, the Court held that the dumping would result into environmental pollution and hazard and that it would constitute a threat to health and human existence. The right to life has also been held to be violated where the State fails to observe its positive obligation to ensure that the activities within its jurisdiction do not result into environmental degradation and human rights abuse. In Indian Council for Enviro-


\textsuperscript{70}Ibid.

\textsuperscript{71}[1994] SCMR 2061

\textsuperscript{72}Ibid.

\textsuperscript{73}Suit No. FHC/CS/B/153/2005 [Unreported]

\textsuperscript{74}See the Constitution of the Federal Republic of Nigeria 1999 [as amended in 2011]; see also the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Laws of Federation of Nigeria 2004

\textsuperscript{75}Supreme Court Nepal, Oct. 31, 1995

\textsuperscript{76}Human Rights Case No. 31-K/92(Q) P.L.D. 1994 Supreme Court
Legal Action v Union of India,77 the Supreme Court held that the negligent of the national government in the regulation of toxic substances released by the industries into the environment violates citizens’ right to life. In this case, the petitioner filed this suit for remedy and injunction to stop pollution caused by numerous chemical industrial plants manufacturing highly toxic chemicals. Applying the constitutional right to life, the Court held that the national government had been in violation of the right to life of its citizens for its failure to ensure appropriate regulations and impose control measures on the industry emitting dangerous substance into the environment.

Decisions from regional human rights commission have supported the expansion of the right to life to foster environmental protection and enhance environmental justice. For instance, in the case of SERAC v Federal Republic of Nigeria,78 the “African Commission of Human Rights” interpreted the right to life to include the right to survive and freedom from activities likely to affect survival.79 In EHP v Canada,80 a group of Canadian citizens brought an action under the International Covenant on Civil and Political Rights asserting that the storage of radioactive wastes near their homes threatened the right to life of the present and future generations in the area. The Human Rights Committee, while acknowledging that the case raised serious issues with regard to the obligation of the states parties to protect human life, declares that the application is inadmissible for non-exhaustion of domestic remedies. Here, what the author intends to establish is the acknowledgment by the Human Right Committee that such a case can be brought under the purview of human right life. In Yanomani v Brazil,81 the Inter-American Commission established a link between environmental quality and the right to life in response to a petition brought on behalf of the Yanomani Indians of Brazil. The petition claimed that the government had violated the American Declaration of the Rights and Duties of Man by constructing a highway through Yanomani territory and authorizing exploitation of the territory’s resources. These actions led to the infiltration of non-indigenous who brought contagious diseases, which remained untreated due to lack of medical care. The Commission found that the act of the government had violated the Yanomani right to life, liberty and personal security guaranteed by Article 1 of the Declaration, as well as the right of residence and movement and the right to the preservation of health and well-being.

Apart from the decisions that established the indispensability of the right to life and environment, the views of some human rights bodies support the linkages. For instance, Klaus Toepfer, Executive Director of the United Nations Environment Programme, mirrored this approach in his statement at the 57th session of the Commission on Human Rights.82 He said:

Human rights cannot be secured in a degraded or polluted environment. The fundamental right to life is threatened by soil degradation and deforestation and

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77 [1996] 3 SCC 212
78 Communication 155/96, Case No. ACHPR/COMM/A044/1. This case was filed by a non-governmental organizations, that is, CERAC (Centre for Economic Rights Action) and Environmental Rights Action on behalf of the Ogoni people and Niger Delta as a whole. The case of the petitioners was that the Nigeria Government has violated the rights of the people of Niger Delta and Ogoni in particular for its failure to regulate and control the activities of oil and gas industries operating in the region. The petitioners also asked the Commission to declare that the activities of the oil and gas industries in the Niger Delta has violated the right to life of the people due to degradation of the environment that has led to destruction of “environmental quality” upon which the people rely for survival. The Commission found in favour of the petitioners and held that the right to life of the people of Ogoni and the Niger Delta as a whole has been violated by oil and gas activities.
79 See also Shehla Zia and Others v WAPDA [1994] PLD, 693 where the Pakistani Supreme Court also held that the right to life include the right not to be exposed to harmful substance capable of affecting life or existence.
80 Communication No. 67/1980, EHP v Canada, selected decisions of the Human Rights Committee (1990), 20
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 recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well.\(^3\)

The International-American Commission on Human Rights has the authority to study the human rights situation generally or in regards to specific issue with a member state of the OAS. In three recently published studies, the commission devoted particular attention to environment, health and human rights. In regards to Ecuador, the Commission was responding to a claim that oil exploitation activities were contaminating the water, air and soil, thereby causing the people of the region to become sick and to have a greatly increased risk of serious illness.\(^4\) The commission emphasized the right to life and physical security stating that:

> The realisation of the right to life, and to physical security and integrity is necessary related to and in some ways dependent upon one physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the forgoing rights are implicated.\(^5\)

Thus, states Parties at various levels are required to take positive measures to safeguard the fundamental rights to life and physical integrity, in particular to prevent the risk of severe environmental pollution that could threaten human life. The examined cases showed that the right to life offer lots of promises in the quest for environmental protection. Courts at various jurisdictions have been creative and imaginative in their interpretation to read into the right to life, the right to safe, clean and healthy environment. By expansive interpretation of the right to life, new rights such as right to clean and unpolluted air, right to safe and clean water have emerged. Since virtually all states include the right to life as one of the protected rights in their constitutions, it could therefore be employed in the protection of the environment. Thus, constitutional provisions which define the substitutive rights of citizens create affirmative role in this regard. This contention is premised on the fact that the constitution of a state is more than an organic act creating government department and authorities; it guarantees its subjects fundamental rights such as the right to life, the right to property and numerous others. Owing to the growing environmental consciousness recently, the environment has acquired greater priority, which has prompted all courts throughout the world to interpret progressively the near-provision of the right to life as embodying the right to a healthy environment in which to live that life. As these cases illustrate, the right to life can be a powerful instrument for the environmental protection. Frequently, the right to life has proved in most cases to be the sole basis for a court’s decision to widen protection or avert damage to the environmental resource. When a nation does not have an articulate constitutional right to a healthy environment and in the absence of ample environmental legal and regulatory systems (or inadequate remedies under those systems), the constitutional right to life becomes all the more important. The provisions of the right to life in most countries around the world are considerably alike to those in the

\(^3\)Ibid.

\(^4\) Report on Ecuador, v. The commission first became aware of problems in this region of the country when a petition was filed on behalf of the indigenous Huaraorani people in 1990. The commission decided that the situation was not restricted to the Huaorani and thus should be treated within the framework of the general country report.

\(^5\) Ibid.
constitutions of nations that have expansive jurisprudence interpreting the meaning and scope of those provisions. Hence, the logic, basis and motivation relied upon by the courts of these other jurisdictions could present persuasive influence for similarly extensive constructions of the right to life in other jurisdictions.

E. Conclusion

The construction of the rights encompassed both in the international human rights documents and the constitution of a state is of importance to respond to cases of environmental pollution within the framework of human rights. The Court’s tactic in this perspective regarding environmental protection has been analyzed through judicial decisions. Consequently, it is obvious that interpretation as a legal instrument gains a significant priority since it contributes to the continuous expansion of the list of the fundamental rights in the abovementioned instruments. When looking at the history of the human rights, it is not hidden that some rights which were not explicitly foreseen by the drafters of the constitution of a state and international conventions on human rights were created by the judiciary as so called “sub rights” through the process of interpretation. This movement can be observed in the light of the judgments of almost all human rights bodies. Therefore, environmental protection, as one of the latest global concern of humanity, has not been excluded from this development. The discussion further revealed that the Court has gone beyond the traditional concept of negative duty as far as the classical rights are concerned and there is no doubt that the Court is making a considerable contribution to the concept of environmental protection due to the wider interpretation of protected rights such as the right to life. This is more so that there is no provision in the international human rights instruments that limited their application to the time when they are made. It is thus suggested that victims of environmental pollution can utilize human rights provisions in curbing damaging activities threatening the quality of the environment. This is notwithstanding the fact that most of the national and international human rights instruments do not make express provisions for a right to healthy environment. However, the judicial survey of courts’ interpretation in an expansive way shows that the protected rights can go a long way in ensuring a healthy environment. This approach by the Court is what some authors refer to as judicial activism. The activism is demonstrated by the Court by interpreting the right to life to include the right to a healthy environment notwithstanding the fact that neither the Constitution nor the international human rights instruments contain express provision of the right to healthy environment.

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