

# AN EXAMINATION OF THE RIGHT TO A CLEAN, HEALTHY ENVIRONMENT, HUMAN RIGHTS AND THE CONSTITUTION

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## Abstract

*Examination of the right to a clean, healthy, and sustainable environment is widely regarded as a necessary precondition for the enjoyment of many long-established and universally recognised human rights, such as the right to life, the right to enjoy the highest attainable standard of physical and mental health, the right to an adequate standard of living, the right to sufficient food, the right to housing, the right to safe drinking water and sanitation, the right to education, the right to freedom of expression, and the right to freedom of association. These rights are*

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## Introduction

There are many long-established and universally recognised human rights, some of which include the right to life, the right to enjoy the highest attainable standard of physical and mental health, the right to an adequate standard of living, the right to sufficient food, the right to housing, the right to safe drinking water and sanitation, and the right to participate in cultural life. A clean, healthy, and sustainable environment is widely regarded as a necessary precondition for the enjoyment of many of these rights. These rights include the right to life, the right to The infliction of harmful effects on the environment or damage to its physical state makes it more difficult to exercise these and other human rights. Despite the widespread agreement that human rights and a healthy environment are inextricably linked, there is still no universal understanding about the specific legal role of the environment in the language of international human rights. The most important question right now is whether or not people have a separate individual human right to enjoy a clean, healthy, and sustainable environment, and whether or not the state has a commensurate responsibility of care to provide such an environment to individuals. In addition, a variety of non-governmental corporations, such as oil firms, automobile manufacturers, and other businesses, may have a duty of care that is analogous to the state's. Consideration of a clean, healthy, and sustainable environment as a necessary precondition for the enjoyment of traditional, long-recognized and established human rights is fundamentally distinct from the explicit recognition of a human right for each individual to be provided with a clean, healthy, and sustainable environment. This "greening" of already existent human rights has been going on for years, despite the fact that certain parts of the world have been more forward-thinking in this development than others. The recognition of the right to a healthy environment as a separate and independent individual human right is the only thing that might make this event genuinely revolutionary. A resolution on the human right to a clean,

healthy, and sustainable environment was just passed by the United Nations Human Rights Council (HRC), and it has the potential to be a "game changer." The next events, namely how the international community will react to this resolution, will determine whether or not the resolution is indeed capable of playing this function.

### **The Human Right to a Clean, Healthy and Sustainable Environment**

Let us begin by describing the resolution itself and then move on to some of the comments that have been received internationally. During the 48th session of the United Nations Human Rights Council (which took place from the 13th of September through the 8th of October of 2021), a resolution about the human right to a clean, healthy, and sustainable environment was approved on the very last day of the session. This resolution was drafted by a large coalition, and it has received official approval from the states of India.

"the right to a clean, healthy, and sustainable environment as a human right that is vital for the enjoyment of human rights" is recognised as part of this resolution. This fairly perplexing language demonstrates how challenging it was to have this right expressly recognised as an individual human right. After all, one would expect that the human right to a clean, healthy, and sustainable environment would be considered important both in and of itself, as well as for the enjoyment of other human rights, such as the right to life, an adequate standard of living, and so on; however, this is not what it says. One would expect that it would be considered important both for the enjoyment of other human rights, such as the right to life, and for the enjoyment of other human rights. The word "other" is noticeably absent from the phrase that comes at the very end of the sentence.

Other portions of the resolution also give the impression that they are trying to imply that the enjoyment of human rights is contingent upon the existence of a clean, healthy, and sustainable environment, but that there is no independent human right to the enjoyment of such an environment. For instance, the preamble recognises the significance of a clean, healthy, and sustainable environment by stating that it is "essential to the enjoyment of all human rights." In addition, two of the preambular paragraphs, as well as paragraphs 4(b) and (d) of the operative paragraphs, make reference to human rights obligations relating to the enjoyment of a clean, healthy, and sustainable environment. This is done rather than making reference to an obligation to simply guarantee the enjoyment of and respect for the human right to a clean, healthy, and sustainable environment itself.

In any case, despite the fact that the remainder of the resolution seems to imply that a healthy environment is a necessary precondition for the enjoyment of human rights that have already been acknowledged, it is indisputable that the first operative paragraph of the resolution begins with an explicit recognition of "the right to a clean, healthy, and sustainable environment as a human right" in and of itself. This cannot be disputed. The motion had forty-three votes in favour and four abstentions, thus resulting in its adoption (China, India, Japan, and the Russian Federation). There was not a single vote cast inside the Human Rights Council that was against the resolution.

### **Climate change impacts on human rights**

The Inuit Petition was the first concrete attempt to apply human rights legislation to climate change. It was submitted to the Inter-American Commission on Human Rights in 2005. In spite of being dismissed, the case was successful in giving climate change a "human face." It introduced the concept that climate change is not merely an abstract and intangible environmental phenomenon that "belongs squarely to the natural sciences,"

but rather, it is a human process with human causes and consequences for all of humanity. This was accomplished despite the fact that the case was dismissed. And this was the first time that climate challenges were presented as human rights issues, which resulted in a following hearing before the Inter-American Commission on Human and People's Rights on the topic of global warming and human rights in the Americas.

The momentum that was generated by the Inuit Petition was quickly seized upon by the government of the Maldives, which, in November 2007, called a Small Island States Conference in Malé to explore the connections between climate change and human rights. The Malé Declaration on the Human Dimension of Global Climate Change is the first international instrument to explicitly recognise said linkages. It makes the observation that 'climate change has clear and immediate implications for the full enjoyment of human rights.' This declaration is the result of the meeting that took place in Malé. The Declaration, on the other hand, did more than merely recognise the risks that climate change poses to internationally recognised human rights; it went on to call on the United Nations Human Rights Council to "address the issue as a matter of urgency." The next year, the Council did address the matter by adopting Resolution 7/23 on human rights and climate change. This resolution was passed at the end of the previous year. Resolution 7/23 of 2008 was the first United Nations resolution to state explicitly that climate change poses 'an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.' It was later followed by other resolutions where the same message was conveyed with even stronger wording. Resolution 7/23 was the first resolution to state explicitly that climate change poses 'an immediate and far-reaching threat to people and communities around the world and has implication for the full enjoyment of human rights In a similar vein, the connection between human rights and climate change started to make its way into climate change treaties such as the Cancun Agreements and the Paris Agreement slowly but surely over time.

## **Environmental Rights**

It is challenging to provide a comprehensive definition of environmental rights; however, it has been proposed that these rights include the rights to a healthy and clean environment, the right to the protection of the environment, the right to information, and the right to participate in decision-making. The international environmental law has acknowledged, for a very long time, that humans are a major contributor to the destruction of the environment. In light of this, environmental justice and international human rights groups are increasingly employing a strategy that is based on rights in order to combat global environmental destruction, environmental racism, and to conserve natural ecosystems and the planet for future generations. The right to a healthy environment necessitates the existence of a human habitat that is free of poisons and other dangers to human health, as well as water, air, and soil that are free of contamination. All of these things together make up the individual's immediate environment. The right to a clean and healthy environment is guaranteed by Article 39 of the Constitution of 1995, which states that everyone has the right to live in an environment that does not pose a risk to their health or well-being. This clause was articulated in the case of *Auto Garage v. Motokov*, which In accordance with the provisions of Article 245, paragraphs a, b, and c of the constitution, the legislative branch has the authority to enact laws that serve to protect and preserve the environment from abuse, pollution, and degradation, as well as to manage the environment and raise awareness about environmental issues. In accordance with the provisions of subsection (1) of section 45 of the Land Act, the state government is obligated to safeguard the natural lakes, rivers, ground water, natural ponds, streams, wetlands, forests, national parks, and any other land set aside for ecological and touristic purposes on behalf of the people of Rajasthan. This is done for the benefit of the state's populace as a whole.

## **Human Rights Act 2004**

The Human Rights Act 2004 is the piece of legislation in the ACT that ensures legislative protection of human rights. In all of Australia, the Australian Capital Territory (ACT) was the first jurisdiction to implement a legislative charter of human rights. In later years, comparable pieces of legislation were enacted, initially in Victoria with their Charter of Human Rights in 2006 (Vic), and then in Queensland with their Human Rights Act in 2019 (Qld). A national charter of human rights has never been established in Australia. A variety of civil and political rights, along with some economic, social, and cultural rights, are among those that are safeguarded under the Human Rights Act (ESC rights). The International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) are the primary sources from which these rights were derived (ICESCR). Individuals have the right to take legal action in the Supreme Court if public authorities fail to behave in a manner that is compatible with human rights as recognised in the Act. Public authorities are obligated to act in a manner that is consistent with human rights as recognised in the Act. 2 The Human Rights Act acknowledges that human rights may be subject to legitimate restrictions, so long as these limitations are able to be demonstrated to be justified in a society that is both free and democratic. 3 In addition, certain components of economic, social, and cultural rights can be realised right once, while other aspects of these rights must be gradually realised by the government over the course of time and are contingent on the resources that are readily accessible. A right to a healthy environment would give rise to a number of general responsibilities that would force the government to take urgent action in order to fulfil them, if it were to be included in the Human Rights Act. In addition, there would be a responsibility placed on the government to take further positive actions to strengthen the enjoyment of the right via the use of acceptable methods and within the constraints of the resources that are already available. Additionally, it would need that the government refrain from taking retrograde measures that would lessen the protection of the right. These components of the right would likewise be subject to limits that are deemed to be reasonable.

## **Climate Change**

The Australian Capital Territory (ACT) joined a large number of other cities, states, and territories across the world in declaring a state of climate emergency in May 2019, recognising the need for immediate action across all levels of government. The ACT Climate Change Strategy outlines the steps that the government wants to take to meet the problem of climate change. These steps include lowering greenhouse gas emissions and bolstering the territory's capacity to withstand the effects of climate change. In addition to these pledges, the government has formulated plans for the development of the Territory's planning and transportation systems, as well as for the improvement of living infrastructure and biodiversity. 6 The goal of "securing a liveable and healthy future for our community, for all species, and for future generations" lies at the heart of these agreements. Environment-related human rights are gaining prominence as a means of ensuring accountability of governments and companies for protecting the environment and preventing further degradation that would have an impact on human health and wellbeing in the context of the climate emergency. This is done as a means of ensuring accountability of governments and companies for protecting the environment.

## **Environment and Health**

The natural environment and ecosystems sustain humans and all other living creatures, which rely on the environment for food, clean air and water as well as raw materials and medicines. The environment and ecosystems also deliver essential services (such as pollination, soil fertility, pest control and erosion control) which may be irreplaceable if lost. The environment is a major underlying determinant of health and how we live. According to the World Health Organisation, environmental factors are responsible for almost a quarter of global burden of disease. India national preventive health strategies acknowledge the integral role of the environment – both the natural and built environments – in shaping the health and wellbeing of India. In the ACT, key actions in the Territory preventive health strategy focus on the promotion of active living and rely to a large extent on broader environmental factors such as safe and accessible urban spaces, nature and other amenities. It is within this context that the discussions on introducing a new right to a healthy environment in the ACT are taking place.

### **Right to a healthy environment**

There is a growing corpus of legislation at the national, regional, and international levels that acknowledges the inextricable connection between environmental protection and human rights. This is in conjunction with a movement that is taking place in a variety of nations toward the establishment of laws that expressly recognise the right of persons to live in an environment that is healthy, safe, and sustainable. The United Nations Human Rights Council passed a resolution in October 2021 that acknowledged the right to an environment that is secure, free of pollution, conducive to good health, and able to support life as a fundamental human right that is essential to the exercise of all other human rights. The resolution requests of the States, or the governments of each country, that they increase their capacity for the efforts to protect the environment and that they adopt policies for the enjoyment of the right to a secure, clean, healthy, and sustainable environment, including biodiversity and ecosystems. 16 Despite the fact that the resolution does not impose any legally enforceable responsibilities, it is an important declaration that may be used to shape the way that the Territory takes when contemplating incorporating a right to a healthy environment into the Human Rights Act.

### **Defining ‘environment’**

Both natural and built environments are factors in determining people’s health. Existing Territory legislation sets out a broad definition of ‘environment’ that incorporates both natural and built environments. The Environment Protection Act 1997 defines ‘environment’ as follows:

Environment means each of the following:

- (a) the components of the earth, including soil, the atmosphere and water;
- (b) any organic or inorganic matter and any living organism;
- (c) human made or modified structures and areas;
- (d) ecosystems and their constituent parts, including people and communities;
- (e) the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value, and amenity;
- (f) the interactions and interdependencies within and between the things mentioned in paragraphs (a) to (e);

(g) the social, aesthetic, cultural and economic conditions that affect, or are affected by, the things mentioned in paragraphs (a) to (e).<sup>23</sup>

For the purposes of this Discussion Paper, it will be assumed that in adopting a right to a healthy environment in the Human Rights Act, the term "environment" will be defined consistently with the definition in existing Territory laws. This will be done so in order to ensure that the right to a healthy environment can be effectively implemented.

### **A. Healthy Environment as a Precondition for Human Rights**

Klaus Toepfer, who once served as the executive director of the United Nations Environment Programme (UNEP), once articulated quite eloquently that "[h]uman rights cannot be guaranteed in a deteriorated or contaminated environment." <sup>10 5</sup> If what he says is true, then a broad variety of environmental dangers, one of which is climate change, put fundamental human rights at jeopardy. These rights include the right to life, as well as the right to enough food, housing, and cultural expression. According to this interpretation, the protection of the environment is a prerequisite to the actualization of human rights. Because of this, advocating for human rights may be understood as the process of drafting and enforcing laws that safeguard the environment. This concept of "environment as a human rights requirement" can be traced all the way back to the Stockholm Declaration, which was the first explicit acknowledgement in international law of the connections between the defence of human rights and environmental conservation. In the first principle of the Stockholm Declaration, it was stated that "Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." (Man possesses the fundamental right to freedom, equality, and adequate conditions of life.) This approach was supported by the General Assembly of the United Nations in the year 1990, when it issued a declaration stating that "a better and healthier environment may assist contribute to the full enjoyment of human rights by everyone." This "environment as precondition" concept has been developed in some detail by the Inter-American Court and Commission. This concept articulates the right to an environment of a quality that allows for the enjoyment of the human rights that are explicitly guaranteed in the American Declaration of the Rights of Man and the American Convention on Human Rights. This strategy places an emphasis on the premise that in order for human rights to exist, there must first and foremost be fundamental safeguards for the environment. The Commission came to the conclusion that human rights such as the right to health, life, and food cannot be exercised in an environment that is deteriorating, and they supported this position. The Commission, for example, stated in its Report on Ecuador that "[c]onditions of severe environmental pollution, which may cause serious physical illness, impairment, and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being." This was in reference to the fact that severe environmental pollution can cause serious physical illness, impairment, and suffering. <sup>109</sup> Similarly, in his separate opinion in the case concerning the Gabeikovo-Nagymaros, Judge Weeremantry referred to environmental protection as "a vital part of contemporary human rights doctrine." He called environmental protection "a sine qua non for numerous human rights," including the right to health and the right to life itself. He also stated that "damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments." This approach posits environmental protection as a form of human rights protection because it views environmental protection as an essential component of efforts to realise human rights more generally. In other words, this approach sees environmental protection as an essential component of efforts to realise human rights. The link of

environmental protection with the normative framework of human rights lends an extra layer of legitimacy to environmental preservation efforts.

As a consequence of this, environmental protection not only makes reference to the underlying normative values associated with human rights, but it also develops into an integral component of the legal obligations that states take on when they ratify multilateral and bilateral human rights agreements. This way of looking at things has a strong resonance with issues pertaining to environmental justice. The concept of non-discrimination and the right to equal treatment are two of the most fundamental tenets of human rights legislation. When environmental protection is viewed in the same light as the preservation of human rights, it becomes clear that assessing success in terms of aggregate statistics for the environment as a whole will not be sufficient. The human rights approach requires paying special attention to those demographics that are particularly susceptible to environmental harms (such as children, the elderly, and people with preexisting health conditions), in addition to those who are already struggling under an excessive amount of environmental stress. This "environment as precondition" approach is a method of thinking about the link between human rights and the environment that has a lot to offer as a way to approach the topic. However, the lessons that have been learned from sustainable development have repeatedly proven that it is not always feasible to avoid trade-offs and decisions between conflicting interests. These competing priorities include the priorities of advancing human rights and conserving the environment. Finding a happy medium between these opposing agendas is the primary obstacle that has to be overcome. For instance, what happens if a development project encourages one group of people to exercise their right to a means of subsistence and a place to live, but at the same time degrades the environment in a way that threatens other people's right to health in the near term or in the long term? Is the project in line with the gradual achievement of human rights or does it not? This is not a pointless exercise in supposition. On a regular basis, human rights tribunals are requested to resolve comparable contentious rights claims that contradict with one another. According to the findings of the European Court of Human Rights in *Lopez Ostra v. Spain*, the state is afforded certain latitude in determining how best to strike a fair balance between the human rights claim brought forth by an individual and the economic interests of the society as a whole. In that particular instance, the Court was tasked with striking a balance between an individual's stated right to privacy in the home, which is safeguarded by Article 8 of the European Convention, and the economic interests of the municipality in which she resided. Simply declaring that the protection of the environment is a prerequisite for human rights does not provide much in the way of direction or guidance for how such a balance might be achieved.

## Conclusion

Article 39 of the constitution states that everyone has the right to a clean and healthy environment. This fundamental human right is one that needs to be strictly enforced and put into practice, since it is a part of the constitution. The right is a component of other rights that together make up a framework of human rights that cannot be divided, and it also serves as a connection between the well-being of humans and various other pursuits. To guarantee that environmental rights are preserved and promoted as fundamental human rights, a variety of different measures, both national and international, are necessary to be taken at various levels. These rights are on par with other human rights; they can be exercised by the general public, and the state is obligated to protect them. In order to accomplish this goal, the current framework for human rights should be expanded in order to unambiguously provide for these rights and remedies, both of which deserve proper acknowledgment. If this right is taken away, it effectively nullifies all of the other rights guaranteed by the constitution.

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