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## **Need to Implement the Environmental Rights to Protect a Clean and Healthy Environment for Sustainability: A Case Study**

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**Abstract.** Malaysia is one of the environmentally rich and developing countries in the globe which is in fact, very attractive and charming to all. But her bounty has been degrading gradually due to environmental pollution and therefore, the people's rights are not maintained & ensured properly as guaranteed by their constitution which is also part of the environmental rights in the light of the international environmental laws.

Meanwhile, the Government of Malaysia passed some important environmental laws including 'the Environmental Quality Act 1974; the Environmental Quality Regulations 1989 and the Environmental Quality Order 1989 etc; along with the international environmental laws in order to keep the clean and healthy environment but not yet been properly done in compliance with the above laws. Consequently, sustainability may not be made possible. It may also affect the biodiversities in flora and fauna. Moreover, it

is observed that the existing legal mechanisms are not friendly with the environment and development due to absence of environmental governance including the insufficient environmental provisions, inadequate penal

provisions, lack of political commitment, lack of resources, unawareness, short term planning etc.

**Keywords:** (a) the Environmental Rights, b) the Clean and Healthy Environment and c) the Sustainability

### **1. Introduction**

The term 'environmental rights<sup>1</sup>' is a very vague and vast issue related to the concept of the environment.<sup>2</sup> The Environmental Science Dictionary defined the environmental rights as a right enjoyed by

all members of society that people can live and work in a healthy, safe and comfortable environment. It also

states that it includes the right of life and healthy, the right of property security and the right of comfortable

environment for living and working. The Environmental rights mean access to the unspoiled natural

resources that enable survival, including land, shelter, food, water and air. They also include more purely

ecological rights. In Friends of the Earth's includes the political rights as mentioned in the International

Covenant on the Economic, Social and Political Rights 1966 and of course the International Covenant on the

Civil and political Rights 1966. It is in fact a new idea in the history of legal systems of the world. Its

concept may be identified in the different religions. But we hardly forget the role of different religions

relating to a clean and healthy environment. There are many messages in this regard. It may be treated as the religious based rights. This idea is discovered in 1960s.<sup>3</sup> In the late 20th century, it observed that the environmental problems were acute that affects the economy. Consequently, the environmental rights began to grow fast. In 1970s, it is found that the European Commission of Human Rights<sup>4</sup> accepted the theme of environmental rights and recognized it as human rights.<sup>5</sup> With this inclusion, the human rights have been increasing and developing at home and abroad. There are many constraints towards the human rights and the environmental rights as well. The current pollution and damages of environment and lack of natural resources have been threatening the survival of human beings with an unprecedented degree. It needs to have the immediate solution for the freedom of the mankind for the purposes of making a beautiful world for our generations. It is a harmonious development based rights that promotes the sustainable development.<sup>6</sup> It has become a fundamental part of environmental law. It safeguards and facilitates the human rights.<sup>7</sup> It is hoped that the world leaders will work for the interest of the mankind irrespective of race, religion, colors, language, sex etc. The Environmental rights are the new human rights that everyone is born with and area also natural rights that cannot be deprived. It is treated as the 'should have rights' not as the practical or statutory rights.<sup>8</sup> It drives to produce the better conditions of life on the earth.<sup>9</sup> The environmental rights need time to its development. It needs immediately for legalization and institutionalization. In fact, an idea of environmental rights relating to the harmonious development between the human beings and nature confirms to the natural rules and the trend of development. We can create a better environment for the people to live and protect the interest of both current and future generations by obeying the natural rules and establishing the harmonious development simultaneously. We should not forget the WHO declaration made more than six decades ago that "enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being". The ancient people were very much obeyed with the nature and the natural law.<sup>10</sup> The environmental rights is also considered and based on the anthropocentrism and eco-centrism.<sup>11</sup> In the global context, it is found many international environmental initiatives<sup>12</sup> have been made to ensure the environmental al rights and protection. The Aarhus Convention<sup>13</sup> is the best initiative in this regard.

## **2. Definition of the Key Terms:**

There are three key terms in this work such as (a) the Environmental Rights, b) the Clean and Healthy Environment and c) the Sustainability.

### **3. An Explanation of the Environmental Rights**

It is a very vast issue as mentioned earlier to understand the environmental rights. Some of its meanings are discussed below:

*According to Cai:* 'The environmental rights as the basic rights and obligations enjoyed by the subjects

of legal relationships in environment that they rely on and survive.<sup>29</sup>

*According to Lu Zhongmei:* 'Environmental rights as the citizen's rights to survive and use resources in the

unpolluted and not destroyed environment.<sup>30</sup>'

*According to Chen:* 'Environmental rights as the basic rights the subjects of environmental legal relationship enjoy the appropriate environment for healthy living and use the environment and resources

rationally.<sup>31</sup>

*According to the Environmental Protection and Human Rights: Conceptual Aspects, J.G. Merrill's:* the study abridges the major problems in the research on environmental rights from five aspects such as the

definition of environmental rights, harmonious development with the nature and human beings, constitutional matters etc. The concept of anthropocentrism and the eco-centrism deal with the environmental rights. Their activities are based on the anthropocentrism.<sup>32</sup> Their activities may go against

the nature and can cause numerous environmental problems that may threaten the survival of human beings.

Some ecologists proposed the concept of eco-centrism.<sup>33</sup>

#### **4.1 Elements of the Environmental Rights**

There are some important elements dealt in the Aarhus Convention along with many international

environmental treaties.<sup>34</sup>

### **5. Other Relevant Considerations**

#### **5.1 Right to Harmonious Development with the Nature**

There is a close relationship between the nature and the human being. Human being is a part of nature

and created naturally. It is said in the Quran that '*human being is the best creation of all beings on the*

*earth.*' This relation has gone through a cycle based on the concept of anthropocentrism and eco-centrism.

The natural resources can only be rational utilizations and be judiciously utilized. The natural beings cannot

speak but feel the environment and its impacts.

### **6. The Environmental Rights and the Human Rights**

The Environmental procedural rights are linked with the human rights. Environmental rights such as the

access to information, right to healthy environment, public participation etc., are found in the international

and national human rights laws. It not only depends on the attitude of the State but also the civil society. The

environmental rights as mentioned in the international environmental laws may be justified in connection with the human rights perspective focusing the rights mentioned in the International Human Rights Legal Foundation such as the Magna Carta, 1215; the Petition of Rights, 1628 and the Bill of Rights, 1689; the Act of Settlement, 1701 etc.

## **7. Human Rights and Fundamental Rights**

It is noted that after 1948, most of the new States of the world accepted the human rights as their fundamental rights as enumerated in the Universal Declaration of Human Rights 1948. The fundamental rights are treated as the part of the human rights. Therefore, a close relation is prevailing between these two rights and ultimately, these two rights driving force of the environmental rights. The table 4 also examines these rights.

## **8. Some Constitutional Spirits**

We may start with the following statement: *‘All peoples shall have the right to a general satisfactory environment favorable to their development.’* - African Charter on Human and Peoples Rights, Art. 24.

The constitutions of more than seventy countries adopted or revised since 1970, either state the principle that an environment of a specified quality constitutes a human right or impose environmental duties upon the state. Art. 50 of the Constitution of the Ukraine, adopted 28 June 1996 is an example. It states that “every person has the right to a safe and healthy environment and to compensation for damage resulting from the violation of this right.” The other constitutions such as the Hungary, South Africa, Nicaragua, Korea, turkey refer to a decent, healthy environment. The Korean Constitution refers to a pleasant environment. The Peru, Philippines; Portugal refers to natural, clean, ecologically balanced environment. The Chile refers to safe environment or one free from contamination environment.

## **9. The Environmental Rights and the Principles of the International Environmental Laws**

There are principles underlined in the international environmental laws under the public international law which is very essential to the protection and sustainable development and environment of the globe. It should be truly understood. The principles of the International Environmental Laws are found in the relevant website.

## **10. Some Judicial Responses**

Some landmark judicial judgements are made in the subcontinent including Bangladesh and India to

protect the environmental rights in the form of public Interest Litigation. The list of case laws is attached in the appendix in this regard. Also some other judgements are also made in the other parts of the world to protect the interest of the society which has been made due to the pollution of the society as mentioned the causes earlier. The European Court plays an important role based on the article 10 of the European Convention on Human Rights. The case laws may be found in *the Bangladesh Environmental Lawyers Association, (BELA) Website.*

## **11. The Role of Civil Society**

It is observed that the aims and objectives of the civil society including the non Governmental Organizations, trade unions, manufacturers, individual members of the community etc., bear relevancy with the environmental development and conservation. Most of the cases, this society deals and likes to work with the human rights, environmental development, humanity, child rights, human culture and heritage etc. Their efforts and importance are recognized at home and abroad by the legislations. The significance of the NGOs is reflected in the emphasis on their role in recent treaties such as the Desertification Convention etc.

## **12. Report on the Case Study**

The Government of Malaysia passed several environmental laws and policies to protect the environment of Malaysia. But unfortunately, these laws are not implemented effectively due to several causes as mentioned in the abstract. It is concerned that there is no Environmental Courts in Malaysia which is quite unhealthy to the people of Malaysia. It needs to reform in the policy level in order to ensure environmental rights to all. The Government also approved some international initiatives which are really relevant but it regrets that the necessary measures such as the Information Act along with our recommendations in the international environmental laws are not properly implemented. A case study was done as mentioned in the abstract highlighting the indicators as follows:

**Some Key Indicators:** ERM=Environmental Remarks

1. *Clean and Healthy Environment in Malaysia* ER=Environmental Rights

1.1 Clean and Healthy Environment (60-100) %=Good HR=Human Rights

1.2 Partial Clean and Healthy Environment (50-60) %=Fair TR= Total Respondents

1.3 Not Clean and Healthy Environment (30-50) %= Unexpected

2. *Idea on Environmental Rights and Human Rights?* a) Yes, b) No

3. *Relationship between the Environmental Rights and Human Rights?* a) Yes, b) No.

**Tab 1:**

**SL Indicators**

**(30%-100%)**

**TR (60%-**

100%)

(50%-

60%)

(30%-

50%)

**ERM**

1. *Clean and Healthy*

*Environment*

50 10

(20%)

25

(50%)

15

(30%)

Fair

**Tab 2:**

**SL Indicators TR Yes No ERM**

1. *Any idea on ER &*

*HR*

50 20

(40%)

30

(60%)

Fair

**Tab 3:**

**SL Indicators TR Yes No ERM**

1. *Any relationships*

*between ER &HR*

50 45

(90%)

5

(10%)

Good

The Table 1 indicates that the 50% people think that they are enjoying the partial clean and healthy

environment in Malaysia. The only 20% people think that they have clean and healthy environment. The rest

of 30% people think that they don't have any clean and healthy environment in Malaysia. The Table 2 shows

that the 40% people have some any ideas on the Environmental Rights and the Human Rights and the rest of

the 60% people don't have any idea in this regard. The Table 3 indicates that the 90% people think that there

is a relationship between the Environmental Rights and the Human Rights and the rest of the 10% don't

think so. The Tab 4: An Interface with the Human Rights, Environmental Rights and Fundamental Rights or

the Constitutional Rights is showed here: ER=Environmental Rights recognized by the International

Environmental Law and Courts; HR= Human Rights recognized by the Universal Declaration of human

Rights 1948; FR/CR= Fundamental Rights/Constitutional Rights recognized by the Constitutions  
CR=Category of Rights.

### **SL CR List of Rights**

1. *ER* Basic Rights (Food, Clothing, Housing, Medical, Life, Association, Expression, Liberty, Equality, Health Decent Living, decent working Environment, Safe Environment, Healthy Environment, Harmony with the ,Access to Justice, Standard of Life Solidarity etc

2. *HR* Equal in dignity and rights, freedom of movement, right to life, liberty and security of person,

inhuman or degrading treatment or punishment, equal protection, no arbitrary arrest, detention or exile, freedom of thought, conscience and religion, freedom of opinion and expression freedom of peaceful assembly and association, Education, cultural life etc.

3. *FR*

Equality, protection of law, life and personal liberty, Freedom of movement, Freedom of association, Freedom of thought and conscience and of speech, Freedom of profession or occupation, Protection of home and correspondence

Free and compulsory education etc.

### **13. Recommendations**

Some recommendations may be made in the following two ways:

#### **13.1 Field Based Recommendations**

The following Recommendations are made based on the case studies: 1. To recycle the Environment; 2.

Better Enforcement of Laws; 3. To empower the Police Force; 4. Not to throw the rubbish in anywhere; 5.

To throw the wastage in a proper place; 6. To use the better Technology for maintaining cleanliness; 7. To

educate the Children and take them the practical lessons; 8. To enforce laws the laws in a proper manner; 9.

Not to use the plastics; 10. To improve the Police Force; 11. To stop the open burning; 12. To promote the

recycle efforts; 13. To take lesson on environmental rights; 14. To teach environment to the people a God

gifted; 15.To introduce the polluter pay principles; 16.Introduce the Environmental Courts o maintain the

Transparency and Accountability in the administration etc.

#### **13.2 Some General Recommendations**

1. Need to implement the principles as mentioned in the International Environmental Laws; 2. Need to

introduce the Environmental Courts in Malaysia; 3. Need to proper enforce of the existing environmental

laws and policies in Malaysia; 4. To empower the Police Force; 5. To implement the Municipal Laws and

Policies; 5. To implement the International Health Law Regulations, World Health Organization.

### **14. Conclusion**

From the above the study, it may be said that there are many laws on the environmental rights and

policies but hardly realized these rights. The existing laws and policies are not properly implemented due to

many causes such as lack of co-ordination, lack of enforcement of the laws and policies etc.

The above case

study finds the partial clean environment is prevailing in Malaysia. This situation needs to be improved by taking appropriate measures as mentioned in the abstract.

## 15. Acknowledgements

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## 16. References

- [1] The Environmental Rights means a set of rights dealing with the environment including the rights of flora and fauna. The Aarhus Convention in this regard is notable.
- [2] The concept of environment is found in many International Initiatives such as the Brundland Commission along with the different religious books such as the Holy Quran, the Hadith, the Ijma the Qias, the Gita, the Bible etc.
- [3] Chen Demin & Dong Zhengai, and found in the internet website: [www.sciencedirect.com](http://www.sciencedirect.com), accession on 5 October 2009.
- [4] The Convention for the Protection of Human Rights and Fundamental Freedoms and also see "ECHR".
- [5] Loc. cit.
- [6] Ibid. p.189-192.
- [7] <http://www.sciencedirect.com/science>, China Population, Resources and Environment, Vol: 18, Issues 1, January 2008, Pages 189-192, accession on 10.06.2009 at 11:47 AM.
- [8] Ibid.
- [9] Phillip Cullet., *Definition of Environmental Rights in a Human Rights Context*. Geneva: International Environmental Law Research Centre P. 1 and (<http://www.ielrc.org/content/a9502.pdf>).
- [10] A Chinese ancient scholar Guan Zhong believed that people who followed the principles of nature would be protected and helped by the nature.
- [11] *Anthropocentrism* is an idea based on the activities of the Human Beings on the earth.
- [12] The European Minister Conference 1973; the Universal Declaration of Human Rights 1948 etc.
- [13] The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, Done at Aarhus, Denmark, On 25 June 1998.
- [14] These organizations are the intergovernmental. There are some environmental provisions dealing with the environmental rights that may be discovered based on the critical studies.
- [15] To promote the welfare of the peoples of South Asia and to improve their quality of life to accelerate economic growth, social progress and cultural development in the region etc.
- [16] The Constitutions of India, Pakistan, Sri Lanka, South Africa, Nigeria etc.
- [17] S.N. Singh, *Environmental Psychology*. India: Pointer Publishers, 1997, p.1.
- [18] Pls see the Environmental Sciences, Social Sciences etc. Simon Ball & Stuart Bell, *Environmental Law (New Delhi: Universal Law Publishing Co.Pvt.Ltd, 1996), p.05*.
- [19] 'The Human Rights' term are described in the Universal Declaration of Human Rights 1948. The relation between the Human Rights and the Environmental Rights are showed in the interface Table 4.
- [20] Ann Doherty, Friends of the Earth International, *Our Environment, Our Rights standing up for people and the Planet*. . Amsterdam: Friends of the Earth International. 2004, p. 15.
- [21] The Principles and the Objectives of the Aarhus Convention 1998.
- [22] The Aarhus Convention 1998 deals with the above aspects.
- [23] <http://www.dalailama.com/page.79.htm>, accession on 10.09.09 at 3:19 PM.