

The Link between Right for Development, Right for Clean and Healthy Environment; and Essentiality of Including These Rights in National Constitution

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Abstract— *The United Nations Declaration of Human Rights provides an international standard to uphold basic moral dignity among human beings, though different states select particular fundamental rights that may or may not intersect with the UN Human Rights framework. As an instance, ten articles are included at the first amendment in 1789 Constitution of USA. Sri Lanka's 1978 constitution includes a third chapter that outlines articles such as 10 to 17 and 126 which emphasize national standards of human rights. Stability and protection of fundamental human right is a prominent responsibility of government according to the article 4 (d). 'The fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided. ' Article 4 (d) However, these provisions for human rights are notably incomplete, and ought to be amended for a number of reasons. As example the country does not ensure the basic human right to a clean and healthy environment, and instead focuses exclusively on a development paradigm to the detriment of basic human and environmental well-being. Each human being depends on protecting the environment as the resource base for all life. Therefore People started to see that a clean and healthy environment is essential to the realisation of fundamental human rights. Human rights cases of environmental disruption, like the Bhopal and Chernobyl disasters, it has become more acknowledged over the years. The General Assembly Resolution, Article 1(1), mentioned the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The Preamble of UN Declaration on the Right to Development states "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population*

and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. For these reasons, Sri Lanka should specifically amend its constitution to include the right to a clean and healthy environment and the right to sustainable development in its third chapter.

Keywords— *The 1978 Constitution of the Democratic Socialist Republic of Sri Lanka, The right to a Clean and healthy environment, The right to Sustainable Development*

I. INTRODUCTION

Before global industrialization, the scope of human needs in the world was fairly limited. Subsequently, however, human demands vastly expanded with the advent of population growth and the competitiveness of a global economy. In the early era of industrialization, governments worldwide concentrated almost exclusively on economic growth and ignored basic concerns of human and environmental well-being. As a result, global problems have arisen such as, ozone depletion, deforestation, rising atmospheric temperatures, sea level rise, and climate change. These problems threaten the health of human beings worldwide, and actually pose both direct and indirect threats to the economic productivity of nations. Therefore, Sri Lanka should amend the third chapter of its constitution to ensure both the right to development and the right to a healthy and clean environment so that these objectives are both mutually attainable. Without such explicit parameters, there can be no accountability to the Sri Lankan state.

II. METHODOLOGY

The aim of this research was to identify how Sri Lankan government concerns the sustainable development. In this research the researcher selected more Development projects and examines the governments' decisions for sustainable development.

III. RESULTS & FINDINGS

'The right to clean and healthy environment is not to be threatening human beings by the environment, right to water, food, employment & development.'

- Prof. Jemy Batram

'The natural resources of the nation are the heritage of present and future generations. The right of each person to clean and healthful air and water, and to the protection of the other natural resources of the nation, shall not be infringed upon by any person'

- Proposed Amendment to the U.S. Constitution (1996)

Several diseases can be occurred due to the imbalance of clean and healthy environment. Approximately 14000 people have died pertain to the lack of water daily. Approximately 500 million deaths reports from China annually. 656000 people had lost their lives while the air pollution arisen highly. More fundamental human rights are lost due to lack of clean and healthy environment. Therefore, the right of clean and healthy environment mentioned as a Human Right in international law.

Advocates, NGO organizations, Conventions (Kyto Protocol, Vienna Convention on the Protection of the Ozone Layer, Rio Declaration on Development and Environment, 1987 Montreal Protocol, The report of the World Commission on Environment and Development; Our Common Future) and many other organizations accept that. Human have a right to a clean and healthy environment through moral. Some Legal Advocates argue that right is not only human right but also constitutional right, because China, South Africa, South Korea, Spanish and some more states include this right as a human right in their national constitutions. The Constitution of the Republic of Korea declares in Article 35, 'All citizens shall have the right to a healthy and pleasant environment,' Article 45 of the Spanish Constitution declares that everyone has 'the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.' Article 225 of the Brazilian Constitution declares that everyone has 'the right to an ecologically balanced environment which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.' Article 56 of the Turkish Constitution declares 'Everyone has the right to live in a healthy, balanced environment. It shall be the duty of the State

and the citizens to improve and preserve the environment and to prevent environmental pollution.' The 1993 Russian Constitution declares in Article 42, 'the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.' The 1996 South African Constitution gives everyone the right 'to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.'



Figure 1-Nations recognizing constitutional right to a healthy environment as of 2012- (The Constitutional right to a healthy environment, <http://www.lawnow.org/right-to-healthy-environment/> Accessed 03/09/2014,12.51P.M.)



Figure 2- Nations recognizing the right to a healthy environment in constitutions, legislation, or international agreements as of 2012 (The Constitutional right to a healthy environment, <http://www.lawnow.org/right-to-healthy-environment/> Accessed 03/09/2014,12.51 P.M.)

Alan Boyle (2011) says many national legal systems that lack comparable constitutional provisions nevertheless allow quite liberal use of public interest litigation and judicial review in environmental cases. This is particularly true of common law countries such as the USA, UK, Canada, Australia and India.

Sierra Club v. Morton (405 US 727(1972)), *Friends of the Earth v. Laidlaw Environmental Services* (120 S Ct 693(2000)), *Lujan v. Defenders of wildlife* (504 US 555 (1992)) (American cases), *Environmental Defense Society v. South Pacific Aluminium* (No.3)(1981) 1 NZLR 216 (New Zealand case), *Rural Litigation and Entitlement0 Kendra v. State of Uthar Pradesh* (AIR 1985 SC 652) , *Damodhar Rao v. Municipal Corporation of Hyderabad* (AIR 1987 AP 171), *M.C.Mehetha v. Union of India* ((1987),1 SCC 395; id., (1987), 4 SCC 463) (Indian Cases), *Shela Zia v. WAPDA* (PLD 1994 SC 416) (Pakistan Case), *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*(33 ILM (1994),173), (Philippine Case), *Vereniging Milieudefesie v. Hoofdingenieur* (Directeur van de Rijkswaterstaat 11 Neths. YBIL (1980), 318; Environmental Protection Act of 1993 and the Collective Actions Act of 1994.) (Netherlands Case) above mentioned cases would manifest the statement of 'Common law states used to mount environmental rights by defining other fundamental right combined with environment.'

Sierra Club v. Morton (405 US 727(1972)), The Sierra Club is a non-profit corporation organized and operating under the laws of the State of California. The United States Forest Service permitted development of Mineral King near Sequoia National Park. Issue of this case was whether the permitted development would cause the Sierra Club sufficient injury to give them standing to sue to block the permit. The Supreme Court held that the Sierra Club, in its corporate capacity, lacked standing, but that it may sue on behalf of any of its members who had individual standing because the government action affected their aesthetic or recreational interests. *Friends of the Earth v. Laidlaw Environmental Services* (120S Ct693(2000)), In this case South Carolina's North Tyger River had standing to sue an industrial polluter, against whom various deterrent civil penalties were being pursued. The Court noted that the polluter still retained its license to operate such a factory, and could reopen similar operations elsewhere if not deterred by the fine sought. *Lujan v. Defenders of wildlife* (504 US 555 (1992)) the court held that a group of American wildlife conservation and other environmental organizations lacked standing to challenge regulations jointly issued by the U.S. Secretaries of the Interior and Commerce, regarding the geographic area to which a particular

section of the Endangered Species Act of 1973 applied. The case arose over issues of US funding of development projects in Aswan, Egypt and Mahaweli, Sri Lanka that could harm endangered species in the affected areas. The government declared that the act did not apply to projects outside of the United States and Defenders of Wildlife sued. *Rural Litigation and Entitlement0 Kendra v. State of Uthar Pradesh* (AIR 1985 SC 652) case the Supreme Court observed that Article 21 of the Indian Constitution guarantees the fundamental right to life and personal liberty to include the right to a wholesome environment. *Kinkri Devi and Anr. v.State Of Himachal Pradesh And Ors.*Cited (AIR 1988 HP 4 ,on 29 May, 1987) loss of right to environment, will effect loss of right to human reputation. Finally it causes for the disappearance of right to life.

The right of clean & healthy environment had been included to the right of life in *Dr. Mohideen Farooque v.Govt. Of Bangladesh* (1997) 49 DLR (AD) 1. The right to life includes their right to clean and healthy environment in *Chhetriya Pardushan Mukti Sangharsh Samiti v.State of Uthar Pradesh* (AIR 1990 SC 2060), *Dehra Dun Quarrying Case* AIR 1988 SC 2187, *Mathiw Locose v.Kerala State Pollution Control Board* WP(C) No. 20026 of 2007(H), *Inre Noise Pollution Case* (manu/SC/0415/2005), and *Advisory Opinion on Legality of the Threat or use of nuclear weapons Case*1996 ICJ reports p.226. *Ahangama Vithanage Deshan Harinda and 4 others v.Ceylon Electricity Board & 7 others* case (SC Application No.323/97), the noise generated by the diesel power plant, disturbed the day to day work of people lived in surrounding areas. The generated smoke caused illnesses to children. It was decided to compensate the people and close down the power plant to protect the rights of the people to live in a healthy environment.

Every Development Projects appertain the right to development & right to healthy and clean environment. Therefore it must need a balance. Sustainable Development is a best solution for it. Sustainable development is most popular topic in this century. Sustainability is important because all the choices we pursue and all the actions that we make today will affect everything in the future. We need to make sound decisions at present in order to avoid limiting the choices of generations to come. Sustainable Development notices the needs of future generation as well as current generation. If person, institution or government doing some development project, parallel they have to make Environmental effect Evaluation Report including analysis of environmental cost & returns. According to the report, in sustainable development concerning the place of development project is done, Social Threats, Duration of

Project, Commercial Development Issues, and make a balance of development and environment. Brundtland Commission, Johannesburg assembly mentioned the clean and healthy environment and development cannot be dividing. Sustainable development was defined in the Brundtland Commission report 1 as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Principle 4 of the Rio Declaration states that “In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.” John D Leeson says in his book “Environmental Law” in 1995, sustainable development attempts to assess or quantify development in relation to the impact of its range of effects or potential effects on the local and global environmental media at risk.” The United Nations Framework Convention on Climate Change (1992) defined in Article 3 (4), the parties have a right to and should, promote sustainable development. Policies and measures to protect the climate system against human- induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.” United Nations Desertification Convention says in Article 5, “Establish strategies and priorities, within the framework of sustainable development plans and/or policies, to combat desertification and mitigate the effects of drought.”

Hungarian had to cope with several interrogations due to the Gabcikovo-Nagymaros project undergone near the Danube River. Therefore, *Hungary v.Slovakia* case (C-364/10), Weeramanthy j. cited government must concern economic & environment factors and necessity of sustainable development. Thuldeep j. Cited in *Vellore Citizen Welfare Forum v.Union of India* (AIR 1996 SC 2715), the contradiction of development & environment would not exist anymore and he had emphasized sustainable development is an essential concept. In *Narmada Bacho v.Union of India* (AIR 2000 SC 3751), if the Narmada Dam & Electricity Power Plant will not be constructed, there will be a enormous economic crisis, and the poverty will be increased due to the economic crises mentioned above. And the environmental pollution will have occurred. Therefore court had been given the decision to construct the dam. In *Nayama Devi v.State case*, the petitioners cited that the government proposed Biological Park tend to destroy the forests. But the state government proved that the objective of building the

Biological Park is to protect the forest & bio diversity. Therefore court approval was given to the project as it has adopted sustainable development.

In KandalamaCase (*Environmental Foundation v. Land Commissioner* (1994 1(1) SAELR 1)) the relevant private hotel made under the naturalism. They made it with minimum damage to the environment. As well as they provided more job opportunities to the villagers. Therefore court gave permit to done it.

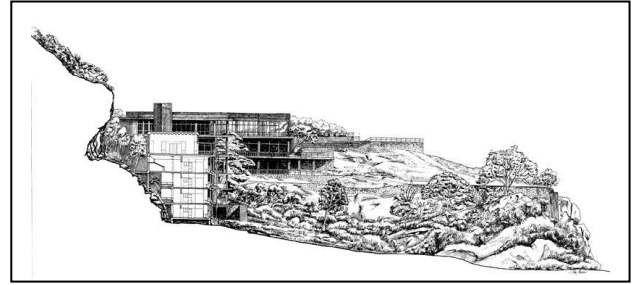


Figure 3- The Plan of the Kandalama Hotel

In Embilipitiya Paper Factory Case untreated ‘Black liquor’ was released to the Walawe Lake which was a waste from the production. This would not take place if they have adopted sustainable policy into the production.

Samanala Wawa Project has caused an immense damage to the environment. The tank was built destroying an area with large biological diversity. This would have being avoided if it was done according to the sustainable policy. Hambantota Airport is another major scale project done without adopting sustainable policy. It has caused air pollutions and damaged bio-diversity of the area.

Amarasinha j. said in Eppawala Case (*Bulankulama and six others v. Ministry of Industrial Development and seven others* (S.C. Application No 884/99 (F.R), 2000 Sri L R 243) that proposed contract must be done under the national development and environmental policies. He cited the Stockholm & Rio Declarations. And he said essentiality of sustainable development. By leasing out Eppawala phosphate deposit to a private company, it will reduce in 1.2 metric tons yearly and will be over in 30 years; which has direct effect on peoples’ right to live and therefore the project was disconfirmed.

Although Laxapana, Mahaweli Hydro power complexes, Hambantota Solar power plant, Hambantota wind power plant projects done according to the sustainable development, Lakvijaya, Sampur Coal-fired stations,

Sapugaskanda, Kelanitissa fuel- oil power stations done without concerning the sustainable policy. Currently environmental organizations are arraigned for Colombo Port City Project. In Upper Kothmale Project not concern about these regulations. Therefore waterfalls in below figure, face lack of waters currently. The project contravenes the future generations' rights; The Right to development, the Right to Water & Right to clean and healthy environment because of lack of water & make drought.

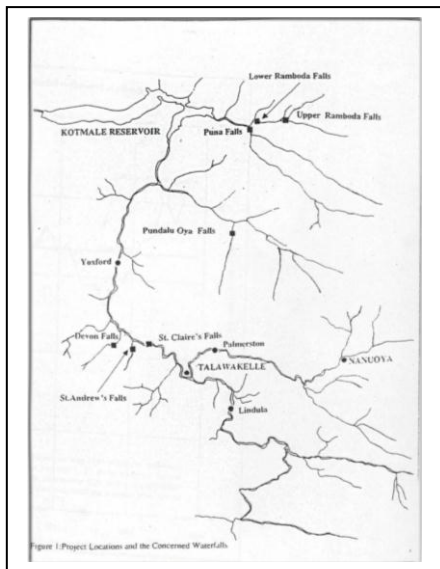


Figure 4-Upper Kothmale Project Locations and the Concerned Waterfalls

According to the above details, Government has concerned about the sustainable development only in few projects. Therefore this must be included in the 1978 constitution. Thereafter it will be a responsibility of the government to secure it when planning new developments.

III. CONCLUSION

The third chapter of the constitution 1978 ought to be amended for a number of reasons. Number one, the chapter itself has not been updated in more than four decades in light of dramatic changes in Sri Lanka. Second, the chapter is not a comprehensive framework, and leaves many areas for improvement in the insurance of basic human rights in Sri Lanka. Third, the fifteenth and sixteenth sentences of the chapter offer concessions to undermine the absolute preservation of these human rights. Fourth, in comparison to other states, Sri Lanka offers significantly fewer constitutional protections of

human rights. Fifth, the country does not ensure the basic human right to a clean and healthy environment, and instead focuses exclusively on a development paradigm to the detriment of basic human and environmental well-being. For these reasons, Sri Lanka should specifically amend its constitution to include the right to a clean and healthy environment in its third chapter. It should also go in parallel with the right to sustainable development. Therefore the researcher suggested third chapter in 1978 constitution must be amended as the below figure.

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