

Development of the Right to a Clean and Healthy Environment: A Comparative Study of India and Sri Lanka

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Abstract

Right to a clean and healthy environment is required for and based on all other human rights. Adverse effects of environmental degradation including climate change and aggravated conflicts over limited resources has further prioritized the same. India and Sri Lanka are South Asian nations with shared legacies. This essay examines whether the legal developments on the right to a clean and healthy environment differ in India and Sri Lanka. States have embodied said right in the Constitution and utilized judicial review to further fortify the same. The Constitution of a state, as the Supreme law of the nation, must respond to the needs of the people. Statutory provisions assume substance only following adaption as appropriate by the judiciary. Indian and Sri Lankan Constitutions do not enumerate an enforceable right to a clean and healthy environment. Yet both Constitutions state environmental protection as a directive principle of state policy. The judiciary has remarked that despite lack of enforceability such principles must be considered in earnest. Indian judiciary has widened the scope of right to life assured in the Constitution to include the right to a clean and healthy environment. Sri Lankan judiciary has interpreted the right to a clean and healthy environment within the purview of right to equality, a fundamental right guaranteed by the Constitution. Therefore, it is concluded that Indian and Sri Lankan judiciaries have ensured the right to a clean and healthy environment through judicial review, despite the lack of positively obliging constitutional rights.

Key words: *Right to a clean and healthy environment, Constitution,*

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Introduction

According to Institutions of Justinian, by the law of nature these things are common to mankind---the air, running water, the sea, and consequently the shores of the sea.¹ It is axiomatic to the observation that human well-being has several key components: the basic material needs for a good life, freedom and choice, health, good social relations, and personal security². Disregarding the time gap, both above approaches substantiate the assertion that environment is an integral component of human rights and a pre-condition. The definition of Human Rights in its most primal form is that they are literally the rights that one has because one is human.³ Driven by the idea of the essentiality to ensure protection of individual rights and hold states accountable for violation of such rights the United Nations Charter was drafted. To further the same, United Nations adopted the Universal Declaration of Human Rights (UDHR) 1948, and its preamble highlights that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their optional

¹‘The Institutes of Justinian’ (*The Latin Library*) <<http://thelatinlibrary.com/law/institutes.html>> accessed 6 June 2020.

² G Zurlini and F Müller, ‘Environmental Security’ (2008) 5 *Encyclopedia of Ecology*.

³ J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013).

Protocols were drafted in order to enforce provisions of the UDHR and, these four instruments are commonly referred to as the International Bill of Rights. Article 12(2) (b) of the ICESCR recognizing that every State should provide for “The improvement of all aspects of environmental and industrial hygiene” is the only reference made with regard to environmental rights in the International Bill of Rights. It is indisputable that the right to a clean and healthy environment is an element of the inherent right to life enumerated in Article 3 of the UDHR and Article 6 of the ICCPR. With passage of time environment has turned from the common heritage of the mankind to the common concern of mankind.⁴ In response to the imminent concern on environment the international body of environmental law emerged. Principle 1 of the Stockholm Declaration, popularly called the Magna Carta of human environment 1972 states 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 wellbeing”. Report on the World Commission on Environment and Development proposed 22 legal principles for environmental protection and sustainable development. Further, ‘Caring for the Earth 1991’ and the ‘Earth Summit’ of 1992 state that human beings are entitled to a healthy and productive life in harmony with nature. Nonetheless, Air pollution kills an estimated seven million people worldwide every year. WHO data shows that 9 out of 10 people breathe air

⁴ M Redclift and G Woodgate, *The International Handbook of Environmental Sociology* (Edward Elgar 1997).

containing high levels of pollutants⁵. 829 000 people are estimated to die each year from diarrhoea as a result of unsafe drinking-water, sanitation, and hand hygiene.⁶ States such as France, Iraq and South Africa have employed various measures to ensure protection from environmental degrading including rivers being given a separate legal personality⁷; legislation for environmental protection; including a substantive fundamental right to a clean and healthy environment in the Constitution⁸ and judicial review.

Authors opine that right to a clean and healthy environment is a pre-requisite for and a determinant of all other fundamental rights. It encompasses right to live in a surrounding that fits the dignity of a human being, right to enjoy a quality life and right to participate in sustainable development. It has a collective facet besides being an individual right. This research endeavours to compare and contrast between the development of constitutional provisions and related judicial review on the right to a clean and healthy environment in India and Sri Lanka. Hence, the research problem is whether the Indian legal development on the right to a clean and healthy environment differs from that of Sri Lanka. In this context

⁵ 'Air Pollution' (*World Health Organization*) < https://www.who.int/health-topics/air-pollution#tab=tab_1 > accessed 08 February 2020.

⁶ 'Drinking-water' (*World Health Organization*, 14 June 2019) < <https://www.who.int/news-room/fact-sheets/detail/drinking-water> > accessed 08 February 2020.

⁷ KAAAN Thilakarathna, 'Encironmental Protection through Judicial Review: The Sri Lankan Experience' (2019) 17 Sabaragamuwa University Journal 15.

⁸ James May, 'Constituting Fundamental Environmental Rights Worldwide' (2006) 23 (1) Pace Environment Law Review 113.

the authors have identified following research objectives: identify and contrast constitutional provisions on the said right in India and Sri Lanka; identify and contrast judicial review on the said right in both states; deduce whether the existing constitutional provisions in each state is competent in ensuring the said right. Therefore, this research seeks to answer following questions based on the research problem and research objectives stated above: what are the constitutional provisions on the right to a clean and healthy environment in India and Sri Lanka; how such provisions oblige the said right; how efficient is the judicial review in securing the same right - in said two states -in the absence of positively obliging constitutional provisions. India and Sri Lanka share a legacy of millennia thorough ethno-cultural roots, colonial past and today, as developing nations. The Sri Lankan Legal system which considers Roman-Dutch Law as its common law is now departing its roots from these traditions to more English Law based statutory laws to cope with the modern structures of the local and international communities⁹. The same is observed with regard to India. However, the legal mechanisms of both states have significantly developed upon the contribution made by judicial review; specifically with regard to unconventional concepts such as environmental rights.

Rule of law and Human Rights

A qualitative study was conducted using primary and

⁹ LJM Cooray, *An Introduction to the Legal System of Sri Lanka* (Stamford Lake 2011).

secondary sources as this study has a subjective element. The following theories and concepts, in the framework of the state-centric approach, were employed:

Elaborating on Locke's idea that the legitimacy of a state can be measured by the implementation and protection of natural rights, the obligation of the states to respect, protect and fulfill human rights of the people of the country is the core concept behind modern international human rights law. Donnelly maintains a very significant approach to the state-centric concept of human rights recognizing states as both the 'Principal Violator' and the 'Essential Protector' of human rights of the individuals. Human rights are inseparable and right to a clean and healthy environment is considered a pre-requisite for protection of a plethora of further rights originating from the dignity of humankind.

Rule of law is the norm any State seeks to achieve and fulfill; and simultaneously the principle against which the legitimacy of a State can be measured and evaluated according to Locke. The Sociological school of Jurisprudence advocates that the role of law is to maintain an equilibrium between rights and development. Justice Coke quoting Bracton in the *case of Proclamations*¹⁰ explained that "The king himself ought not to be the subject to man but subject to god and to the law, because the law makes him king". A Constitution must evoke the unstinted loyalty of the people by its acceptability and its

¹⁰ [1610] EWHC KB J22.

capacity to respond to the needs of the people.¹¹ Fundamental rights need to be embodied in the Constitution in order for all citizens to benefit from them. Mathew as edited by Baxi¹² concurs. The ideal of limited government, or constitutionalism, is in conflict with the idea of parliament sovereignty.¹³ This tension is particularly apparent where constitutionalism is safeguarded through judicial review.¹⁴ Oliver Holmes of the American realist school of thought contends that law is a creation of the judiciary, as the statutory provisions assume substance only following interpretation and elucidation with respect to socioeconomic circumstances and adaption as appropriate by the judiciary. Further, according to John Chipman Gray statutory provisions constitutes only barebones of the legal regime, whilst the actual determination is made by the judiciary. Hence, the authors have drawn from the constitutions of India and Sri Lanka provisions relevant to right to a clean and healthy environment, and also made references to decided case law on the same.

Controversy surrounds the question whether the doctrine of human rights is in its origin a universal concept.¹⁵ The doctrine of cultural relativism holds that at least some such variations cannot legitimately be criticized by

¹¹NM Perera, *Critical Analysis of the New Constitution* (Colombo, 1979).

¹² Upendra Baxi, *K.K. Mathew on Democracy, Equality and Freedom* (Eastern Book Co. 1978).

¹³ Paul Kahn, *The Reign of Law: Marbury v. Madison and the Construction of America* (Yale University Press 2002).

¹⁴ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003).

¹⁵ CG Weeramantry, *An Invitation to the Law* (Stamford Lake 2009).

outsiders¹⁶. Nevertheless, if human rights are simply an undeniable entitlement of the human and are the standard engineered through the international order to attain the aspired world order, then they must be universal by definition. According to Danchin, “in any particular case, “human nature” is a social as well as a “natural” product.” Therefore, this essay has applied the concept of cultural relativism in comparing and contrasting constitutional provisions and judicial review of India and Sri Lanka on the right to a clean and healthy environment.

However, this research is limited to the empirical data obtained from cases decided by the Supreme Court of each state, as only such have been empowered to enforce the fundamental rights conferred in the Constitution; by Article 32 of the 1950 Indian Constitution and Article 17 read together with Article 126 of the 1978 Constitution of Sri Lanka.

Constitutional provisions and judicial review

Constitutional provisions on the right to a clean and healthy environment

Part III of the Indian Constitution titled ‘Fundamental Rights’ sets forth the enforceable rights accorded within the territory of India. Similarly titled Chapter III of the Sri

¹⁶ P Danchin, ‘Cultural Relativism and Universal Values’ (University of Columbia)
<http://cnmtl.columbia.edu/projects/mmt/udhr/preamble_section_7/concept_history.html>.

Lankan Constitution lists the justiciable rights assured within the territory of Sri Lanka. However, the right to a clean and healthy environment is absent in the enforceable rights sections of both Constitutions. Article 48A of the Part IV of the Indian Constitution titled 'Directive Principles of State Policy' states that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 27(14) of the Chapter VI of the Sri Lankan Constitution titled 'Directive Principles of State Policy and Fundamental Duties' states that "The State shall protect, preserve and improve the environment for the benefit of the community". But, Article 37 of the Indian Constitution provides that provisions contained in Part IV (Directive Principles of State Policy) are not enforceable by any court. Correspondingly Article 29 of the Sri Lankan Constitution states that the provisions of Chapter VI do not confer legal rights and are not enforceable in any court. Hence, it is evident that neither Constitution provides positively obliging provisions on the right for a clean and healthy environment. Nonetheless, the Indian Supreme Court held in *Kesavananda Bharati v. State of Kerala*¹⁷, *State of Bombay v. F.N. Balsara* and many other cases that since the Directive Principles are for securing political, social and economic justice by all organs of the State including the judiciary, when a constitutional provision is not clear, a court is entitled to take cognizance of Directive Principles for the purpose of interpreting the Constitution. Das CJ in *Re Kerala*

¹⁷ [1973] 4 SCC 225.

*Education Bill*¹⁸ stated that “the Court may not entirely ignore the Directive Principles... but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible”. In *Golak Nath v. State of Punjab*¹⁹ five judges opined that Parts III and IV (Fundamental Rights and Directive Principles) constituted an integrated scheme forming a self-contained code. The Court has observed that “While the rights conferred under Part III are fundamental, the principles given in Part IV are fundamental in the governance of the country”. Also in *Minerva Mills v. Union of India*²⁰, Court observed that Parts III and IV together constitute the core of the Indian Constitution and combine to form its conscience. The Sri Lankan Supreme Court also has discussed the availability of Directive Principles of State Policy for application in other legislative enactments. Proponents of *Re the Thirteenth Amendment to the Constitution Bill*²¹ argued that the Thirteenth Amendment to the Constitution Bill and the Provincial Council Bill were consistent with the Article 27 (4) of the Directive Principles. Sharvananda CJ, representing the majority, stated that even though the Directive Principles are not enforceable, that does not diminish their value as guiding the aims and aspirations of the government of Sri Lanka. Wanasundara J observed that although Indian courts used Directive Principles to remove matters of doubt, they should not have any controlling effect on any provision of

¹⁸ [1958] INSC 20.

¹⁹ [1967] AIR 1643.

²⁰ [1980] AIR.

²¹ [1987] 2 SLR 312

the Constitution. In *Senevirathne v. U.G.C.*²² petitioner challenged the distribution of fifty five per cent of the places in University admission district wise based on the population of each district. The University Grant Commission maintained that this was a step in conformation to National Policy and ‘relied on’ Directive Principles of State Policy, specially Article 27(2) (b) and (h):

the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life ;...

the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.²³

This contention of the University Grants Commission was accepted as a reasonable basis for restriction of the fundamental rights. It is observed that the Article 2 of the Constitution specifically declares sovereignty upon the people of Sri Lanka. In Article 27(2) (a) “full realization of fundamental rights and freedoms of all persons” is referred as the first Directive Principle (Chapter VI). This establishes a clear connection between the Chapters III and VI of the Constitution. A Tamil refugee living in a

²² [1978-79-80] 1 SLR 182

²³ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, 17, 18

Refugee camp in Vavuniya was placed under a restriction of movement outside the camp on the grounds that he had taken his son to Colombo on two occasions for medical treatment without permission of the first respondent in *Vadivelu v. Officer-in-Charge, Sithambarapuram, Regional Camp Police Post, Vavuniya and others*²⁴. The Supreme Court observed that such restriction has not only infringed the petitioner's freedom of movement (Article 14 (1) (h)) and that such right was not restricted by interests of national economy (Article 15(6)) or by any of the national interests catalogued in Article 15 (7), but the provision "The State shall recognize and protect the family as the basic unit of society" (Article 27 (12)) embodied in the Chapter on the Directive Principles of State Policy. In *Wijebanda v. Conservator General of Forests*²⁵ Tilakawardane J. observed "The constitution in Article 27 (14) of the directive principles of state policy enjoins the state to protect, preserve and improve the environment." In *Environmental Foundation Ltd v. Mahaweli Authority of Sri Lanka*²⁶, Ratnayake J state "Although it is expressly declared in the Constitution that the directive principles and fundamental duties 'do not confer or impose legal rights or obligations and are not enforceable in any Court of Tribunal' Courts have linked the directive principles to the public trust doctrine and have stated that these principles should guide state functionaries in the exercise of their powers." Similarly, in *Chunna Ravindra Gunawardena Kariyawasam v. Central*

²⁴ [2002] 3 SRI LR 146.

²⁵ [2009] 1 SLR 337.

²⁶ [2010] 1 SLR 1.

*Environment Authority [Chunnakam case]*²⁷ Jayawardena J noted that “directive principles are a living set of guidelines which the State and its agencies should give effect to” and that the petitioner will have a strong case if a fundamental right violation is also in contravention of Directive Principles of State Policy. Consolidating the obligation of the judiciary, as a part of the State, to pay due regard to the directive principles, in *Centre for Environmental Justice (Guarantee) Ltd. v. Conservator General and Others [Wilpattu deforestation case]*²⁸ De Silva J observed the Court is bound to protect, preserve and improve the environment for the benefit of the community as directed by Article 27(14) of the Constitution. In light of said, Justice further noted that ‘procedural requirements should not be an obstacle to the Court giving effect to this Directive Principle of State Policy’ and any misgiving of the plaintiff should not undermine the directive principle. Notably, it was ruled that every person in Sri Lanka, including the public officials and representative of the public, have a fundamental duty to protect the environment. This is in reference to the Article 28(f) of the Constitution which provided that it is the duty of every person in Sri Lanka to protect nature and conserve its riches.

Hence, despite the explicit constitutional provisions on the right to a clean and healthy environment being rendered unenforceable, judiciaries of India and Sri Lanka

²⁷ [2015] SC FR 141.

²⁸ [2015] CA Writ 291.

have considered such in redressing citizens whose right to an immaculate environment has been infringed.

Judicial Review on the right to a clean and healthy environment

This section surveys the development of the right to a clean and healthy environment through judicial interpretation and how the constitutional provisions were applied to connote such right despite the lack of the same within the ambit of enforceable rights in both countries' jurisdictions. The right to life of the Indian Constitution and the right to equality of the Sri Lankan Constitution are examined in light of liberal judicial review and the wide scope they have gained as a result.

Right to life: The Bopal gas tragedy served as an eye opener on the right to a clean and healthy environment in India. The nexus between environmental quality and the right to life was first addressed by the Supreme Court in *Charan Lal Sahu Case*²⁹ in which the petitioners challenged the validity of the Bhopal Gas Disaster (Proceedings of Claims) Act 1985. The Indian Constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law."³⁰ This article has received liberal interpretation from time to time after the decision of the Supreme Court in *Maneka Gandhi vs. Union of India*³¹.

²⁹ *Charan Lal Sahu v. Union of India* [1990] AIR 1480.

³⁰ The Constitution of India 1949, art 21.

³¹ [1978] AIR 597.

The Supreme Court of India indirectly implied that enjoyment of life and liberty guaranteed by Article 21 connotes the right to a clean and healthy environment in the ruling of *Ratlam Municipality v. Vardichand*³². The Supreme Court of India resorted to the right to life in *Dehradun Quarrying Case*³³ in order to presume that the right to a clean and healthy environment is a fundamental right and directed the letter claiming illegal limestone mining damages the ecosystems in the Dehradun region, to be treated as a writ petition under Article 32³⁴, which provides remedies for enforcement of fundamental rights conferred by the Constitution.³⁵ The Supreme Court pronounced that the right to a healthy environment is fundamental but the “exercise of Article 32 jurisdiction presupposed the infringement of a fundamental right.”³⁶ In *Subhash Kumar v. State of Bihar*³⁷ the Supreme Court of India expressly recognized that the right to a clean and healthy environment is an element of the right to life assured by Article 21. Justice K. N. Singh observed that “Right to live ... includes the right to enjoyment of pollution free water and air for full enjoyment of life”. Further, this case also indicated that the governmental agencies entrusted with environmental protection cannot rest content with unimplemented measures to ensure a clean and healthy environment and compelled such

³² [1980] AIR 1622.

³³ *Rural Litigation and Entitlement Kendra vs. State* [1988] AIR 2187.

³⁴ The Constitution of India 1949, pt III.

³⁵ *Dehradun v. State of Uttar Pradesh* [1985] AIR 652.

³⁶ Rodgers Kalas, ‘*Environmental Justice in India*’ (2000) 1 (97) *Asia Pacific Journal on Human Rights and Law*.

³⁷ [1991] AIR 420.

agencies to take positive measures to improve the environment. This stance was reaffirmed in *M.C. Mehta v. Union of India*³⁸. In this case the applicant has claimed relief under Article 32 to ensure a better quality of environment in form of environmental education and, the Supreme Court directed the relevant government bodies to conduct the same. The Supreme Court also observed that “there is a general acceptance throughout the world as also in our country that protection of environment and keeping it free of pollution is an indispensable necessity for life to survive on earth. If that be the situation, everyone must turn his immediate attention to the proper care to sustain environment in a decent way.” The Supreme Court held that the right to a decent environment is guaranteed in a civilized society within the ambit of the right to life in *Shanti Star Builders v. Narayan Totame*³⁹. Article 19 (1) (g) of the Indian constitution guarantees the fundamental right of every citizen to practice any profession or to carry on any occupation, trade or business. The Supreme Court, while determining a matter related to trade of alcohol in *Cooverjee B. Bharucha v. Excise Commissioner, Ajmer*⁴⁰ observed that, in case of a conflict between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the said fundamental freedom. In *Vellore Citizens Welfare Forum v. Union of India*⁴¹, the Supreme Court held that ‘Precautionary

³⁸ *Mehta v. Union of India* [1991] AIR SC 81.

³⁹ [1990] 1 SCC 520.

⁴⁰ [1954] SC 220.

⁴¹ [1996] 5 SCC 647.

Principle’ and ‘Polluter Pays Principle’ are essential features to balance the concept of ‘Sustainable Development’. Therefore, it is evident that the Supreme Court of India has expanded the scope of the right to life assured in Article 21 to include the right to a clean and healthy environment through judicial review despite the absence of positively obliging constitutional provisions.

Right to equality: In contrast the Sri Lankan Constitution does not expressly recognize a right to life. The Supreme Court of Sri Lanka has recognized the right to a clean and healthy environment as an integral component of the Article 12 of the Constitution which assures the right to equality. In *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others (Eppawela Case)*⁴² the Supreme Court held that there is an imminent infringement of the petitioners’ fundamental rights under the Article 12 due to the proposed agreement for exploration and mining of phosphate. In *Wijebanda v. Conservator General of Forests*⁴³ Shiranee Thilakawardena, J. observed that “Even if environmental rights are not specifically alluded to under the fundamental rights chapter of the Constitution, the right to clean environment and the principles of equity with respect to the protection and preservation of the environment are inherent in a meaningful reading of Article 12(1) of the Constitution”. Similarly, in *Sugathapala Mendis and another v. Chandrika*

⁴² [2000] 3 Sri LR 243.

⁴³ [2009] 1 Sri LR 337.

*Kumaratunge and others (Waters Edge Case)*⁴⁴ the Supreme Court granted leave to proceed a petition on infringement of right to equality by sale of land acquired on the premise of utilizing for public purpose to a private party. Further, in *Environmental Foundation Ltd v. Mahaweli Authority of Sri Lanka*⁴⁵ the Supreme Court invoked the right to equality and equal protection of the law to redress the alienation of lands within the ‘special area’ declared under the provisions of the Mahaweli Authority Act. The harmful effects of noise pollution was considered an infringement of Article 12 (1) in *Ashik v. Bandula, O-I-C Weligama*⁴⁶. In the landmark ruling on *Ravindra Gunawardena Kariyawasam v. Central Environment Authority [Chunnakam case]*⁴⁷ the Supreme Court applied the “Polluter Pays” principle to direct the Northern Power Company (Pvt) Ltd to pay compensation to the families who were adversely effected by ground water pollution due to a thermal power plant. Further, whilst the Supreme Court held that Article 12 (1) has been infringed and Article 126 (4) of the Constitution vests ample jurisdiction to redress as above; the respondent company was permitted to resume operating the thermal power station provided adequate measures are taken to ensure non-contamination in consideration of the contribution to demand for electricity. Applying the ‘Polluter Pays’ principle in landmark *Wilpattu Deforestation case*⁴⁸ the Court of Appeal ordered the

⁴⁴ [2008] 2 Sri LR 339.

⁴⁵ [2010] SC 1.

⁴⁶ [2007] 1 Sri LR 191.

⁴⁷ SC FR Application No: 141/2015.

⁴⁸ [2015] CA Writ 291.

Conservator General to reforest an area equivalent to the deforested area for IDP settlements and, most significantly, that respondent Rishad Badiuddeen, who was instrumental in obtaining said reserve land for resettlement, 'bear the full the cost of such tree planting programme' Thus, the Supreme Court of Sri Lanka has connoted that the right to equality includes the right to a clean and healthy environment and developed the same via judicial review to redress the citizens in the vacuum created by the absence of positively obliging constitutional right.

Conclusion

A critical survey of the Indian and Sri Lankan Constitutions manifested that neither enumerate a positively obliging right to a clean and healthy environment. Article 48A of Part IV of the Indian Constitution and Article 27 (14) of Chapter VI of the Indian Constitution provides that each state must be directed by the principle to protect and preserve the environment. But, neither provision is enforceable. In this scenario, the Supreme Court of each state has exploited the jurisdiction vested in itself by the respective Constitution to redress infringement of the right to a clean and healthy environment. As analysed above, Indian Supreme Court has augmented the scope of right to life (Article 21) and presumed that the right to a clean and healthy environment is mandatory to assure the right to life and, is an integral part of the right to life. In contrast the Sri Lankan Constitution has defined the right to a

clean and healthy environment as a constituent of the right to equality assured by Article 12 of the Constitution. Both apex courts have noted the importance of the directive principle on environmental protection in establishing a significant portion of the body of environment law and used such provisions to further support the cause of infringed fundamental right. In the *Chunnakam case* Jayawardena J. famously observed that “The Directive Principles of State Policy are not wasted ink in the pages of the Constitution. They are a living set of guidelines which the State and its agencies should give effect to...” In the *Wilpattu deforestation case*, the Court of Appeal definitively identified that the judiciary is ‘bound to protect, preserve and improve the environment for the benefit of the community’ as provided by the directive principles. Further, the ‘duty’ of individual to protect the environment as provided in Article 28(f).

Thus, the authors conclude that the Supreme Court of India and Sri Lanka have exercised judicial review in the absence of positively obliging constitutional provisions on the right to a clean and healthy environment. Further, in the process of judicial review both apex courts have given due regard to the directive principles on environmental protection despite lack of enforceability. Hence, ensuring that an equilibrium is maintained between rights and development, as required by the role of law. Such judicial review, once again, elucidate that while statutory provisions only provide the mere outline, law is a creation of the judiciary. History demonstrates that environmental protection and the duty thereof are not unknown to the

two nations millennia before colonization. For example, Kutadanta Sutta, a Buddhist canonical text, states that government has the responsibility of protecting nature and Padma Purana, one of the eighteen major Purana texts in Hinduism, provides that polluters are destined to suffer in Hell⁴⁹. Hence, the two neighbouring nations indicating a strong similarity along their respective journeys developing the right to a clean and healthy environment from an unenforceable constitutional provision to a standard measurement through which said right is consolidated, is not an unexpected phenomenon.

⁴⁹ [2015] CA writ 291