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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE UNFULFILLED PROMISE: USING CONSTITUTIONAL ENVIRONMENTAL RIGHTS TO COMBAT THE SCOURGE OF PLASTIC POLLUTION

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Abstract

The global plastic pollution crisis stands for a fundamental failure of traditional environmental regulation. While policy responses have largely focused on downstream waste management and voluntary corporate initiatives, the relentless production and pervasive contamination of ecosystems by plastics continue unabated. This paper argues that the recognition of the human right to a clean, healthy, and sustainable environment, particularly when enshrined at the constitutional level, provides a transformative and underutilized legal tool to address the root causes of plastic pollution. Moving beyond a mere doctrinal analysis, this paper examines the jurisprudential evolution of this right, its substantive and procedural components, and its practical application through strategic litigation. It analyses how constitutional mandates can compel legislative and executive action, hold states accountable for regulatory failure, and potentially impose direct obligations on corporate actors. The paper concludes that while not a panacea, the constitutional right to a healthy environment stands for a critical paradigm shift—from viewing plastic pollution as a policy inconvenience to treating it as a violation of fundamental human rights, thereby unlocking more powerful, justiciable, and preventative remedies.

Keywords: Environmental Law, Constitutional Law, Human Rights, Plastic Pollution, Right to a Healthy Environment, Strategic Litigation, Extended Producer Responsibility, Plastic Treaty, Environmental Justice

1. Introduction:

The Limits of Traditional Regulation and the Emergence of a Rights-Based Approach Plastic pollution has transcended the category of a mere environmental nuisance to become a planetary boundary threat. From the deepest ocean trenches to the highest mountain peaks, and within the human bloodstream itself, plastic particles are now a ubiquitous marker of the Anthropocene (United Nations Environment Programme [UNEP], 2021). The traditional regulatory toolkit including recycling mandates, limited bans on specific single-use items, and end-of-pipe waste management strategies has proven woefully inadequate to stem the tide of over 400 million tonnes of plastic produced annually. This regulatory failure is rooted in a reactive, fragmented approach that treats symptoms rather than the source: the linear economic model of take-make-dispose, driven by the overproduction of virgin plastics.

In this governance vacuum, a powerful alternative framework has been gaining profound momentum: the recognition of a human right to a clean, healthy, and sustainable environment. Historically championed by environmentalists and legal scholars, this right moved from the periphery to the centre of international law with its landmark recognition by the United Nations General Assembly in July 2022 (UN General Assembly, 2022). Crucially, this right is not merely a declaratory principle; in over 150 countries, it has been codified in national constitutions, environmental framework laws, or regional treaties (Boyd, 2012).

This paper posits that the constitutionalizing of the right to a healthy environment provides a formidable, yet under-leveraged, legal instrument to combat plastic pollution at a systemic level. Unlike conventional regulations that can be weakened by lobbying and political cycles, constitutional rights offer a stable, supreme legal foundation. They empower citizens, civil society organizations, and future generations to demand accountability from the state and, increasingly, from private actors. This paper will explore the jurisprudential underpinnings of this right, deconstruct its application to the plastic life cycle, analyze groundbreaking case studies, and critically assess the challenges and future potential of this rights-based approach in forging a path toward a non-toxic, circular economy.

2. The Anatomy of a Right: Deconstructing the Constitutional Right to a Healthy Environment

To understand its utility, one must first dissect the components of the constitutional right to a

healthy environment. It is not a monolithic, single right but a constellation of intertwined substantive and procedural entitlements.

2.1. Substantive Components

The Right to a Non-Toxic Environment: This is the most directly applicable component to plastic pollution. It entails protection from hazardous substances that threaten human health and ecosystem integrity. Microplastics and the chemical additives they carry (e.g., phthalates, BPA) are known endocrine disruptors and carcinogens, directly engaging this right (World Health Organization [WHO], 2022).

The Right to a Healthy Ecosystem: This focuses on the integrity of natural systems. Plastic pollution smothers marine and terrestrial habitats, harms and kills wildlife through ingestion and entanglement, and disrupts biogeochemical cycles, thereby violating the right to a healthy and functioning ecosystem (UNEP, 2021).

The Right to Intergenerational Equity: This principle, inherent in many constitutional environmental rights, mandates that the present generation manages the environment for the benefit of future generations. The persistent nature of plastic, which can last for centuries, stands for a clear violation of this intergenerational duty, bequeathing a toxic legacy (Boyd, 2012).

2.2. Procedural Components

These are the mechanisms that give the substantive right its teeth. They are the "how" of enforcement, often grounded in the Aarhus Convention and similar frameworks.

The Right to Access Environmental Information: Citizens have the right to know about the potential environmental and health impacts of plastic production, the chemical composition of plastic products, and the performance of waste management systems. This is essential for holding both government and industry accountable (Knox, 2020).

The Right to Public Participation: This ensures that communities have a say in the siting of plastic production facilities, waste processing plants, and the development of relevant plastic policies.

The Right to Access Justice and Effective Remedies: This is the cornerstone. It allows individuals and groups to bring lawsuits before courts or tribunals to challenge government actions (or inaction) that violate their right to a healthy environment and to seek effective remedies, such as injunctions, mandamus (court orders compelling action), or damages (Gellers, 2017).

3. From Principle to Precedent: Applying the Right to the Plastic Life Cycle

The constitutional right to a healthy environment can be strategically invoked at every stage of the plastic life cycle, challenging the state's failure to adequately regulate each phase.

3.1. Upstream: Challenging Plastic Production and Design

The most significant impact of a rights-based approach may lie in its potential to address the problem at its source. The production of virgin plastic, predominantly from fossil fuels, is a major source of greenhouse gas emissions and toxic pollution. Communities living near "cracker" plants that produce plastic feedstocks often bear a disproportionate health burden, raising issues of environmental justice.

Legal Strategy: A lawsuit could be filed against a government agency for granting permits for a new plastic production facility without adequately assessing its cumulative impact on the community's right to clean air and health (a violation of the substantive right and the procedural right to participation). Citing the constitutional right, courts could mandate a stricter application of the precautionary principle, requiring the state to prove the activity will not cause harm before allowing it (Boyle, 2012).

3.2. Midstream: Regulating Products and Promoting Circularity

This stage involves the goods placed on the market. A rights-based approach can accelerate the transition from a linear to a circular economy.

Legal Strategy: Citizens or NGOs could file a lawsuit against the state for failing to implement effective Extended Producer Responsibility (EPR) schemes, arguing that this regulatory failure leads to uncontrolled plastic waste, violating the right to a healthy environment. The court could then issue a mandamus order, compelling the legislature or executive to enact and enforce robust EPR regulations. Similarly, lawsuits could challenge the legality of misleading "greenwashing" claims on plastic products as a violation of the right to access accurate information (Knox, 2020).

3.3. Downstream: Addressing Waste Management and Pollution

This is the most visible stage of the crisis—plastic waste in the environment. While clean-ups are necessary, a rights-based approach seeks systemic fixes.

Legal Strategy: A seminal example is the Indian case of *Vardhman Kaushik v. Union of India* (2019). The petitioner argued that the unchecked dumping of plastic waste, clogging drains and

rivers and causing public health hazards, violated the fundamental right to life and liberty (Article 21) under the Indian Constitution, which has been interpreted to include the right to a healthy environment. The National Green Tribunal (NGT) agreed, issuing a sweeping order that compelled cities and states across India to implement solid waste management rules, phase out certain plastics, and show mechanisms for compliance. This proves how constitutional rights can be used to force the executive branch to perform its statutory duties.

3.4. The Transboundary Dimension: Halting Waste Colonialism

The practice of exporting plastic waste from high-income to low- and middle-income countries, often under the guise of "recycling," shifts the environmental burden to communities with less capacity to manage it safely. This raises profound issues of transboundary harm and environmental injustice.

Legal Strategy: In a recipient country, impacted communities could sue their own government for not protecting their constitutional right to a healthy environment by allowing the importation of foreign plastic waste. They could argue that the state has a positive obligation to refuse such imports, citing the Basel Convention's plastic waste amendments. This leverages the constitutional right to force the state to uphold its international commitments and protect its citizens from external harm (Zaelke et al., 2021).

4. Case Study in Focus: The Philippines Landmark Inquiry

A powerful contemporary example is the ongoing inquiry by the Commission on Human Rights of the Philippines (CHR). In 2019, following a petition from civil society groups and individuals, the CHR launched a National Inquiry on Climate Change. While focused on climate, a significant portion of the testimony and evidence centered on the impacts of plastic pollution, linking the fossil fuel-based production of plastics to climate change and highlighting the local pollution from waste.

Although the CHR is a quasi-judicial body and its findings are not legally binding, its 2022 report was groundbreaking (Commission on Human Rights of the Philippines [CHR], 2022). It found that major carbon producers (the "Carbon Majors") could be found legally and morally liable for human rights harms resulting from climate change. By extension, this logic applies directly to plastic producers. The inquiry set up that corporate actors have a responsibility to respect human rights, which includes undertaking human rights due diligence across their value

chains and refraining from obfuscating the dangers of their products. This creates a powerful moral and political precedent, setting the stage for future binding litigation that directly names plastic producers as violators of the constitutional right to a healthy environment.

5. Challenges and Limitations of the Rights-Based Approach

Despite its promise, using constitutional rights is not without significant challenges.

Justiciability and Enforcement: A key hurdle is getting courts to intervene in what governments often argue are "policy matters." Judges may be reluctant to dictate specific environmental policies to the executive branch. Even when a court issues a favorable ruling, ensuring its implementation and monitoring compliance over the long term can be difficult, as seen in the ongoing struggles to enforce the NGT's orders in India fully (Gellers, 2017).

Attribution and Causation: In cases seeking to hold specific plastic producers directly liable, showing a direct causal link between a specific company's products and a specific harm (e.g., a community's health crisis) is complex due to the diffuse nature of plastic pollution. However, evolving legal doctrines of market-share liability or public nuisance are beginning to address this.

Political and Economic Backlash: Invoking constitutional rights to challenge powerful industrial interests can provoke strong political and economic backlash, including efforts to legislatively weaken the right itself or to strip courts of their jurisdiction over environmental matters.

Resource Imbalance: Communities and NGOs often lack the financial and technical resources to engage in protracted legal battles against well-funded corporate and state defendants (Boyd, 2012).

6. Synergy with Global Governance: The UN Plastic Treaty

The rights-based approach does not exist in a vacuum; it can and should synergize with the developing international legally binding instrument on plastic pollution. A robust global treaty can create a supportive international framework that strengthens domestic constitutional litigation.

Negotiators of the treaty should explicitly anchor the agreement in the human right to a healthy environment. This would:

Provide a Guiding North Star: It would frame the treaty's aim not just as managing waste, but as upholding a fundamental human right.

Strengthen Domestic Courts: National judges can use a right-centered treaty to interpret and enforce their own constitutional provisions, creating a feedback loop between international and domestic law (Knox, 2020).

Mandate a Full-Lifecycle Approach: A rights-based framework inherently demands interventions across the entire plastic lifecycle, from production to pollution, preventing the treaty from being watered down into a weak waste management agreement (Zaelke et al., 2021).

7. Conclusion: Toward a Paradigm of Rights and Remedies

The plastic pollution crisis is a symptom of a deeper governance failure—one that has prioritized economic convenience and corporate interests over ecological integrity and human health. The constitutional right to a clean, healthy, and sustainable environment offers a corrective to this imbalance. It elevates environmental protection from a discretionary policy goal to a fundamental, legally enforceable entitlement.

By empowering citizens as rights-holders and imposing correlative duties on states as duty-bearers, this legal instrument can compel comprehensive legislative action, drive judicial innovation, and begin to assign accountability to corporate actors. The cases from India, the Philippines, and many other jurisdictions are not mere anomalies; they are the leading edge of a global jurisprudential shift.

While challenges of enforcement, causation, and political resistance remain, the transformative potential of this approach is undeniable. It reframes the citizen from a passive victim of pollution to an active agent of change. In the relentless fight against plastic pollution, using constitutional law is not just a legal tactic; it is an essential strategy to secure a just, healthy, and sustainable future for both people and the planet. The right to a healthy environment is no longer a mere promise it is, increasingly, a tool for survival.

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