

Citizens' Environmental Rights from the Perspective of Constitution

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Abstract

Environmental pollution has become an important problem in China's current economic development, which can only be fundamentally solved by relying on laws. The incorporation of citizens' environmental rights into the law and the constitution is an important way to solve China's environmental crisis and the construction of environmental rule of law. In the context of the concept of ecological civilization, the incorporation of environmental rights into the constitution has become an unavoidable issue, because the incorporation of environmental rights into the constitution is essentially a response to the concept of ecological civilization. For a long time, the discussion about the incorporation of environmental rights into the constitution has never stopped, but the practice of incorporation of environmental rights into the constitution has not progressed. This paper discusses the lack of environmental rights of citizens as an important reason for the backwardness of environmental protection and environmental law in our country, and states the necessity of incorporating environmental rights into the constitution.

Keywords

Environmental Rights; Human Rights; Constitution; Constitutional Environmental Rights.

1. Introduction

The environmental pollution is an important international issue in the 21st century. The deterioration of the ecological environment not only poses a major threat to the survival of human beings, but also restricts the development of society to a certain extent, which is reflected in the emergence of a series of new rights in law. Many countries in the world have clarified environmental rights through high-level domestic laws [1], but in China, the content of environmental rights is only scattered in some low-level local environmental legislation, and high-level legislation is urgently needed for guidance and protection.

China's environmental issues have always received extensive attention from all walks of life. After years of research and discussion, there are still many controversies in the field of environmental rights. From the perspective of jurisprudence and constitution, there are still many defects in China's environmental rights theory, and from the current academic research results, the research on the nature of environmental rights and other aspects is not deep enough, which is why China's environmental rights have been delayed into the constitution. one of the reasons. This article will start with the discussion on the incorporation of environmental rights into the constitution, and analyze the dilemma and path of the incorporation of environmental rights into the constitution.

In November 2012, the 18th National Congress of the Communist Party of China started from a new historical starting point and made a strategic decision to "vigorously promote the construction of ecological civilization". With ecological civilization as the basis, social development will not follow the old road of pollution first and then governance, and will not It will be extensive development at the expense of environmental interests. Green development is

inseparable from the support of the legal system. Governing the country according to the constitution is the foundation of the rule of law. Incorporating environmental rights into the constitution is an inevitable requirement for the construction of ecological civilization, and it can also increase the public's attention to their own environmental rights.

2. Tests

2.1. The Necessity of Enlisting Environmental Rights into the Constitution

As the fundamental law of the country, the constitution plays a guiding role in a country's legal system, which determines that the rights and obligations it stipulates must be the most fundamental and universal rights and obligations, and the stability of the constitution determines its formulation and revision. complex features of the program. Therefore, whether a right meets the requirements of the constitution and is incorporated into the constitution should first pay attention to its two aspects: first, whether the right is the most basic and universal right and obligation of citizens; second, the necessity of the right being incorporated into the constitution is it sufficient.

First, the proposal of environmental rights is of great significance to the improvement of the constitutional rights structure, which can be the beginning of the incorporation of new rights into the constitution [2]. When the problem of food and clothing has not been solved, people rarely put forward excessive demands on spiritual pleasure, but with the continuous improvement of life quality, the satisfaction of the spiritual world and the needs of self-realization have become the elements of life. As an organic part, the demand for emerging rights has become a new cultural phenomenon. The scope of the basic rights of citizens satisfied by the law should be expanded as much as possible in order to seek better well-being for citizens. It can be said that with the progress of the economy, the welfare of human beings is gradually improved, and the proposal of new rights must be the general trend.

Secondly, environmental rights fully conform to the four characteristics of constitutional rights, namely, universality, equality, reality, and consistency. First, its broadness in the main body shows that it includes anyone, not only contemporary people, but also future generations. The breadth of content includes not only the most basic living environment rights of citizens, but also the derived rights such as spiritual enjoyment. Second, its equality shows that all subjects have the right to enjoy a good environment equally and should not be deprived in any way. Third, its reality is shown in: on the one hand, environmental rights are to solve the impact of environmental degradation on citizens' survival, which is of practical significance; on the other hand, the existing systems and policies also provide protection for the implementation of environmental rights. Finally, its consistency is reflected in the relativity of rights and obligations of environmental rights. Since it is stipulated that citizens have the obligation to protect the environment, then citizens should enjoy equal environmental rights.

Finally, the proposal of environmental rights has political legitimacy. At the Sixteenth National Congress of the Communist Party of China, the Third and Fourth Plenary Sessions of the Sixteenth Central Committee, the establishment of a "resource-saving and environment-friendly" society was taken as the guideline to guide the country's environmental construction. The "integration" strategy juxtaposes the construction of ecological civilization with politics, economy, culture and society. The Environmental Protection Law enacted in 2015 expressly stipulates that environmental protection is a basic national policy, citizens have environmental protection obligations, and the government's environmental protection responsibilities are clarified. In recent years, China's frequent environmental diplomacy activities, support for the domestic new energy industry, including the commitment to reduce emissions at the 2015 United Nations Climate Change Conference, all reflect the political legitimacy of the government in safeguarding citizens' environmental rights.

As an important part of human rights, environmental rights should become the fundamental law of the country - the object of protection of the Constitution. From a global perspective, few countries have incorporated environmental rights into their constitutions. Once environmental rights are incorporated into the constitution, they will provide environmental protection for the survival of citizens, so that citizens' lives and health can be fully valued and protected, and at the same time, environmental rights will be protected. Make the content of the constitution more abundant and perfect. Among the environmental laws and regulations, the incorporation of environmental rights into the constitution is conducive to realizing the effective connection between the Basic Law and the common law, resolving conflicts between different departmental laws, making up for the deficiencies in the content of departmental laws, and providing principled guidance for the implementation of departmental laws.

2.2. The Significance of the Entry of Environmental Rights into the Constitution

First, the citizen's environmental right is a legal right that has a long-term impact on environmental protection and the construction of the environmental rule of law. With the development of the theory and practice of environmental rights since the beginning of the 21st century, academic circles have summarized individual environmental rights as "the individual has the right to live in a suitable environment and the obligation to protect the environment." Citizens' environmental rights refer to citizens' basic environmental legal rights and Unification of basic environmental legal obligations. This shows that citizens not only enjoy the basic environmental rights, but also bear the basic environmental obligations.

The so-called basic environmental legal rights refer to the most basic rights of the subject to the environmental resources, which represent the basic requirements of the subject's dependence on it and its derived survival and development. It is generally believed that a balanced and healthy environment is the most basic environmental state that can meet people's basic material and spiritual needs. In this sense, citizens' environmental rights refer to the right of individual citizens to live in a balanced and healthy environment. The environment is the basic condition and material basis for the survival and development of nature. Among all kinds of environmental rights, individual environmental rights are the most basic environmental rights. It is not only the basis for unit environmental rights, national environmental rights and human environmental rights, but also Necessary conditions for realizing personal property rights, labor rights, rest rights, survival rights, life and health rights and other basic rights.

Secondly, stipulating citizens' environmental rights in the constitution can fundamentally improve the status of environmental law [3], and provide legal basis for environmental management and environmental law enforcement to be legitimate, legal and effective. Citizens' environmental rights are the basis of citizens' rights to participate in environmental decision-making and management or file environmental public interest lawsuits. Restricting corporate economic personnel by citizens' environmental rights can effectively solve the problem of corporate pollution externalities; using citizens' environmental rights to restrict government environmental management rights can solve the problem of government The legitimate exercise, abuse and rent-seeking problems of environmental management rights can also solve the legitimacy and effectiveness of environmental law enforcement [Lv Zhongmei. The rationale and assumption of the incorporation of environmental rights into the constitution [J]. Law Journal, 2018(1):23-40]; on the basis of citizens' environmental rights, it can solve the ambiguity or blankness of the applicable laws of environmental justice, as well as the status quo that the punishment of illegal acts is not painful, and can promote the sustainable development of environmental protection and the construction of environmental rule of law.

Thirdly, citizens' environmental rights provide power guarantee for the all-round development of human beings and the construction of a harmonious society [4]. Everyone lives in nature and is in contact with other people as well as with nature. The essence of human beings is the unity

of sociality and nature. This is the basic relationship that everyone cannot get rid of. Harmony between people and nature is the basic condition and guarantee for realizing the all-round development of human beings and the sustainable development of society. The other rights of citizens guarantee the free development of people in the social field, while the environmental rights of citizens are the legal guarantee to realize the survival and development of people in nature.

2.3. Prospects for the Entry of Environmental Rights into the Constitution

At present, China's Constitution only reflects the protection of environmental rights in an indirect way. For example, Article 9 of the Constitution stipulates: "The state guarantees the rational use of natural resources and protects precious animals and plants. It is prohibited for any organization or individual to occupy or destroy by any means. Natural resources." Article 26 stipulates: "...The state protects and improves the living environment and ecological environment, and prevents pollution and other public hazards. The state organizes and encourages afforestation and protects forests." The Constitution's provisions on citizens' environmental rights are rather vague, which also affects other departments' regulations on environmental rights.

To protect environmental rights in the constitution, environmental rights can be specifically stipulated in the chapter on basic rights of the constitution, which stipulates that "every citizen has the right to be clean and healthy and the surrounding environment is not disturbed; the state protects the living environment and ecological environment, and prevents pollution. and other public hazards; no organization or individual may arbitrarily destroy the living environment of citizens", that is, to protect citizens' right to environmental security. According to the "public trust theory", citizens will entrust environmental management and ownership of natural resources to the state through the constitution [5], and citizens have the right to participate in the supervision of the state's environmental management and natural resource management. Citizens have an obligation to report environmental violations." Environmental supervision rights should also be clarified. When the public believes that environmental government decisions and plans, or enterprise construction projects may affect their environmental safety rights, they can apply to relevant departments to participate in and supervise the implementation of such decisions. Through various special environmental laws and administrative regulations, the rules for citizens to maintain the right to know and participate in the environment are refined, to realize the connection between the Constitution, the basic environmental law and the common law.

At the same time, it is necessary to improve the corresponding judicial relief system. After the citizens' environmental rights are incorporated into the constitution, they can be combined with the current environmental public interest litigation, and based on the "private attorney general system" in the United States [6], through the basic environmental law, citizens can be granted the subject qualification of environmental public interest litigation. Citizens may file an environmental public interest lawsuit if the environmental administrative department and the procuratorial organ do not act passively after citizens report and expose the environmental pollution or ecological destruction that threatens their environmental security rights.

3. Conclusion

Law is the end of governance. The incorporation of citizens' environmental rights into the constitution can not only drive the development of the environmental legal system and lead the direction of reform of the environmental protection legal system, but also guide the environmental legal system to completely transform from the past model of "seeking food and clothing" to "seeking ecology". It also conforms to the general law of the development of the rule of law.

The top-level institutional guarantee for the protection of environmental rights and interests by constitutional environmental rights, only if the fundamental law establishes the status of environmental rights, and then through the Basic Law and other departmental laws to concretize the protection of this legal interest, can the environmental law be incorporated into the constitution into practice, not written in the Constitution. The castle in the sky in the constitution. Environmental rights have obvious human rights attributes and are the premise and foundation of other rights of citizens. The incorporation of environmental rights into the constitution is not only a practical need for environmental protection, but also an important way to protect basic human rights. A two-way interaction model between rights protection and government environmental protection, to ultimately realize the realization of environmental rights and the legalization of environmental protection.

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