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## **The constitutional enshrinement of the human right to a healthy environment according to the basic law of the State**

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### **Abstract**

This study aimed to determine the nature of the right to the environment and to develop a conception of a constitutional text for the environment, with a conception of a constitutional text that recognizes this right and the limits of the protection it enjoys under the Basic Law of Omani Sultanate, while defining its essential role in protecting human health and ensuring a healthy future for future generations. The study reaches several important conclusions, including that the Omani constitutional legislature places a high priority on environmental protection and is considering including it among the fundamental rights of the state order. Pollution is a global and national issue. National legislation will continue to be the most visible, essential, and successful way to implement international law's environmental preservation objectives. State law must prioritise constitutional texts to guarantee the right to a constitutional environment. The Omani constitutional assembly aimed to include environmental preservation in the state's fundamental structure. National legislation protecting the right to the environment will remain the most visible, vital, and successful way to implement international law. The report recommended including explicit language in the Basic Law of the State safeguarding the human right to the environment.

### **Introduction**

Human pollution's substantial risks to human and environmental safety make it a given. Policymakers worldwide prioritise environmental conservation.

International and regional conferences, treaties and agreements, specialized research bodies, scientific journals and periodicals on environmental issues, and environmental protection organizations have all resulted from the global awareness of the need to protect the environment.

This has sparked a global campaign to codify the right to live in an unpolluted environment in the constitution.

Many nations' constitutions include extensive environmental protections. Some constitutions ensure a healthy environment objectively. This right may be enforced legally or otherwise.

One of the most fundamental human rights is the right to the environment, which protects human health and ensures a healthy future. Thus, this research seeks to establish the constitutional foundation for this right in Oman.

### **The Importance of Research**

the aim of this research is to find out what the right to the environment is, where it is enshrined in the Constitution, what protection it enjoys in the Basic Law of the Sultanate of Oman, and the importance of protecting human health and ensuring that future generations will have a healthy future.

Hence the need to give the constitutional right to the environment an independent and unambiguous constitutional basis. Therefore, such research is of great importance, as it helps to show the basic features of these rights and to clarify the close relationship between them and human rights issues. The close relationship between the human right to a healthy environment and sustainable development This research helps to clarify the importance of enshrining this right in the Constitution in order to prevent legislators from disregarding the environment when establishing various laws and regulations, and this means that interests

related to the environment must not be sacrificed to other interests, or else the facts of unconstitutionality will be met.

Given Oman's fundamental framework, it's vital to assess the effectiveness of environmental protection. The constitutional legislature is working to build a legislative framework to realize the ideal picture of this right and align it with other constitutions that include human rights in a healthy environment.

## **The Research Problem**

By extrapolating the Basic Law texts in the Sultanate Oman State issued on November 6, 1996 by Royal Decree No. 101/96, it becomes clear that he has paid attention to the protection of the environment, by including in this system since its inception the principle of environmental protection in Article 12 in its fifth paragraph of the second unit. This matter had a constitutional value, with its ensuing results, but it did not include an explicit text address.

- How has the Omani constitution safeguarded environmental rights? How much protection is this? Since Royal Decree No. 114/2001 protects the environment and combats pollution, how can an ordinary lawmaker regulate the environment constitutionally?

## **Research methods**

This study employs an analytical approach and rational reasoning to reach conclusive conclusions regarding the issue at hand; in particular, the constitutional texts relevant to the question of the constitutionality of the right to the environment are examined and analyzed to the extent that it meets the research objective within the framework of the basic order of the State of Omani Sultanate as set forth in Royal Decree No. 101/96.

## **Preface**

Since the constitutions occupy a leading position in the legal structure of the state, since they are the apex of the legal structure of the state, because they determine its form, the nature of the system of government in it, and organize its powers in terms of its formation, functions, competences, limits and mutual relations, and define the rights and freedoms of individuals, as well as lay foundations and pillars, draw philosophies and trends, set goals and ambitions in various social, economic and political areas that should go all the way, the authorities operating in the state follow their guidance and work in their light (Obaid, 2005, p. 148).

The Constitution is the first legal act and the nation's sovereignty. Thus, legitimacy is established, requiring the governing and the ruled to follow the Constitution. All State activities, including laws, decrees, and judgments, as well as individual actions and behaviour, must follow the law or be null and invalid..(Rahim, 2006, p. 130).

Constitutionalism (Nisreen, 2017, p. 60) means the process that, through the principle of constitutionalism, makes the constitution of the state the supreme value in its legal system, helps to ensure the unity of the law or legal system by giving a common basis to all branches of law. This is because the constitution is a supreme legal value, conferring legitimacy on the entire legal system. The Constitution can also be defined as the normative change in the value of a pre-existing rule that has become constitutional (Miqdad, 2018).

The right to the environment is one of the fundamental rights guaranteed by the Egyptian constitution, which was adopted after the Stockholm Conference in 1972 and the Rio Declaration in 1992 (El-Shenawy and Hilal, 2012; Nisreen, 2017, p. 60). The legislature responded to this development by creating new basic rights.

## **Reasons for constituting the right to the environment**

- Many prevailing factors have contributed to strengthen the movement towards the constitution of the right to the environment, as it is closely linked to the inviolability of human rights, thus giving effectiveness to the right to the environment, the most important of which are the following:

- Regardless of the method used to determine what factors or characteristics constitute a given right, they serve as the foundation upon which to build and uphold constitutional protection for that right. It is undeniable that the rules of public international law, both convention and customary, played a significant role in setting the stage for the constitution and the institutionalisation of this right in particular. For several reasons, including its status as one of the rights of an international nature in terms of its origin and the fact that it is still an emerging and undefined constitutional right, as well as the fact that it cannot be discussed apart from the rest of the other rights, that is, it is a right of a special nature within the framework of protection, the right to privacy deserves special attention and care (Al-Hisban, 2011, p. 286).

- Despite a new dynamic in dealing with nuclear hazards and the widespread and dangerous radioactive contamination from the use of nuclear weapons in World War II, the UN and other international institutions have reiterated the basic principles of international environmental law without significantly expanding their normative content or legal interpretation. Environmental rights need their constitution. (Hayagnah, without, p. 36).

- The growing trend toward internationalization of human rights protection, as respect for and protection of human rights is a criterion for government legitimacy. The American professor "L. Henkin" pointed out that this era is the era of human rights, which was expressed by "James R. May" by saying that the steady growth of the constitution of the environmental fundamental rights movement is mainly due to two phenomena: the first is the spread of new constitutions in the new constitutional democracies in Eastern Europe, Sub-Saharan Africa, the Middle East and Latin and Central America. The second is the growing trend toward the internationalization of constitutional rights (Nisreen, 2017, p. 68).

- The incorporation of the human right to the environment in the Constitution leads to the consolidation of its legal status, which prevents legislators from ignoring the environment when drafting various laws and regulations in the areas of industry, agriculture, tourism, and investment. The Constitution, as a fundamental law guaranteeing individual and collective rights and freedoms, is the best guarantor of the realization of this protection within the framework of the rule of law and institutions, and gives those interested in the environment and civil society organizations the legal means to protect it.

- Constitutional texts dealing with an issue differ from all other legislative instruments in that they are more stable and continuous, since constitutional amendments and reforms require a long period of time and complex procedures, making the constitutional treatment of the issue of protecting the environment from pollution much stronger and longer than if it were dealt with by a legislative instrument at a lower level than the Constitution. (El-Shenawy and Hilal, 2012).

- The Constitution has an important legal effect because it creates the basic rights of the state to implement these rights, both as an argument against those who claim the uncertainty of new provisions related to the environment in general, and as a response to the argument that many constitutional provisions on environmental issues are vague and unenforceable. It is characterized by the uncertainty about the concept of the environment, which is accompanied by the fact that the adjective "healthy" or "balanced" attached to it is not specified, and this, on the other hand. (Nisreen, 2017, p. 63).

- Treating the right to the environment in the context of a constitutional text gives it a broader character, so that it is not an instrument or text to deal with cases where individual harms occur, but gives the text meaning and breadth, so that it is dedicated to a long-term public policy to protect and preserve the environment (El-Shenawy and Hilal, 2012, p. 4).

## **What is meant by the constitutional right to the environment?**

Discussing the concept of the right to the environment requires addressing some of the definitions contained in the environment and then clarifying the legal nature of this right, as follows:

### **The concept of the right to the environment**

The global community has become aware that the protection of the environment is a necessity for human survival. This is because of the close relationship between damage to the environment and the enjoyment of human rights. A constitution of environmental rights is an urgent necessity to legitimize them.

### **Define the environment as a constitutional right**

Despite the multitude of studies and researches that have dealt with the right to environment, there is a discrepancy in the definition of environment, but they have not agreed on a comprehensive definition of this right, to the extent that some jurists see the absence of this right among the other human rights, considering that it is a non-independent right (Elwan 2009, p. 423). Others believe that environment is a word that means nothing because it means everything. One of these authors is J. Panatel, who decides that the term environment is vague and ambiguous. Its scope is unclear and not well defined, M. Prier states that the term environment is a volatile, variable and versatile concept, and M. Deepak states that the term environment is a kind of unconscious mercury for the jurist that he thinks he has. At the same time, it also disappears (Al-Baz, 2005, p. 11).

Despite this ambiguity, this did not prevent legislators and jurists from defining and clarifying the concept of environment using linguistic, idiomatic, and legal terms:

#### **a. Linguistic and idiomatic definition of the environment:**

The environment is a noun derived from the past tense baa and boaa (Al-Razi, 1995 - Bab Al-Baa-), It's also the creature's home. It shows a genus, plant, or animal's general location. It shows the names' condition (Al-Baz, 2005, p. 12).

Due to its many linked words, defining the environment is challenging. "Everything that surrounds man, from the earth with its elements to the live creatures of plants and animals" is one definition. (Abdul Hamid, 2009, p. 56).

Jothan Tuerk defines the environment as the biosphere and its physical or biological resources, but "Joseph Seneca" and "Michael Tug" include man's biosphere and his connection to nature and everything it has produced and surrounds. (Al-Baz, 2005, p. 13).

It is clear from the previous definitions of the environment that it consists of two basic elements (Al-Hadi, 1986, p. 20):

The elements are the products of man's contribution to the natural and industrial environment, as well as the human and social relations that manage these facilities. It includes renewable natural resources such as agriculture, fisheries, forests, and oceans, and non-renewable ones such as minerals and petroleum.

#### **b. Legal definition of the environment:**

By following environmental legislation, we find that there is a discrepancy in defining the term environment among them, even though they aim to achieve the same thing. They aim to identify the different elements that have an impact on humanistic life, which will lead to determining the healthy life of individuals.

The Omani Environmental Protection and Pollution Control Law promulgated by Royal Decree No. 114/2001 defines the environment as a place of protection. It can be said that the Omani legislator, in his definition of the environment, was influenced by the approach of the Egyptian legislator.

The legislative definition of the environment does not differ from the conventional definition, since each of them includes two basic elements, namely, the material nature consisting of air, water, and soil, and man and the changes that he causes in the natural environment. The introversion of an environment to these two elements-according to the legislative definition-gives it a broader scope that allows addressing the consequences of the individual's behavior on the natural elements surrounding him.

The importance of the study of the right to the environment - since it is a new right - is shown in two aspects. One is that it plays an important role in the creation of an international and internal legal system for the environment. It is necessary not to determine the effectiveness of the constitution but rather to ensure the use and empowerment of the constitutional right.

### **Elements of the environment according to the regional concept**

The researcher will focus on the three basic elements of the region, or as they are called, the traditional elements - dry, water and soil.

#### **First: the land element:**

The term soil refers to the dry part of the earth with all its layers under the surface, and these layers contain different kinds of riches, such as minerals, petroleum, and coal. It is based on the geographical features of nature such as mountains, rivers, plains, valleys or plateaus, and the waters in between.

A Bloy court sentenced a man who unlawfully discharged water into a valley creek. He was unaware that water pollutes the valleys. "There is a spot designated for this purpose, and the defendant did not get a permission for the discharge of water into these valleys," the Court of First Instance condemned Bloy.

The court convicts the defendant for releasing environmental contaminants into valleys and rivers without Ministry authorisation under Article (217/2) of the Code of Criminal Procedure, citing Article (34 of Article 20) of the Environmental Protection Law. And the battle against pollution, which doesn't contradict the defendants' lawyer's claim that the water is pure and not an environmental contaminant... Why wasn't the water sampled for laboratory study to establish if it was an environmental pollutant? The court punished the defendants according to the accusation after finding them guilty. (Bloy Criminal Chamber, 2019).

#### **Second: the marine element:**

The territory of a state is defined by the availability of its elements, land, and air only. It includes internal waters, including lakes, rivers, canals, ports, straits, and bays, as well as the territorial sea, provided that the territory of the state may not include the marine component. (Abu Al-Atta, 2010, p. 209).

Water pollution is the study of how water reaches the environment, and includes pollution of seawater through the sinking of crude oil tankers. Water pollution represents especially the spread of microbes and carrier viruses. Diseases (such as dysentery and schistosomiasis) are one of the main health problems in developing countries. (Abdul Hamid, 2009, p. 62).

#### **Third: the air element:**

By "airspace" is meant the atmospheric strata or air above the land territory and territorial sea of the State, and it shall have the right to exercise its powers over it, including the regulation of traffic therein in accordance with its interests and safety requirements and with the international treaties to which it has been a signatory (Rahim, 2006, p. 173). Among the most important sources of pollution that clean air carries while passing over the surface of the earth are various chemicals resulting from natural phenomena or human activity. (Sabbagh, 1992, p. 84).

### **The legal nature of the constitutional right to the environment**

There is no doubt that one of the main features of any human right is the statement of its characteristics that distinguish it and infer it, and therefore, the researcher must address the characteristics of the human right in a healthy environment, as it constitutes the reservation of the corner that can be relied upon to raise this right to the ranks of the basic rights and then the constitutional recognition of this right:

**The right to the environment is one of the rights of the third generation (solidarity rights).**

Human rights and freedoms are diverse, and in this context some scholars proceed to divide human rights into three generations in terms of their content, the chronology of their emergence, and their crystallization (Al-Haf, 1998, p. 44). These rights are as follows:

1. **The right to the first generation rights:** It is represented in civil and political rights related to freedoms and political participation, and includes the right to life and individual freedom, freedom of opinion, expression, thought and belief, freedom of organization and association, the right to vote and candidacy, the right to participate in public affairs, the right to assume public office, and the right Peaceful assembly, equality before the law, the right to safety, the right to a fair trial, freedom of religion, and voting rights all require protection against government interference.
2. **The rights of the second generation** (Al-Haf, 1998, p. 92) The government has to do things to make sure that these rights are put into practise and that people can enjoy them.
3. **Rights of the third generation:** Accordingly, the human right to a healthy environment - along with the right to development and the right to peace - is considered one of the inseparable rights, so that none of them can be separated from the other, since the human right to a healthy environment is necessary to achieve the wheel of development and peace (Al-Tawil, 2014, p. 297) and that the environment is not a right of an individual, nor is it the mere property of a generation without a generation. (Bashir, 2013, p. 314).

### **The right to the environment is a modern right of the international origin**

As the court is pleased with the evidence, it convicts the accused of dumping environmental contaminants into valleys and rivers without a licence from the ministry, based on Article (34 of Article 20) of the Environmental Protection Law. Combating pollution, which doesn't affect what the defence counsel said, that the water is pure and not an environmental contaminant,... Why wasn't a sample of the water analysed to see if it was a pollutant? As the court found the defendants guilty, it punished them according to the indictment. (Al-Hisban, 2011, p. 286).

Therefore, international declarations and treaties gave rise to this right. The 1972 Stockholm Conference recognised this right, laying the foundation for international environmental law as a contemporary component of public international law. The conference's principles and recommendations aren't legally binding. The actual importance of this conference is in awakening the world consciousness to safeguard man's right to life, a healthy environment, and the fulfilment of life necessities via environmental preservation. (Al-Elewi, 2017, p. 36).

This was repeated in the declaration of "Rio de Janeiro" in Brazil (Elwan, 2009, p. 421).

As part of the World Conference on Environment and Development, the United Nations hosted the "Earth Summit" in Rio de Janeiro, Brazil, from June 3–14, 1992. 30.000 participants from 172 nations and 108 leaders of state and government. They recognised the close relationship between the human right to a healthy environment and other human rights, which means that states can negotiate to find solutions to balance the right and the means to stop the destruction of natural resources, given the impact of environmental degradation on human life, health, development, etc. (Al-Elewi, 2017, p. 39).

### **The right to the environment is a complex right**

Given the traditional split of law into public and private, the human right to a healthy environment is complicated, depending on the parties and their features. Environmental law doesn't fit well into public or private legal systems. The right to a healthy environment is both an international and a national right, expressed through environmental clauses in many nations' constitutions and legislation. (Al- Elewi, 2017, p. 36).

The human right to a healthy environment is complex because it cannot be classified as a purely individual or collective right. On the one hand, it grants every human being the right to a healthy environment as a human right, but on the other hand, a healthy, pollution-free environment is a right for all peoples of the international community. (Abu al-Atta, without date, p. 62).

Therefore, legal jurisprudence classifies this right as a complex right with several aspects, therefore it cannot be regarded in isolation from other rights and must be preserved for all people, regardless of their legal affiliation, political affiliation, or ethnic background. (Al-Hisban, 2011, p. 287).

## **The predominance of the peremptory nature of the rules of the human right to the environment**

This peremptory nature of the rules that govern the human right to a healthy environment is justified by the public interest it seeks to achieve, since it aims to preserve the elements and natural resources on which unjustified interference damages human health and the elements of economic and social development of society. This puts the legal rules that protect the right of man to a healthy environment in the set of mandatory legal rules that must be followed (Al-Elewi, 2017, p.65). Any act that violates it is null and void because it attacks the basic interests of human societies and their right to a normal existence. It is thus more hazardous than breaching any other internal or international law. (Mohamed, 2017, p. 23).

## **The constitutional basis of the human right to the environment**

The constitutional basis means to realise the legal value of the text in terms of protection, so there is no doubt that the Constitution is at the forefront of legislation, that constitutional texts are the cornerstone of the legal organisation of the State, and that other legal rules are next to it in order of precedence, since it is not possible to enact legislation, a decision, or an action of the various authorities in the State that contradicts or interferes with the Constitution. (Desouqi, 2009, p. 323).

This study focuses on the constitutional underpinnings of the human right to a healthy environment to offer light on this key field of law, given the gradation of legal standards discussed below.

## **The way of organizing the right to the environment**

Extrapolating constitutions' approaches for assessing the human right to a healthy environment, we find that some expressly mandate its preservation, while others implicitly do so as a sign. This topic's research is split as follows:

### **Explicit constitutional protection of the right to the environment**

Some nations have enshrined this right in their constitutions. This protection is marked by remarkable homogeneity and convergence when incorporated in constitutions, however others have opted to frame living in a clean and healthy environment as the manifestation of the individual's objective environmental rights. Article 33 of the 2005 Iraqi Constitution declares, "Everyone has the right to a healthy environment." Second, the state ensures environmental and biodiversity protection. This is in France's 2005 Constitutional Charter for the Environment. Article 1 of the Charter and Article 56 of the Turkish Constitution say that "everyone has the right to a healthy and balanced environment."

Article 56 of the Slovenian Constitution declares, "All persons have the right to a healthy living environment." Article 41 of the Argentine Constitution protects a healthy environment. (Al- Elewi, 2017). The 1973 Philippine Constitution, for example, states: "The State ensures the right to live in a healthy and clean environment, free from pollution." Article 20 of the 1999 Finnish Constitution declares, "The State should guarantee that everyone has the right to a healthy environment and the chance to participate in environmental decision-making," as does Article 24 of the 2001 Greek Constitution. (Al-Elewi, 2017, p. 115).

Some constitutions relate the right to a healthy environment to the state's and citizens' responsibilities to safeguard it. Article 45 of the 1978 Spanish Constitution states: (1) Everyone has the right to a healthy environment. 2. Public authorities must guarantee the sensible use of all natural resources to promote and safeguard quality of life, defend the environment, and foster social solidarity. 3. Anyone who violates the previous paragraph and the law will face criminal or administrative sanctions and be required to make reparations (Al-Hisban, 2011). This is also stated in Article 23 of the Venezuelan Constitution of 1978 (Abd, 2012, p. 430) and in Article 66 of the Portuguese Constitution of 1976. (Al-Baz, 2007, p. 74).

In some countries, constitutions explicitly recognize that environmental protection is not only a right but also a duty of the state to protect and improve the environment and ensure the enjoyment of human rights in it, and that it is each individual's duty to protect his environment and limit its degradation and pollution. "The state must safeguard the environment and maintain national security." Article 51/1 (c) of the Constitution declares that every Indian must "preserve and enhance the natural environment, including forests, lakes, and animals" (Al-Baz, 2007, p. 74).

Some believe that protecting the environment without regulating or specifying its content could give the judiciary and legislature the unconditional will to regulate these rights or to limit or affect the rights of the individual in a proper environment. The constitutional legislator must take this into account when drafting constitutional texts on environmental protection. Enact laws and regulations to govern, oversee, and control the responsibility to implement the constitutional language generally. (Al-Sayed, 2013, p. 83).

Through the previous presentation, the researcher points out that it was not spared the criticism leveled at it, especially concerning the formulations included in those constitutions when they constitutionally enshrined this right.

The report criticises the right's Constitutional language. Some jurists say the formulation of ecological equilibrium or environmental equilibrium might lead to disagreements about the criteria of equilibrium that must be considered in the law and whether this formulation includes scientifically ambiguous environmental threats and damages. All these considerations lead to problems in applying the constitutional language and its actual implementation, depending on the point of view, and to significant litigation in the courts; some jurists prefer building an acceptable environment to a healthy one. It prioritises humans in environmental conservation, which harms other species.. (Al-Sayed, 2013, p. 78).

Some criticise these constitutions, in relation to some countries' centrality of man in their devotion to law in a healthy environment, because of the attribute attached to law and its companions, which is considered more effective compared to those that declare exaggeration and try to embody nature as the bearer of law, but the most effective comparison is the one that adopts ecocentrism in a broader sense that includes humans. (Nisreen, 2017, p. 117).

On the basis of what has been said, we agree with some jurists that the legislature's task is not to make a general declaration and an absolute determination, as the Constitution provides, nor to establish a global limit to this right, but that this right can be invoked in all areas of the legal system that concern this right. This is the real role that the constitutional legislature leaves. As the legislature finds appropriate solutions to the various cases in which a conflict may arise between the rights when they are exercised in practise, and to define the goals and objectives that must be achieved through the protection of the human right to a healthy environment, and harmonisation between this right and other interests, values, Principles, and other constitutionally recognised and guaranteed rights, so that none of them remains absolute, so it can be achieved. (Al-Hisban, 2011, p. 289).

### **Implicit constitutional protection of the right to the environment**

Some constitutions define the human right to a clean environment indirectly, which guarantees him to live in a safe environment where he is protected from environmental pollution that may negatively affect his health and, consequently, the development plans and production rates that States seek and want to achieve. This approach, or indirect method, consists in the fact that states do not include in their constitutions explicit texts on the right of the individual to environmental protection or the duty of the state to guarantee this protection to citizens, but that this protection can be achieved by deriving it from the spirit of the text, which aims that the legislator, behind his report, guarantees the protection of citizens through social and economic texts. (Al-Baz, 2007, p. 75).

Thus, the implicit method belongs to the unexpressed from the expressed, and its lack of explicitness comes from the fact that the utterance does not directly indicate it; it is benefited by it indirectly through meditation on the utterance and understanding of the utterance. Good purpose drives good application (Mohamed, 2017, p. 43).

Accordingly, Identifying the implicit constitutional protection of the environment and its constitutional foundation requires a detailed grasp of the state's public policies. The framework of legal laws in this life is governed by social jurisprudence, which views the legal language as a tool to safeguard individual and society interests equally. (Al-Hisban, 2011, p. 293).

among the most prominent countries that have adopted the approach of implicitly and indirectly protecting the human right to a healthy environment through what they have already incorporated into civil and political rights or other economic and social rights sufficient to derive environmental protection are the Italian Constitution, which states that health is one of the fundamental rights of the individual and that the state must take care of it, and many Constitutional Courts have derived this from the interpretation of



constitutional texts related to the right to life and the right to health care, as well as the Egyptian Constitution of 1971, which does not explicitly provide for the protection of the environment, but it is possible to get this protection through the indirect method, or the tacit method, to get this protection from the spirit of the texts related to the social and derive economic rights of the spirit dedicated to him as it is a high place among the texts when it was treated in Chapter Two of it, and as one of the fundamental components of society, particularly in Article 16, which states that the state shall ensure the services of the state.

UAE's 1971 constitution does not clearly state the right to a healthy environment. It can still be derived from other literature. It wanted a constitution provision protecting health and the environment. Article 19 reads, "Society should provide health care for citizens and the tools to prevent and treat illnesses and epidemics." (Al-Iraqi, 2013, p. 301).

Article 8 of the Bahraini Constitution of 2001 states: "a. Every person has the right to health care, and the state shall ensure the means of prevention and treatment, as well as the creation of various types of hospitals and health care facilities." (Abd, 2012, p. 433).

From the above, it's obvious how tightly the human right to a healthy environment is linked to other human rights, confirming the cohesion of human rights as universal, indivisible, interrelated, and intertwined rights. Some jurists argue it is unnecessary to formally codify this right in the constitution since it is a basic individual right and may be protected by other human rights. constitutionally protected (Al-Sayed, 2013, p. 91).

Various jurists argued a deeper look at some Constitutional rights indicates that both of them, or what is beyond them, are values and that what is sought for purposes is contained in other unestablished rights. The Constitution's rights lead to new ones. Thus, its provisions are confined not only to the rights it has officially created, but also to the rights it has implicitly guaranteed, so they all stand above everything else in a manner that prohibits the legislature from distorting them. (Al-Murr, without date, p. 92).

Despite the validity of this trend, the researcher agrees with other jurists that the implicit recognition of the right to the environment, based on the linkage with other related constitutional rights, is an insufficient recognition, despite its importance for the indirect protection of the environment and, therefore, for the possibility of asserting the other rights, since it depends on the will of those who interpret the constitution. In this scenario, however, despite attempts to recognise direct constitutional protection of the right to the environment, its stated establishment may evoke indirect protection. (Al-Hisban, 2011, p. 295).

### **The position of the Basic Statute of the Sultanate Oman State of the right to the environment**

By extrapolating the texts of the Basic Law of the State of Omani Sultanate, promulgated on November 6, 1996 by Royal Decree no. 101/96, the researcher notes that this system is one of the systems of Arab countries that have explicitly enshrined environmental protection in their constitutions or statutes since the early 1990s (The Basic Law of Governance in the Kingdom of Saudi Arabia, 1992, through the text of Article 12 in its fifth paragraph) "The state cares about public health and strives to prevent and treat diseases and epidemics. It protects the environment and prevents pollution."

The Sultanate's constitutional legislation clearly prioritises environmental preservation. The inclusion of environmental protection in the Basic Law of the State since its enactment has given this matter a high constitutional status, with the result that the legislature and authorities of the State refrain from ignoring the environment and the need for it to be free from pollution when drafting various laws that may endanger the environment or any of its elements, from near or far. It's a governmental duty not to compromise environmental concerns for economic progress. (Al-Hadi, 2007, p. 8)

The constitutional provisions give priority to the preservation of the environment. The inclusion of environmental protection in the Basic Law of the State since its adoption has given this issue a high constitutional importance so that the legislature and the authorities of the State, when formulating various laws, do not overlook the environment and the need to keep it free from pollution. Environmental issues must take precedence over economic growth

Since the court is the ultimate expert in the issue before it, and since the expert report is not beyond the capability of an element of evidence that this court is independent of its discretion, it is authorised, within its discretionary power, to accept the expert report in its entirety. Or to adopt any part of what it has been assured, and it shall be its right to submit such report in whole or in part, except that in the case of purely technical questions, such as environmental issues that require the opinion of environmental experts, the court has no choice but to adopt the expert's opinion because he is the most knowledgeable of his field, the court is convinced of what this opinion says, and assumes it is correct. (Oman Administrative Judiciary Court, 2016).

Omani Administrative Court also confirmed that "the legislature has established a strict system for activities related to quarries and mining sites that have a direct impact on the environment, ensuring ways to control their environmentally harmful impact on the sea, and has delegated the administrative authority represented by the Ministry of Environment and Climate Affairs the power to issue environmental licences.", 2016, p. 13).

On the other hand, the aforementioned text implicitly and indirectly referred to the human right to the environment when it linked the human right to health - as a social right - to the right to a healthy environment. Here it can be said that the meaning of the term "operative" in this text is devoted to the constitutional protection of the right to public health. The meaning of the term comes from linking the spirit of the text with its utterance. The researcher concluded that effective constitutional protection of public health is possible only by creating an environment free from environmental inconveniences and harbingers that lead to disruption of the environment in which social rights, including the right to health, are exercised. (Al-Hisban, 2011, p. 294).

If this is the Omani legislature's devotion to environmental preservation, it doesn't meet the ideal picture in creating the right to the environment from several key elements. First, the Basic Law implicitly includes the human right to the environment. Individual constitutional rights allow appeals and compensation (Tagien, 2008, p. 103). Second, the provision of social and economic rights as a constitutional obligation of the state depends on its material means, thus citizens cannot challenge it in court if it cannot fulfil them, since they are more of a promise than a right. This means individuals acquire rights via commitment, not just through dedication. (Al-Tabtabaai, 1972, p. 554).

Second, this passage illustrates his idea of calling this right, which is protected by the spirit of the law, a second-generation social right. ( ) - Therefore, the state must implement these rights and create an atmosphere that allows individuals to enjoy them in perpetuity, which always makes the individual a defender against state intervention, without the individual having to play a central role in protecting the environment from pollution and enforcing this right, making the state the first and last responsible for protecting the environment.

It is agreed that designating the right to the environment as a basic right may affect implementation differently than classifying it as a third-generation right, which needs joint efforts by all actors. Eastern European constitutions recognise new environmental rights. Thus, these third-generation rights are far from basic rights that people may utilise to defend themselves. (El-Shenawy, 2013, p. 60).

The right to the environment as a basic right may have different implementation consequences than as a third-generation right, which needs coordinated efforts by all parties. Eastern European constitutions recognise new environmental rights. These third-generation rights are far from the basic rights that people may employ to defend themselves. (El-Shenawy and Hilal, 2012, p. 20).

Third, he did not mention sustainable development, his goal in protecting this right for future generations. (Al-Elewi, 2017, p. 135).

Some jurists believe that sustainable development is the closest formulation of constitutional environmental law because it considers economic resources, conservation of natural and environmental resources, and social development without compromising future generations' rights. (Al-Sayed, 2013, p. 88).

Based on the foregoing, we think that defining the human right to the environment, the state and individual obligation to safeguard it, and the right of generations to this right to achieve sustainable development completes the constitutional construction of environmental principles.

### **-The proposed text of the right to the environment in the Basic Law of the State in the Sultanate:**

The Constituent Assembly's Basic Law of Oman includes environmental protection provisions. This system should include an environmental right word.

Thus, the Omani Constituent Assembly should include a realistic, truthful, and balanced expression of the human right to the environment to the Basic Law. The state and individuals must maintain environmental balance to ensure sustainable development. This essay links the right to the environment to the following:

1. Since its adoption, the Omani constitutional legislature has. That this language comprises two key elements that cannot be separated, namely the Constitution's rights and environmental responsibility. environmental language. (El-Shinawy and Hilal, 2012, p. 21).
2. The human right to a healthy environment assesses threats to human security, such as pollution, contamination, and pollution from industrial and technological progress and the disposal of nuclear, industrial, and toxic wastes and the conduct of nuclear tests underground, in the atmosphere, or in water.
3. It resulted in considering the right to the environment as one of the collective rights - economic and social - with the consequent obligation of the state to intervene positively to implement and protect these rights and to create an atmosphere that allows individuals to enjoy them permanently (Al-Tabtabaai, 1972, p. 395).
4. The Constitutionally guaranteed civic and political right is protected by the State. The right holder or bearer receives affirmative government action to realise this right without constraints or actions that violate these rights and freedoms. This made it a political right, which includes non-binding policies the government seeks to achieve within its economic and social means, and a procedural right that guarantees individuals the right to request information, participate in environmental political decision-making, seek asylum from the judiciary, and compensation. (Al-Sayed, 2013, p. 105).
5. This book defined its philosophy in designating the human right to the environment as a third-generation right that requires coordinated efforts by the state and people to implement. To be effective, all actors must cooperate. (El-Shenawy and Hilal, 2012, p. 21).
6. This article states that protecting this right ensures sustainable development for future generations. Natural resources are not the exclusive property of a generation without a generation, thus this generation must give this heritage to future generations in the same condition as it acquired it. (Bashir, 2013, p. 314).

### **Summary of results**

1. The environment is a common heritage of humanity, and policymakers in all developed and developing countries are aware of the importance of protecting it from pollution, which crosses borders and continents.
2. The third-generation constitutional right to the environment needs governmental and individual cooperation to enforce. To work, all actors must cooperate.
3. Since there is no clear definition of "environment," the most prominent, important, and effective way to protect the environment is through national legislation, which is determined by international law in relation to environmental protection principles. Environmental conferences propose principles without requiring States Parties to comply.
4. The right to a constitutional environment receives the greatest legal protection since constitutional texts come first in the State's legal system and other legal standards follow them in order of priority.
5. The constitutions of various nations address the right to the environment differently. Some specifically stated this right in their constitutions, while others implied it by alluding to other rights.
6. The express text on the right to the environment guarantees this right and other fundamental rights because it limits the ordinary legislator when he enacts laws regulating the right and establishing its detailed provisions.
7. Environmental rights exist without a constitutional provision. Instead, the ordinary legislator may infer it implicitly and indirectly from the spirit of the text by applying broad interpretation methods, but this is insufficient recognition because it depends primarily on the will of those who interpret the constitutional texts in relation to the constitutional rights protected, and it remains a helpless and limited protection because it protects the constitutional rights established.
8. Since its issuance, the Omani constitutional legislator has been keen to stipulate the protection of the environment in the basic system of the state, giving it a lofty constitutional value, with the ensuing consequences, as the legislator and concerned state authorities refrain from ignoring or sacrificing its elements to achieve other interests, especially economic development.
9. He indirectly referenced the human right to the environment by linking the social right to health to his right to a healthy environment. Thus, environmental disruptions and harbingers cannot underpin constitutional public health protection.

## Recommendations:

1. We hope the Omani constitutional assembly would include a clear description of the human right to the environment in the state's fundamental legislation. To achieve sustainable growth, the state and people must safeguard the environment and its balance.<sup>1</sup>
2. The State must engage in all international and regional environmental protection actions to acknowledge current science's discoveries, conserve and sustain the environment, adapt it, and improve it.
3. Find eco-friendly energy, raw material, manufacturing, and consumption options.
4. Raise environmental awareness via media. With the advancement of communication techniques and the speed of information transmission, the media plays a vital role in spreading knowledge and protecting the environment.
5. We are introducing environmental principles into education at all levels to create a generation that values the environment and preserves its resources for future generations. A healthy environment requires a legal framework that Organizes and protects and an authority based on ground implementation and people's knowledge and consciousness.

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<sup>1</sup> To find out the advantages of this proposed text, see the second topic of the second chapter of this study.

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