

The Interrelationship Between Environment and Human Rights: An Overview on Legal Context

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Abstract

Every year more than two million people met the tragic end of their lives across the world for different causes. Thousands of individuals suffer from pollution-related illnesses. Ecosystems, for water scarcity, improper management of natural disasters, and disposal of toxic and hazardous products are degrading across the world due to environmental pollution. Climate change has an adverse impact on human health. These facts indicate that environmental and human-rights are closely related. The UN attempts to tackle environmental issues--the Stockholm and Rio Declaration--illustrate the importance of the link between human rights and dignity, and the environment. Already 69 years of the Universal Declaration of Human Rights have been passed but human rights are still facing serious crisis. This crisis impacts on environment and human right to the environment. The article aims to focus the environmental concerns in human rights discourse; to explore the relationship between human rights and environmental rights in light of the worsening global environmental situation, and to encourage the excellent practices pertaining to implementation of human rights obligations and responsibilities for informing and strengthening the development of overall environmental issues. The article makes use of secondary data i.e. books, articles, different national and international law reports.

Keywords: *Environment; Human Rights; Environment Protection; Human Health, Pollution*

Introduction

There is a strong and undeniable connection between surroundings and human rights. The survival of people relies on a healthy and secure system. For example, serious pollution of the environment may influence the well-being of people and can stop them from enjoying their fundamental rights. Melissa Thorm (1991), an author has indicated this symbiotic relationship as follows:

'Human life and the human environment are inseparable. To survive, humans must have air to breathe, water to drink, foods to eat, and a place in which they can live and sleep. If these elements become polluted, contaminated, or eliminated or destroyed, life will cease to exist. To protect human life, our environmental life support system must be maintained and protected. One way to accomplish this protection is through the enactment or recognition of a legal human right to environment'.

In global legislation, the relationship between the environment and human rights is now well created. Actually, human rights cannot be protected without the protection of the environment in which people live, and environmental rights can often be properly implemented only if human rights have been respected at the same time (Lador , 2004). Thus, the two regions inherently connected with human rights and environmental rights should be approached in a consistent manner. The right to a healthy environment is essential to the right to life and the integrity of people.

Importance of Human Rights Approach to Environment Protection

There are two primary approaches to the strategy of human rights in terms of environmental protection. The first is to protect the environment as a means to meet human rights standards. Since, degraded physical environments directly lead to human rights violations of life, health and living conditions, acts leading to degradation of the environment can represent an instant breach of globally recognized human rights. Secondly, the legal protection of human rights is an

efficient way of attaining the objectives of preservation and protection of the environment. Thus, it can only be feasible to achieve full human rights in culture and politics where environmental rights are more like to be respected (Anderson, 1996, p.3). Two primary reasons for an independent right to a good setting are: Firstly, the improved status be given to the quality of the environment and the greater government attention be given to protect the environment, and secondly, the essential nature of the climate be acknowledged as a fundamental condition for life which is essential for promoting. Besides, the essential character of the setting would be recognized as a fundamental condition for life which is indispensable for promoting human dignity and welfare and the satisfaction of other types of human freedoms (Birini and Bolyel, 2002, p. 255).

However, there has been a wide discussion about the nature of relationships between human rights and the environment. The right to the environment is placed by various academies in various classifications of human rights (Thorne, 1991, p. 301). It is a basic human right for some academies (Weiss, 1987, p. 347). Others have regarded other requirements, like food, water, air, housing, apparel etc, as fundamental human requirements (Falk, 1981, p. 116). The right to a secure setting is also seen as a right of the third generation of 'solidarity', referring to the development of the freedoms in terms of their historical source (Meron, 1986). The most recent acknowledged category of human rights includes the so-called third-generation rights, including the right to health, peace and a good environment. However, according to Birnie and Boyle, such categorization is misnomer and environmental rights straddle all three of the above categories. Environment rights can thus serve three functions: first, to use current civic and policy rights to provide access to data, judicial remedies, or political procedures to people, organizations and NGOs. Secondly, by treating environmental rights as financial or social rights, the environmental quality will offer similar status to other social economic rights. Third, to treat environmental quality as a solid right is to obtain the funds, abilities and technology required by

governments and international organizations for the fulfilment of environmental goals (Birnie and Boyle, 2002, p. 253).

Rights to Safe Environment as a Human Right

The recognition of the right to the environment has two significant objectives: firstly, to enhance the life quality and secondly, to provide the remedy to people suffered by pollution (Gormley, 1988, p. 10). The breach of both types of civil and political rights, and financial, social and cultural freedoms could be related to the environmental degradation according to Phillippe Sands. According to Philippe Sands, environmental degradation could be linked to the violation of both categories of rights - civil and political rights, and economic, social and cultural rights.

As per the opinion of Phillippe Sands, the right to the environment in the context of the achievement of financial, social and cultural freedoms relates to the right to a standard of living suitable for health and well-being; the right to health; the right for everyone to free access to their natural assets; safe and healthy working conditions; protection of children against social exploitation etc. On the other side, certain civil and political freedoms can also create practical and enforceable environmental and associated commitments. The rights to life, freedom, right to property etc. are the most significant civic and political rights relating to environmental protection (Sands, 2004). There are three wider categories of rights articulated by academics in the expansive exposure to the environment: substantive rights and environmental law, eco-centric rights and procedural laws. Thus, the substantive elements of the right to the environment as well as the procedural safeguards given by recognized environmental rights are covered in the expansive formulation of human rights to the environment.

Substantive Right to Environment: There have been many adjectives used for describing and providing the word 'correct' to the environment with a substantial quality standard, which humans are entitled to live in accordance with global and national legislation (Thorne, 1991, p. 309). Safe, satisfying,

healthy, decent, proper, tidy, pure, natural, feasible, ecologically sound and environmentally balanced adjectives are the most common (Thorne, 1991, p. 309). The right to the environment as a human right means the right to live in a minimum quality setting that enables a life of dignity and well-being to be achieved.

What are the contents of the right to environment? The determination of such a precise minimum standard of environmental quality is often a difficult task. According to Birnie and Boyle, the right to environment includes the following elements:

- 1) Freedom from pollution, damage to the environment and activities which influence or threaten the environment, life, health, livelihood, well-being or sustainable growth;
- 2) Protect and preserve the fauna, flora and wildlife of the atmosphere, water, sea ice and all required procedures and regions for preserving biological diversity and ecosystems;
- 3) The highest achievable health level,
- 4) A safe and healthy environment for food, water and work;
- 5) Adequate housing and land tenure in a safe, healthy and environmentally sound setting and living circumstances;
- 6) Ecologically sound access to nature, and natural assets preservation and sustainable use;
- 7) Distinctive site preservation;
- 8) Traditional life and livelihood should be enjoyed by native people (Birnie and Boyle, 2002, p. 255).

The Right of the Environment: This philosophic concept articulates that the environment has privileges based on its own inherent value, which is separate and different from those which it can be ascribed to by human use (Rivera, 2006, p. 282). It implies that if a product is worthy and not merely for its uses, it has an intrinsic value (Jardins, 2001, p. 133). Many environmental concerns have a moral, spiritual, symbolic, esthetic or cultural meaning (Jardins, 2001, p. 133). The two competing concepts -

The human right to the environment and the right to the environment are hard to balance as the former is anti-prop-centric and the latter is environmentally friendly. Professor Kiss and Shelton, however, resolved this issue by suggesting that environmental right is, in reality, a key component in the building of environmental rights: "Intrinsic value" can be grasped in this respect. Viewing people and nature as interrelated enables us to conclude that both of them have to be preserved. The right to the environment as a substantive part of the expanding right to the environment should, therefore, be incorporated (Kiss and Shelton, 1991, p. 23).

Procedural Environmental Rights: The procedural environmental rights are the precondition for the realization of substantial elements of the extensive right to the environment. They refer to human rights procedures or proceedings that are essential to implement efficiently the substantial elements of the extensive right to the environment. Access to environmental data, involvement in decision-making of environmental policies and the accessibility of legal remedies in order to compensate the environmental damage are among the acknowledged procedural environmental rights. Access to environmental data is commonly acknowledged as a precondition for the efficient leadership, security and collaboration of the environment at domestic and international level (Sands, 2003, p. 826). The accessibility and access to data also make it possible to take preventive steps and mitigate them, guarantees citizens' involvement in domestic decision-making procedures and enables the global community to determine whether the states meet their legal requirements or not (Sands, 2003, p. 826).

Public involvement in the environmental field is viewed as an instrument that individuals can use in choices on environmental protection policies. In the environmental sphere, public participation is considered as a tool, which people can use in making decisions on measures relating to environmental protection. Involvement of everyone in the decision-making process of a project implies the participation of the public. The participation of stakeholders in environmental issues is progressively recognized as a way to enhance the value of decision making and assist environmental initiatives to address local requirements and priorities. In brief, as demonstrated by several treaties and non-binding documents, the concept of public participation has discovered expression and is already deeply rooted in civil and political rights (Fitzmaurice, 2003). The right of the stakeholders to participate in decision-making and environmental impact assessments usually involves public involvement in environmental issues (Pring and Noe, 2002, p. 13).

There are two significant components to the demands for public participation in environmental issues: First, the EIA legislation, which typically requires government consultation as an essential element. Second, public participation is not an environmental impact assessment but in the decision-making process (Pring and Noe, 2002, p. 38).

Principle 10 of the Rio Declaration provides that "effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." Agenda 21 needs that governments introduce legal redress processes for judicial and administrative measures in order to resolve problems caused by unwise environmental behaviour.

Linkages Between Human Rights and the Environment

Shelton finds four 'primary and complementary methods' that define the human rights-environment relationship:

- 1) Selected human rights, such as the emphasis on procedural rights (freedom of association and right of access to data on the future environmental threat)

are used by global legislation on the environment for the protection of the environment;

- 2) Human rights regulations interpret human rights to include environmental protection if environmental degradation prevents human rights, including the right to life, health, culture, a family and personal life, from being exercised;
- 3) A fresh substantive human right is now emerging to a secure and healthy setting;
- 4) As a matter of human responsibilities rather than rights, environmental protection has to be resolved (Shelton, 2004, p. 129). Connections have been created by domestic and international courts and tribunals under foreign soft law standards, treaties on human rights, environmental conventions, domestic constitutions and judicial interpretations.

(A) International Soft Law Norms

Many UN resolutions and works have discussed and developed linkages between human rights and the environment. The 1972 Stockholm Declaration was created at the United Nations Conference on Environment and Development which acknowledges the environment as a human rights element.

According to Principle 1 of that Declaration (See Declaration of the UN Conference on the Human Environment, 1972):

"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, and he bears a solemn responsibility to protect and improve the environment for present and future generations."

The United Nations Conference on Environment and Development 1992 followed up the Stockholm Declaration with the Rio Declaration which declares "Human beings are entitled to a healthy and productive life in harmony with nature".

In 1990, "All people are entitled to live in a setting appropriate for their health and welfare" was specifically acknowledged by the General Assembly (1990). In the same year, Resolution 1990/41, reiterating the link between environmental protection and the realization of human rights, was approved by the UN Commission for Human Rights (1990). In 1994, The United Nations Special Reporter Fatema Zohra Ksentini produced a study on the issue titled, "Human and Environmental Rights" which provided for the environmental aspect of basic human rights - to life, health and culture and for a powerful and thorough connection between human right and environment (ECOSOC, 1994). The Ksentini Final Report showed that there is "universal acceptance of the environmental rights recognized at the national, regional and international levels." The World Summit on Sustainable Development in 2002 addressed further links. The right to the environment was implicitly related to the wider right to developments included in the Johannesburg Implementation Plan (Perrez, 2003, pp. 12-22). An International Seminar on the Right to the Environment, released the Bizkaia Declaration on the Right to the Environment, was arranged by the United Nations Educational, Scientific, Cultural Organization and the United Nations High Commissioner for Human Rights in 1999 (See draft Principles of Human Rights and the Environment, 1994). According to Article 1 of the Bizkaia Declaration, "Everyone has the right, individually or in association with others, to enjoy a healthy and ecologically balanced environment, which may be exercised before public bodies and private entities, whatever their legal status under national and international law."

(B) Human Rights Treaties

In International Human Rights Instruments, the right to the environment is not explicitly acknowledged. The International Human Rights Instruments have made only some implicit references. The Universal Statement of Human Rights, for instance, declares that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing and housing." The term 'standard of living' also means the presence of environmental quality that is vital to every individual's life. The International Pact on Economic,

Social and Cultural Rights 1966 offers for the right to 'improving the environmental and industrial hygiene in all aspects of health rights' as set out in the reference to human rights to the environment [Article 12 (2)(b)].

Some regional human rights tools specifically include the right to a secure setting. Article 24 of the African Charter on Human and Peoples Rights 1981 for instance states, "All people shall have the right to a general satisfactory environment favorable to their development". The African Charter acknowledges the right to a good setting as a third-generation category or a right to solidarity. Initially, the 1969 American Convention on Human Rights made no reference to environmental rights but in its 1988 Additional Protocol, Article 11 states, "Everyone shall have the right to live in a healthy environment. The States Parties shall promote the protection, preservation, and improvement of the environment." The 1950 European Convention on Human Rights and Fundamental Freedoms does not include the right to the environment, but some civil and political rights to safeguard against environmental damages have been interpreted by the European Court of Human Rights. For instance, the Court has creatively interpreted the right of the House to remediate the extreme pollution with respect for life (Bell and McGillivray, 2000, p. 55). In some worldwide human rights treaties, unique groups of individuals have reference to the right to the environment. The 1989 Convention on the Rights of the Child, for instance, deals with the protection of the environment in relation to the right of the child to health. Article 24 offers for the fake of suitable actions against disease and malnutrition by States parties. Article 4 of ILO Convention No 169 on Indigenous and Tribal Peoples of Independent Countries (1989) says that States shall take unique steps to safeguard native peoples' environment in accordance with their free expression.

(C) Constitutionalization of Environmental Rights

In the constitutional regulations on the right to the environment, there is a further link between the environment and human rights (Sabsay, 2004, p. 155). The constitutions of 118 countries around the globe recognize the right to a healthy

environment in different formulations. For example, Article 24 of the Constitution of South Africa states that, 'Everyone, by means of reasonable legislation and other actions to prevent pollution and degradation, has the right to an environment that is not detrimental to health and well-being, and to have an environment safeguarded in the interests of the present and future generations.' Moreover, the right of all citizens to "a good, equitable setting appropriate for human development and productive activity that is capable of meeting current requirements without compromising that of the future generations" are provided for in Article 41 of the Constitution of Argentina. However, some environmental constitutional provisions stay mainly inspiring and express domestic objectives rather than legitimate rights. The Constitutions of nations such as Cameroon, Ghana, Namibia and Tanzania, for instance, have clauses of this kind that are laws and policy goals rather than enforceable laws. 'Constitutionalization' can be seen as a more effective manner of environmental protection (Marrani, 2009). In addition to the right to the environment, the constitutional regulations may impose on the public to avoid environmental harm or to protect the environment.

(D) Judicial Interpretation and Environmental Rights

International and national authorities and courts have freely interpreted the current human rights corpus to include the right to a secure setting. In 1997, the International Court of Justice specifically acknowledged the human right to environmental protection in line with contemporary international law as regards the Gabcikovo-Nagymaros Project (Hungary/Slovakia). The International Court of Justice in the 1997 Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia) expressly recognized the existence of a human right to environmental protection under modern international law (See Gabcikovo-Nagymaros Project).

The distinct view presented to the International Court by Judge Weramantry indicated the following:

‘ The protection of the environment is...a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.

Justice militancy continues a significant avenue at domestic level for interlinked innovative aspects of human rights and environmental protection (Faruque, 2010, pp.57-68). If the Constitution expressly guarantees the right of the indispensable judiciary, these Constitutional provisions have not been reluctantly interpreted and enforced by a country. On the other side, Constitutional rights such as the right to life have become a significant interpretative instrument for expanding environmental law if the Constitution of a country has not affirmed the right to the environment. The significance and scope of this clause have been widely explained so that in a multitude of factual contexts, the right to a secure setting is implied.

Justice activism helps to properly apply environmental legislation and gives backwards-looking access to the justice system to the vast majority. The 'right to environment' was expressly recognized as a consequence of a progressive interpretation by the judiciary in respect of certain clauses in the Constitution and law (Chowdhury, 2015).

Climate Change and Human Rights

Nothing better expresses the connection between human rights and the environment than the effect of climate change (Raworth, 2008). The UN Human Rights Council in its resolution 7/23, in March 2008 entitled "Human Rights and Climate Change" emphasized that "climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights (See Human Rights Council report, 2008). Climate change's adverse effects are widely known and can include rising sea levels, forced mass migration, increasing incidence of diseases, shelter

destructiveness and landslides. Clearly, rising global temperatures will boost poverty and social deprivation, the vulnerability of the world's poor people. In the near future, forced migration can lead to millions of being "environmental migrants". We are now well aware of worldwide warming which may lead to water shortage, floods, droughts and livelihood losses. This puts a broad variety of widely acknowledged fundamental rights, including the freedoms of life, food, appropriate housing, health and water, under direct threat from climate change. In specific, those sections of the population which are already susceptible because of variables such as poverty, gender, age, minority status and disability will be the most sensitive to the impacts of climate change. The harmful effects of climate change are especially susceptible to women, kids and indigenous peoples. Indigenous people have, by reason of their proximity to the environment and different livelihoods depending on access to soil and natural resources, in multiple regions of the globe, already been disproportionately impacted by climate change. The environmental strategy continues a traditional approach to climate change, which sees climatic change mainly as an economic and ecological issue of environmental pollution and ecosystem degradation. But the strategy of human rights also points to an issue of human protection and safety that must be solved from a wider socio-economic standpoint.

Until now, although the human cost of climate change threatens numerous fundamental human rights such as freedoms to life, to food, to a location to live and to work, the human rights impacts of climate change have not been investigated. Unless the state acts efficiently to limit global change, these human rights may be widely violated. State reactions to climate change threat must guarantee the protection of human rights. The human rights strategy has become one of the most efficient approaches to combat the impacts of climate change. This strategy is normally based on global human rights standards and is practically geared to human rights promotion and protection (Lankford, 2009, pp. 431-437). Three components of such a strategy based on Human Rights can be recognized: firstly, the argument for powerful mitigation and adaptation measures may add

significant normative importance. Secondly, a strategy based on human rights can help modify and improve international law in appropriate fields. Thirdly, it will certainly help create domestic climate policy, including adaption measures and connecting climate change to a human rights view. Climate adaption is the method by which individuals decrease their harmful health and well-being by reducing their climate vulnerability and requires changes.

Right to Environment (Based on Few Judicial Cases): Bangladesh and Global Context

The judiciary has embraced a liberal and harmonious interpretation of some fundamental rights to guarantee environmental protection in the lack of express constitutional provision on environmental rights in Bangladesh (Razzaque, 2000, pp. 1-27). At the moment, most Bangladeshi environmental activities are covered by the Bangladeshi Constitution on the right to life. The method of writing is preferred rather than the standard case because it is quick, fairly cheap and gives immediate access to the highest judiciary of the country. In the case of Dr. Mohiuddin Farooque Vs. Bangladesh and others (See 48 DLR), judicial recognition for protection of environment was first recorded by the High Court in a case that challenged nuisance during election campaign. The judiciary disposed of the case on assurance from the Attorney General to take measures against defacing of public and private property in the name of election campaign.

In the case, *Hatton and others v. the United Kingdom* (Bhardwaj, 2108, p. 100) the European Court of Human Rights was asked to decide whether the government policy on night flights at Heathrow airport gave rise to a violation of the applicants' rights under articles 8 and 13 of the Convention. In its judgment of 2 October 2001, a chamber of the Court noted that a fair balance had to be struck between the competing interests of the individual and the community as a whole and that in both contexts, the State enjoyed a "certain" margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. (Commission on Human Rights, Science, and Environment, 2005). However, the

chamber underlined that in striking the required balance states must have regard to the whole range of material considerations. Further, “In the particularly sensitive field of environmental protection, the mere reference to the economic well-being of the country is not sufficient to outweigh the rights of the others” (para. 97). Therefore, the Court found that in the absence of any serious attempt to evaluate the extent or the impact of the interferences with the applicants’ sleep patterns, the United Kingdom had failed to strike such a balance, in violation of article 8. (Commission on Human Rights, Science, and Environment, 2005). The judgment was appealed to the Grand Chamber of the European Court, where it was overturned by a judgment of 8 July 2003. Reiterating the “fundamentally subsidiary role of the Convention” (para. 97), the Grand Chamber reaffirmed that it is essentially for the State to strike a fair balance between the economic interest of the country and the conflicting interests of the persons affected by noise disturbances. The Court found that the United Kingdom authorities had not overstepped their “wide” margin of appreciation by failing to strike a fair balance between the right of the affected individuals and the conflicting interests of others and of the community as a whole, and concluded that there had been no violation of article 8 of the Convention.

A tannery waste treatment plant was opened in Lorca, Spain, in July 1988 (Bhardwaj, 2108, p. 100), without the required license. The plant malfunctioned. When it began operations, releasing gas fumes and contamination, which immediately caused health problems and a nuisance to people living in the district. The applicant lived next door with her husband and two daughters, one of whom suffered serious health problems as a result of the pollution. After the Lorca residents complained of stinking smells, fumes, and contamination, the municipal council relocated them for three months. They also ordered the cessation of one of the plant’s activities the settling of chemical and organic residues in water tanks but permitted the treatment of wastewater contaminated with chromium to continue. When the applicant and her family returned to their flat after the relocation, there were continuing problems. The applicant applied to the district

administrative court for protection of her fundamental rights, including those related to the unlawful interference with her home and her peaceful enjoyment of it. The applicant made a complaint under the European Convention, Article 3 (inhuman and degrading treatment), and Article 8 (right to respect for private and family life), based on Spain's failure to take measures to remedy the smell, noise and contaminating smoke from the plant. The Court considered that the determination of whether an Article 8 violation had occurred should be tested by striking a fair balance between the interest of the town's economic well-being and the applicant's effective enjoyment of the right to respect for their home, private and family life. In doing so, the Court found that the "margin of appreciation," which allows the State certain discretion in determining the appropriate balance, had been exceeded (paras. 52-58). *Lopez Ostra v. Spain* was the first major decision of the European Court of Human Rights on the relationship between the right to a healthy environment and the Article 8 right to respect for private life and home and family life. It also confirmed previous decisions on third party accountability, opening the door to findings of State accountability for (polluting) actions by private companies in its jurisdiction.

Under the Bangladesh Constitution, there is no right to the environment. But the protracted movement of civil society and environmentalists has led to the incorporation by the 15th amendment of provisions relating to conservation and growth of the environment in the basic principles of the State Policy of Bangladesh. This evolution is obviously welcomed. But this clause requires the state to safeguard and develop its environment and to guarantee preservation and safety of natural assets, biodiversity, of wetlands and of the wildlife. It, therefore, does not lay down the right of people to a secure setting but is declared to be one of the basic principles of the state policy that can be taken as a guideline when interpreting (See Article 8(2) of Bangladesh Constitution). The government, its organizations, people and legal entities can bear this constitutional obligation to safeguard the environment. The government of Bangladesh lost the chance to make the right to the environment as a basic right that was set up by the judiciary.

Conclusion

Although the discourse on human rights cannot include all environmental issues, at least environmental protection should be based on a right-based strategy. This trend is also indicated by the current global standards. However, insufficiencies in the existing worldwide system of human rights to tackle the problems of the environment, the right to a secure environment, and access to human rights tribunals and processes should be explicitly integrated into the international tool of human rights such as ICCPR (International Covenant on Civil and Political Rights) or ICESCR (International Covenant on Economic, Social and Cultural Rights) in order to agree to environmental allegations. In such cases, an existing structure can be used to implement the right to environment. The development of a new environment protection scheme is another proposal for better environmental protection. To this end, a distinct convention could be enacted which would include environmental freedoms both substantive and procedural. The principal reason for the adoption of a distinct tool is that the right to the environment is classified as a right of solidarity and consequently, must be improved by its own oversight and enforcement structures and mechanisms.

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