

CHILDREN'S RIGHT TO A HEALTHY ENVIRONEMNT

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ABSTRACT

We all live on this earth, the only earth that provide us food, water, shelter, fuel and every other thing things which require to sustain a good life. But in the course of development we are destroying our earth, we as a human being has a duty to protect the earth and the sad part in this is that this is affecting more to the children. Children are more likely affected by these hazardous substances which is affects their overall development and their immune system also gets affected and they got more prone to harmful diseases. Now people are realizing that these chemicals are harmful therefore now in order to protect the earth different conventions, conferences were held were children right to healthy environment is the issue. This paper tends to deal certain issues like what are the effects of pollution on the children, recognition of right of child to healthy environment in both Indian and International level and what are the modern approaches coming in order to give the children a healthy and clean environment.

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INTRODUCTION

Stockholm Conference, 1972 has first recognized right to healthy environment where Principle 1 of the Stockholm says that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

Thus every woman, man, youth and child has the human right to a safe and healthy environment. Since clean and healthy environment is required for everyone but more importantly for children, since they are in growing stage and for the proper development of brain, healthy and clean environment is very much required. Even the children if provided with unsafe drinking water, unsanitary surrounding, deadly diseases like malaria, polio, tetanus bound to happen and this also affect their overall development.

So in this essay we will be going to deal with certain issues like what is effect on earth, children due to pollution , recognition to children right to healthy environment under both International and Indian Law and if there is new approach, then what is the new approach adopted by any state in relation to provide healthy environment.

EFFECT ON EARTH DUE TO POLLUTION

With the advent of an industrial environment, actual development started where more use of natural resources started which leading to pollution of the environment. More demand of energy, more increase in population also started taking place. Seeing the deteriorating condition of environment, different conferences started taking place and one such is The world energy conference where in the conference it was said that by 2020 world will be using more than 75% of the energy² thus in order to save our earth, the consumption of energy should be reduced. But none of these issues were looked seriously and in the heed of development different industries were started setting up, which polluting the environment ,one such example is that in manufacture of refrigerator chlorofluorocarbons is being used which deplete the ozone layer which protect the earth from ultraviolet radiation. However as of now, many companies has stopped using chlorofluorocarbons but some countries still use and it is not completely banned. Road transport, heavy industries are another source for causing pollution in the environment , though many industries controlling their level of emission of carbondioxied but still a remarkable level is not being achieved. Because of all this acid rain also occur, which is very bad for the

² Flavin C, Lensaen N. “Designing a sustainable energy system; In: BrownLR',ed. state of the world 1991. A world watch institute report on progress toward a sustainable society London: Eaitscan Publications, 1991

environment. Acid rain is responsible for deforestation in the environment; it also causes disaster to the biological diversity as more than half of species live in the tropical rain forest.³

EFFECT ON HUMAN DUE TO POLLUTION

It is true that man is the responsible for cause harm in the environment is also the victim. Environmental degradation will directly affect the human being. Though due to rise in temperature direct affect occur on man, there also occur high mortality rate, more of lung, asthma diseases. Disability and psychological problems add to the list. Depletion of ozone layer also causes the sun related skin cancer. Respiratory irritants also occur due to more of nitrogen dioxide and sulphur dioxide in the environment.⁴

Now, the above mentioned disease not only affect the man of younger age or middle age, it is obviously going to affect children also and the children having of such diseases at such young will directly to affect their overall development.

EFFECT ON CHILDREN DUE TO POLLUTION

To protect the children from pollution and to provide environmental friendly atmosphere is very daunting task. Even before the children get the birth, they need to be protected from the deadly atmosphere. Environmental toxicants such as lead, methyl mercury, tobacco smoke and other pollutant can enter's into children body either through inhalation, ingestion of house dust, dust or soil, milk. The environmental chemicals can be found in young children and women of reproductive age. The exposure of these toxic substances linked with the new morbidities of the childhood like intellectual impairments behavioral problems, asthma, and premature birth.

Given the evidence that exposure to these hazardous chemical will affect so much to the children, still a very strong step in regard to their protect has not taken yet. Thus a policy should be made which will eliminate human exposure to toxicants. A framework should be there to protect the children from the pollution, and these frameworks should be such that it can be properly implemented. Though from the very early that is from 1960s only one realizes the importance of healthy environment to children, and how fast these toxic substances affect the children. During the epidemic of phocomelia from thalidomide regulation were developed to protect the pregnant women from exposure to teratogenic drugs. Since then it became clear then pregnant women are more likely to exposed environmental teratogens – teratogenic drugs induce either structural functional abnormalities. Premature births, spontaneous abortions delinquency and conduct disorder, intellectual deficits or attention deficit hyperactivity disorder are some of the common disease which cause the children due to exposure to toxic substances.⁵

³ Fiona Godlee and Alison Walker , “Importance Of A Healthy Environment”, British Medical Journal, Vol. 303, No. 6810 (Nov. 2, 1991), pp. 1124-1126

⁴ *Id.*

⁵ Bruce P. Lanphear, Jerome Paulson and Sandra Beirne , “Trials and Tribulations of Protecting Children from Environmental Hazards” , Environmental Health Perspectives, Vol. 114, No. 10 (Oct., 2006), pp. 1609-1612, Published by: National Institute of Environmental Health Sciences

RECOGNITION OF CHILDREN RIGHT TO HEALTHY ENVIRONMENT

Different countries in their constitution has laid down the policy for healthy environment, at some of the places it is enforceable and some it is given as directive principle, at some it is there as right to health, and at some as in general of environment. The court can enforce the environmental rights in two form one that can be substantive which guarantee the right to quality environment where Portugal is the first country to come up with this as given in (Constitution of Portugal (1976) Art. 66). Colombia, Kenya is some of the countries in whose constitution right to environment is enforceable, as given in (Constitution of Colombia (1991) Art. 79), (Constitution of Kenya (2010) Art. 42(a)) respectively. On the other hand it is procedural which do not provide right to environment as enforceable right and thus there is no guarantee of environmental protection.⁶

CHILDREN'S RIGHT TO HEALTHY ENVIRONMENT UNDER INTERNATIONAL LAW

Since every country is now moving towards development, claiming it as right also, "Right to development" and we have already seen how these development leading to degradation of environment so in order to safeguard the environment many conferences took place in different countries there are many charters, convention, declaration which talks about the clean environment, here we will look more specifically in providing clean environment to children.

UN Convention on the right of a child called as (CRC)

It is the first legally binding convention concerning the children which is adopted by General Assembly resolution on November 20, 1989. It came into force on the 2 September 1990 which has been ratified by 193 countries except of Somalia and USA. The convention contain rights relating to all four categories which are right to life, right to protection, right to development, right to participation.⁷

Article 24 of the convention⁸ specifically says that the state should recognize the right of child to attain the standard of health and to have the good health we need clean atmosphere taking into consideration the dangers and risk of environment pollution.⁹

From this article, certain principle comes which are as follow:-

⁶ Erin Daly, "Constitutional Protection for Environmental Rights: The Benefits of Environmental Process", International Journal of Peace Studies, Vol. 17, No. 2 (Winter 2012), pp. 71-80.

⁷ United Nation Convention on the Right of Child, General Assembly resolution 44/25 of 20 November 1989, available at <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> last retrieved on Nov 9, 2016 at 5:45pm.

⁸ Article 24(c) of the UN Convention on the Right of Child, [hereafter will be referred as CRC] "To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution"

⁹ Childline India Foundation, available on website <<http://www.childlineindia.org.in/United-Nations-Convention-on-the-Rights-of-the-Child.htm>> last retrieved on November 9, 2016 at 6:30 pm

First is that the convention recognizes the importance of all the rights that are physical, psychological, social, culture that are needed for the total development of children. A child full and proper growth cannot take place unless all the requirements are being provided¹⁰.

Second is that there should not be any kind of discrimination in providing basic amenities to children, discrimination can take place on the basic of race,colour,caste,sex,language,religion and such other grounds as mentioned in article 2 of the CRC. State should ensure that right to health is not undermined as a result of discrimination¹¹.

Third is that article 3, of the convention which is one of the important is that which place an obligation on the public and private social welfare institutions, courts of law, administrative authorities and legislative bodies to provide the children with healthy atmosphere for their overall development¹².

And taking out the inference we say that health of child is directly related to the environment, if we want provide good health to children then the first and foremost thing is to provide clean atmosphere, environment which is free from toxic pollutants.¹³ Thus we can say that by through this convention an obligation has been imposed on the State to provide the children with the clean atmosphere and to take measures to the dangers and risks that local environmental pollution poses to children's health. Effort should be there to children with Adequate housing facilities which is of proper ventilation, non-dangerous cooking facilities, smoke free environment and absence of toxic and mould substance. One more important thing is that these days due to Global warming there is rapid change in climate. This climate change is also threats to children's health.¹⁴

Another convention pertaining to children's health is The International Covenant on Economic, Social and Cultural Rights where Article 12 of the said convention says that state parties shall recognize the right of everyone.

CHILDREN'S RIGHT TO CLEAN ENVIRONEMNT UNDER INDIAN CONSTITUTION

Part IV of the Indian Constitution which deals with the directive principle of state policy where in Article 39 (e) , (f) talks about the children right where health of children are not abused¹⁵ and

¹⁰ General Comment No.15(2013) on the right of child to the enjoyment of the highest attainable standard of health (Article 24), Point 7, UN Convention on the Right of Child ,CRC/C/GC/15 , 17 April 2013

¹¹ *Id.*, at page 4.

¹² *Supra* 7, point 12 at page 5.

¹³ *Id.* Point 30 at page 9.

¹⁴ *Id.* Point 49,50 at page 12.

¹⁵ 39 (e) of the Indian Constitution , that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

the children should be given an opportunity to develop in a healthy manner¹⁶. Article 51 A (g) in Part IV of the Constitution deals with the fundamental rights and duties of the Indian people with regard to the environment.¹⁷

Providing clean and healthy environment does not mean only mean in reference of clean atmosphere but also include physical, social and culture environment as defined by WHO¹⁸. So if any children working in a factory or somewhere then there also clean and healthy atmosphere should be provided to children. Keeping this in mind the framers of our constitution has given some articles which are there for the protection of children, some of them are like Article 24 of the Indian Constitution which states that children who are below the age of fourteen should not be employed in any factory or mine. Then there is another legislation called *The Child Labour (Prohibition and Regulation) Act of 1986*: The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list which was expanded in 2006 and again in 2008. To make it more enforceable and strict *The Juvenile Justice (Care and Protection) of Children Act of 2000* came up with the punishment, punishable with a prison term for anyone to procure or employ a child in any hazardous employment or in bondage.¹⁹

So these are some of the legislation which connotes that children have right to healthy environment and one should ignore this. It is also supported by Supreme Court judgment M C Mehta verses State of Tamilnadu where guidelines were given by the government in relation of providing healthy atmosphere to children in the factories.

Hence these are some of the laws in India which gives the children a right to healthy environment.

NEW APPROACH

Recently a bill was introduced by New Brunswick , Canada where certain sections were there in this bill which gives certain rights to children. The main principle of the bill is to protect the children from environmental hazard²⁰.

In October, 2014 bill was sent to government agencies for getting it passed and then to enact it into law. However till date the bill has not been passed.

¹⁶ 39 (f) of the Indian Constitution, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

¹⁷ Emmanuel Opoku Awuku, "The Right to Clean Environment: Lessons from India and Tanzania" Law and Politics in Africa, Asia and Latin America, Vol. 27, No. 4 (4. Quartal 1994), pp. 516-532 Published by: Nomos Verlagsgesellschaft mbH

¹⁸ Novice, Robert "Overview of the environment and health in Europe in the 1990s" (PDF). World Health Organization., (1999-03-29).

¹⁹ Children and Work , Chapter 12 ; pg 99-108.

²⁰ Canadian Environmental Bill of Rights, Bill of rights to protect the children from environmental hazard, Bill C-634, available at <http://www.nben.ca/index.php/en/bill-of-rights>, last retrived on March 10,2016 at 4:18 pm.

The main highlight of this bill is that this bill impose obligation on government to protect the children from environmental hazard and to provide clean and healthy environment. Thus on following of this gives the right to children to sue the government for the hazard they suffered.²¹ Reason behind the introduction of this bill is that children are very vulnerable and they need healthy environment for their proper growth and development. Since to provide healthy environment to children is very much required and to minimize any risk, an obligation has been imposed so their rights cannot be ignored.²²

Now , here we will see some details of the bill .The complete name of the bill is ‘A Bill of Rights to Protect Children’s Health from Environmental Hazards’ ,the first outline of the work was given by New Brunswick Children’s Environmental Health (NBCEH) Collaborative Team. In country Canada there exist two piece of legislation that is Procedural and Substantive. So this Bill has to be break into two parts first where an obligation which has been imposed on the government to protect the children from environmental hazard is Substantive and second bill is procedural which demand for a governance structure to ensure that this obligation will be respected.²³

This piece of legislation is very different and it is one of the newest approach which has not been adopted by any other country till now, though in Canada also the bill has not been passed yet but atleast they realizes the importance of healthy environment in respect of children.

The aim behind this bill is to protect the children from toxic and hazardous substance. They do realize that harmful substances in the environment cause lot many problem to children like asthma, brain disorder, obesity and thus retardation in the development.

In may , 2000, Canada under Article 100 of A Canada fit for children , had Canada plan of action along with UN Special session where they laid down the importance of children to a healthy environment which included clean air for breathe, clean water to drink , food they eat, product they use should all be hygienic.

Despite this, Canada has no constitutional environment protection. Across the world wide 110 countries enjoy right to a healthy environment and 181 countries enjoy such a right, however Canada is an exception in this. So introducing this bill is really a remarkable step.

This bill is not the work of a single man but a lot many people involved in this like many NGOs, advocates of New Brunswick, Ecojustice Canada, the Learning Disabilities Association of New

²¹ Canadian Partnership for Children’s Health and the Environment. 2005. *Child Health and the Environment – A Primer*, 19-23. Accessed February 10th, 2014 at:

<http://www.healthyenvironmentforkids.ca/sites/healthyenvironmentforkids.ca/files/cpche-resources/Primer.pdf>

²² Team Policy of the Children’s Environmental Health Collaborative. 2013. *A Bill of Rights to Support Children’s Health Through Healthier Environments: Draft of the Substantive Legislation*.

²³ Government of Canada. 2004. *A Canada Fit for Children: Canada’s follow-up to the United Nations General Assembly Special Session on Children*, 54-55. Accessed March 10, 2016 at: 4:20 pm http://www.canadianrc.com/PDFs/Canadas_Plan_Action_April2004-EN.pdf

Brunswick, the New Brunswick Lung Association, the Conservation Council of New Brunswick, and the East Coast Environmental Law Association, with the New Brunswick Environmental Network as secretariat.

The milestone (timeline) of the bill is like in 2008 the group formed the policy as strategic for action of Children Environmental Health Collaborative then in may 2013 group pursue an initiative to bring to enactment a Bill of Rights then in November 2013, first time of reading of the bill was done at Children Environment Health Collaborative meeting and in June 2014, they bill was brought in public for the support and input and finally in October 2014, bill reaches to government agencies for its enactment into law.

Present situation is that team working hard for the promotion and to encouraging government agencies, political parties to enact the bill into law.

COMMENT

Inference concluded from the paper is that state now realizes the importance of clean environment, how much environment is necessary for our sustain, more so healthy environment is very much important for the young children who are more vulnerable to toxic substances, pollutants, chemical. Though many convention, declarations has come up for their protection giving the children the right to clean environment even in many states in their municipal law also emphasis on clean environment is given for the betterment of health of the children but the lacuna is that these rights are not enforceable in strict sense, which is very much required. We all know children are the futures of the world, if they are not properly developed and healthy then how it going to help, the world will collapse. However a remarkable step has been taken by Canada which atleast bring out the bill which put an obligation on the government to provide healthy atmosphere. One more flaws which felt here is that since there so many conventions, conferences take place, children of considerable age that is above 12, who have better understanding should also be allowed to participate in these conferences so that they can put their view point, and also everyone will realizes how much important is there to protect our environment. However for this procedure, guidelines should be there for every state to participate, moreover we are living in the high technology, so there can also be online participation .Since global temperature is rising, frequently change in the climate make people realizes that the environment is very much polluted and now more concerns to show and some strict steps have to take in order to protect our earth which can be used for generation and to have sustainable development.

CONCLUSION

Thus I would like to conclude that from the paper we already seen that it is very important to provide children with healthy clean environment. Since they are the future of the world, if they only collapse then how world will run. The participation by different States is there to provide fresh nature to earth, but the enforcement is still not strict, a lot need to done in this regard. The step taken by Canada is very remarkable who atleast thought of putting an obligation on government to provide healthy atmosphere. Other states should also come up with such kind of proposal. So now we should all come together, and join hands to provide our children best healthy atmosphere.