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ABOUT US



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

With this thought, we hereby present to you

IMPORTANCE OF ENVIRONMENTAL LAW FOR THE HEALTH OF PRESENT GENERATION

AUTHORED BY - ANSU EALIAS

INTRODUCTION

The World Health Organization (WHO) is the directing and coordinating authority on international health within the United Nations system. There is a generally accepted definition of health in the WHO constitution. The word 'health' is defined as a "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". In addition to physical and mental health, social welfare is an integral component of the overall health, because the health is closely linked to the social environment and living and working conditions.

RIGHT TO HEALTH

The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to health is an inclusive right. It includes a wide range of factors that can help us lead a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights calls these the "underlying determinants of health". They include safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, gender. The right to a healthy environment is the core of the right to life. It is in many ways connected to the right to clean drinking water and the right to health. This right has been recognized and advocated by the United Nations and was accepted as a global human right at Stockholm Conference in the year 1972 also known as the Magna Carta of human environment. It provides a much required basis for environment protection. Also, this conference linked environmental protection with sustainable development.

Salient principles of Sustainable development

The following principles are necessarily followed in order to achieve the objective of sustainable development. These principles are as follows:

1. Inter-generational equity
2. Use and conservation of natural resources
3. Environmental protection
4. The Precautionary principle
5. The Polluter Pay principle
6. Principle of liability to help and co-operate
7. Poverty eradication
8. Principle of 'Public trust'

Inter-Generational Equity

The principle of intergenerational equity pre-supposes the right of each generation of human beings to benefit from cultural and natural resources of the past generation as well as the obligation to preserve such heritage for future generations.

Inter generational and Intra generational equity

Both are the two hands of the doctrine of sustainable equity. Sustainable equity aims to find a proper balance between inter-generational equity (between the present and future people) and intra-generational equity (between the rich and poor people of the present generation)

Use and conservation of natural resources

This principle requires that earth's natural resources should be carefully used in such a way that they may be conserved and enhanced for the future generations.

Environmental protection

Environmental protection is an integral part of sustainable development. Most of the nations have enacted environmental protection laws to ensure the sustainable development within their territories. In India we have ' The Environment Protection Act ,1986 - Central Legislation. The ultimate object is to ensure sustainable development for protection of environment from being polluted.

Precautionary principle

Precautionary principle is one of the basic principles of sustainable development. According to this principle, any substance or activity causing a threat to the environment should be prevented from adversely affecting the environment. If there are threats of serious and irreparable damage to environment the State should adopt measures to prevent environmental degradation.

Polluter pays principle

The polluter pays principle imposes a dual liability on person/industrialist, who caused the environmental pollution. According to this principle, the polluter is not only liable to pay compensation but also to reinstate or restore the environment to its original condition or position.

Principle of liability to help and co-operate

Environmental problem is not confined to an individual or a nation alone, instead it is a global problem affecting the entire humanity and therefore it has to be tackled with mutual co-operation and assistance.

Poverty eradication

Poverty is perhaps the worst contributing factor for polluting the environment and causing its degradation. Most of the developing countries are facing the problem of poverty which is adversely affecting the environmental quality.

Principles of Public trust

Under the doctrine of public trust, the state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The State as a trustee is under a legal duty to protect the natural resources. These resources mainly meant for public use cannot be converted into private ownership.

Right to Live in a Healthy Environment as a Constitutional Right

The constitution of India is not an inert but a living document which evolved and grows with time. The specific provisions on environmental protection in the constitution are the result of this evolving nature. Immediately after the Stockholm Declaration there was a growing trend in national legal systems to give constitutional status to environment protection. Even in India,

the constitution was amended in the year 1976 by the constitution of India 42nd Amendment Act. This amended Act amended the constitution to add among other articles Article 48A and Article 51A (g)

Article 48A lays down the directive principle for protection and improvement of environment and safeguarding of forests and wildlife. It reads as: The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 51-A (g) which deals with Fundamental Duties of the citizens states: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures".

The Article 48A and 51A(g) imposes two fold responsibility. On one hand it gives the direction on to the State for the protection and improvement of environment and on the other hand it imposes a duty on every citizen to help in the preservation of natural environment.

Fundamental Right to Health - Judicial Activism in India

There is no provision in the Constitution of India for the fundamental right to health. But through judicial interpretations it has been observed that the fundamental 'right to life' guaranteed under Article 21 of the Indian constitution also includes 'right to health' and this it is a fundamental right.

Article 21 states that "No person shall be deprived of his life or personal liberty except according to a procedure established by law."

Case Laws

1. Rural Litigation and Entitlement Kendra & Ors v. State of U. P. & Ors (AIR 1985 SC 2187) (Popularly known as Dehradun Quarrying Case). It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. The right to live in a healthy environment as a part of Article 21 of the Indian constitution was first recognized by the Supreme Court in this case
2. M.C Mehta V. Union of India (AIR 1987 SC 1086) (Oleum gas leakage case) In this

case, the SC treated the right to live in a pollution free and safe environment as a part of fundamental right to life under Article 21 of the constitution. In this case the SC initiated the 'absolute liability' principle. The court's final decision was to relocate such factories to less populated areas to minimise the risk to human life. The court also recommended that the government develop a national policy for the location of such hazardous plants and ensure that they do not pose a risk to the community.

3. Subash Kumar V. State of Bihar (AIR 1991 SC 420) This case was regarding the pollution of Bokaro river by the sludge or slurry discharged from the washeries of Tat Iron and Steel company Ltd. The SC observed that right to life enshrined in Art 21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life.
4. Virandar Gaur V. State of Haryana (1995)2 SCC 577 In this case, SC held that the hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. So the environmental pollution should be regarded as amounting to violation of Article 21 of the Indian constitution
5. Vellore Citizens Welfare Forum V. Union of India (AIR 1996 SC 2715) Court held that the right to fresh air, clean water and pollution free healthy environment includes in the Article 21 of the Indian constitution.
6. T.N Godavarman Thirumalpad V. Union of India (2002)10 SCC 606 Supreme court held that the right to life guaranteed under Article 21 of the Indian constitution includes a right to environment adequate for health and well being.

CONCLUSION

For protecting our fundamental right to live in a healthy environment, the government has enacted various legislations. They are: The wildlife (protection) act, 1972, The water (prevention and control of pollution) act, 1974, The air (prevention and control of pollution) act, 1981, The environment (protection) act, 1986, The energy conservation act, 2001, The biological diversity act, 2002, The national green tribunal act, 2010. The right to life under Article 21 includes the right to health. The environmental law is very much important for the health of the present generation. Because the right to health cannot be assured without the protection and improvement of environment. A healthy and safe environment can guarantee the right to health to present and future generations.