

Right to Health Recognit

Share

- f
- t
- g+
- in
- +

Learn Contract Drafting Skills

Join Contract Drafting Course

Certified by LCI and LAW Firms



INDEPENDENCE DAY DISCOUNT

ENROL NOW - HURRY!



Call: 011-411-70713

Dharma Sadhanam. The right to health has been recognised in the national constitutional and statutory laws as well as in International law. This paper is an attempt to investigate the extent to which this right can be stretched, especially in case of balancing the tragic choices of resources. Right to Health in the Indian Scenario With 260 million Indian citizens still below the poverty line and without the fundamental assurance of healthcare, the right to health clearly acquires great importance in Indian scene. The World Health Organization (WHO) rankings place India as 112th on the list of 199 member countries with regard to the health care systems. In India, the government's concern for health and safety of its people is indicated by the legislations enacted for health care. Recently Article 21 of the Indian Constitution has been interpreted to incorporate

- so submit your article by sending to lawyersclubindia.com
- Articles
- Picks
- own of the online divorce
- miting the 72 years old Article 370
- Cannot Be Forced To Add Against Whom He Does Not Fight: Supreme Court
- in Suit: Principles & Practices
- ration agreement in a void that need not be Void
- ency of child witness
- The Law of winding up under IBC
- Human rights and intellectual property rights
- Companies (Amendment) Act, 2019 - CSR Provisions become more stringent
- Medico autopsy in Anaphylactic deaths
- [view more »](#)

- Browse by Category
- Recent Comments
- Popular Articles

the right to health in right to life and hence this right having now acquired a constitutional status through judicial activism, can be judicially enforced. The Directive Principles of State Policy provide against the exploitation of weaker sections of society, including children, and mandate the state to raise the levels of nutrition, the standard of living and improve public health. Protection and improvement of environment and safeguarding forests and wildlife is also an obligation of the state. These are contained in articles 39, 47 and 48A in Part IV of the Constitution. Numerous statutory enactments also safeguard the health of those employed in factories, large-scale industrial undertakings and mines, the health of women and children and also protect human environment. These statutory enactments cover a wide range of area including food safety legislations, labour laws and environmental legislations and in fact, accord with the spirit of the Constitution. The Role of Indian Courts in Gradation of Right to health The Indian Supreme Court has interpreted Article 21 of the Indian Constitution in the Marshallian spirit and has broadened its scope repeatedly, relying on general legal doctrines, international convention and fascinatingly, the Directive Principles of State Policy, thus making some of them enforceable.

The Courts in India have shown keen interest in protecting the health of people in the society and have accepted it in clear-cut manner that administrative as well as judicial wings of the State are under a duty not to adopt an indifferent attitude in this respect. Right to health is one the various indivisible rights that have been recognised by the Supreme Court under Article 21. The Workmen of State Pencil Manufacturing Industries of Madhya Pradesh Case, a case concerning the death of workers at young age in the state pencil manufacturing industries, due to the accumulation of soot in their lungs, was one the first health related public interest litigation to be filed in the Supreme Court. The Court required the State to ensure installation of safety measures in the concerned factories, failing that it could close down the same. In Pt. Parmahand Katara v. Union of India & others, the Supreme Court held that whether the patient is innocent or a criminal liable to



Similar Forum Post

- **Steps to be taken to get implemented the order of the central information commission**
- **hjskgkslal**
- **Can a child opt mother's surname instead of father's?**
- **Can a child opt mother's surname instead of father's?**
- **IT returns copy of financial year 2014-15 means, ? please mention from where to where (month and year)**
- **police verification**
- **police verification**

[More »](#)

[Subscribe to Articles Feed](#)

punishment under the law, it is obligation of a doctor at the governmental hospital positioned to meet the constitutional obligation directed on the state by virtue of Article 21 to preserve life. Justice Ranganath Mishra gave the opinion in the following words: "No law or state action can intervene to avoid/ delay the discharge of the paramount obligation cast upon members of medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore give way." Similarly in Paschim Banga Khet Mazdoor Samiti v. State of West Bengal, the Supreme Court reasserted that failure on the part of the government hospital to provide timely medical treatment results in violation of the injured victim's right to life guaranteed by Article 21.

The court gave seven guidelines regarding the timely medical treatment and mentioned: "it is the constitutional obligation of the state to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done." The increasing role of the Court from the recognition of right to health at the first level and then to managerial role could be understood by the gradual development from the Parmanand Case to Dr. Chandra Prakash Case. In Dr. Chandra Prakash Case Court took the managerial role by commenting on tapping the resources of revenue for free medical treatment to the victims of road accidents. In A.S. Mittal v. State of Uttar Pradesh, the Supreme Court ordered the state government of Uttar Pradesh to pay compensation, as it had not followed the norms prescribed for the eye-camp and caused serious injuries to 84 patients. In Vincent Panikurlangara v. Union of India the Supreme Court observed that in a welfare state it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good-health. Directions were sought from the Supreme Court for banning the import, manufacture, sale and distribution of drugs recommended for a ban by the Drugs Consultative Committee, and for cancellation of all licenses authorizing all such drugs. The

Enter your email address

Submit

Browse by Category

Business Law

Civil Law

Constitutional Law

Criminal Law

Family Law

Labour & Service Law

Legal Documents

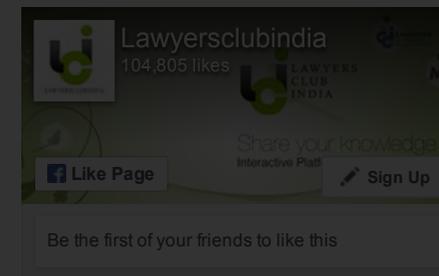
Intellectual Property Rights

Property Law

Taxation

Students

Others



Lawyersclubindia
104,805 likes
LAWYERS CLUB INDIA
Share your knowledge
Interactive Platform
Like Page
Sign Up
Be the first of your friends to like this

importance of this judgment could be seen in the light of recent international agreement on TRIPS. Justice Ranganath Mishra's observation regarding right to health vis- a-vis right to life in that case was as follows: "Article 21 of the constitution guarantees right to life and this court has interpreted the guarantee to cover a life with normal amenities assuring good living which include medical attention, life free from diseases and longevity up to normal expectations." The Supreme Court has also brought occupational health hazards to workers within the coverage of Article 21. The right to health and medical care to protect the health and vigour of a worker while in service or post-retirement has been held to be fundamental right under Article 21 read with the directive principles contained in Article 39(e), 41, 43 and 47 and all fundamental human rights to make the life of workers meaningful and purposeful, with dignity of person. In *Kirloskar Brothers Ltd. v. Employees' State Insurance Corporation*, Supreme Court held that Right to Health is the fundamental right of the workers and is available not only against the state and its instrumentalities but also against the private industries. In *Murali S. Deora v. Union of India*, the Supreme Court recognizing Right to health under Article 21 of the Constitution held that smoking is injurious to health and banned smoking at public places. In *State of Punjab & Others v. Mohinder Singh Chawla* a Government official was reimbursed the expenses incurred on his treatment. However, this extension of right to health constitutionally obliging the state to provide such facilities was moderated in *State of Punjab v. Ram Lubhaya Bagga*.

Here the government had framed a policy allowing reimbursement to the extent of rate prior fixed. Upholding the policy- for no state can have boundless resources- the Court opined it did not violate Article 21 or Article 47 of the *Suprema Lex*. Conclusion The judgment of *State of Punjab v. Lubhaya Bagga* shows a clear change in trend in the policy of the court with regards to the right to health. The courts have bowed before the foreboding presence of the factor of paucity of resources. This bitter reality has been experienced by the legal

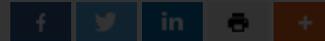
systems of the many developing nations. For example in the case of Vietnam, the constitution of 1980, included the right to health care and the state guaranteed free medical examination and treatment but upon the country facing an economic crunch, this right was deleted and a narrower right which provides that " the citizen is entitled to a regime of health population" was accorded. The tragic choice of resources seems to be a reality, which may be seriously contemplated while according the right to health. This is not only the case with developing nations like India but is also true for developed and resource laden countries like the U.K. and the U.S. The choice that has to be made is between having a narrow, resource based, right to health accorded to the citizens or to having a wide and idealistic right of health, which has no connection with the amount of resources available. The argument in favour of having the former is that only through such a system can we accord rights, which can realistically be availed.

One can avoid a situation where there is "loss of faith" in the judiciary and the legal system as a whole. This would bring a great amount of certainty in the rights available to the citizens and would make them more concrete. While in favour of the latter, it can be argued that only when a wide right of health is granted, can the bounds of the rights that can be realistically be availed be increased. When one would consider the resources before considering the extent of rights available, one would not be able to increase the resources made available for such purposes. The other major argument in support of this is that the real problem is not one of "lack of resources" but of "improper allocation of resources". Corruption, undersized budgets allocated to the health sector, are some of the examples of such improper allocation. In the face of such a situation a resource-based system of rights would not be the correct solution. Keeping in view the situation in India, where the courts have not followed a resource based system of rights for the last decade or so, it is submitted that the best solution would be to try out this system of rights (as the courts have already started

doing) , while trying to tackle the problem of "improper allocation of resources" through other channels.



Prakash Yedhula
on 29 February 2008



Published in Constitutional Law
Views : 5733

Other Articles by - Prakash Yedhula

[Report Abuse](#)

[← Previous](#)

[Next →](#)

Recent Comments

Total: 1

[Login](#) to post comment



keith lacon 17 January 2014

Health problem such as malnutrition and water bone diseases are mostly seen. Malnutrition can be deal by providing a good quality food from the childhood and by drinking boil water, water bone diseases can be avoided to a limit. <http://www.cellublu.com/>

Related Articles

- Latest activities under Right To Information Act
- Right to life i.e. Right not to die or Section 309, I.P.C.?
- Abortion: violation of right to life against an unborn
- The right side of the law
- Consumer Protection and Right to Information
- No Right to Life
- Maintenance - 50% right or 100% criminal?
- Co-parcener right to maintain suit for injunction
- Right to Property - Journey from a Fundamental Right to a Legal Right
- The Right to Information Act and the Political Parties

[More »](#)

Other Latest Articles

- An Arbitration agreement in a void contract need not be Void
- The Law of winding up under IBC
- Here are the top 7 concerns that people have around their post-retirement life
- Dismantling the 72 years old Article 370
- Analysis of the Significant Beneficial Owner rules
- Jurisdiction of Debt Recovery Tribunal and jurisdiction of Civil Court: juxtaposition
- The intellectual property rights and the human right to health
- DIR-3 KYC: Mandatory compliance for DIN holders
- Fundamental Right To Privacy Not Absolute And Must Bow Down To Compelling Public Interest: SC
- Medico autopsy in Anaphylactic deaths

[More »](#)

MENU

[Jobs](#)

[Coaching](#)

[Events](#)

[Bare Acts](#)

[Bookmarks](#)

[Legal Dictionary](#)

[Files](#)

[Judiciary](#)

[Notifications](#)

[Poll](#)

[Video](#)

[Top Members](#)

[Forms](#)

[Scorecard](#)

[Today's](#)

[Birthdays](#)

[RSS](#)

[Rewards](#)

[Lawyers Search](#)

[About](#)

[We are Hiring](#)

[Advertise](#)

[Terms of Use](#)

[Disclaimer](#)

[Privacy Policy](#)

[Contact Us](#)

Our Network Sites



 [Send Me Newsletter](#)