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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **RIGHT TO HEALTH AND MEDICAL AFFORDABILITY: A COMPARATIVE PUBLIC LAW PERSPECTIVE FROM INDIA AND THE USA**

AUTHORED BY - RITUL CHOUDHARY & DR. AMIT KASHYAP  
LOVELY PROFESSIONAL UNIVERSITY

## **ABSTRACT**

This research paper discovers about the health and medical affordability through a comparative law perspective of India and the United Nations. In India, Article 21 refers to the right to health and medical affordability. The Constitution of India the judiciary is bound by this right. "Every citizen has the right to access the services from government hospitals at low cost. India suffers from consecutive challenges in health. Many millions are slipping into poverty due to health and medical expenses. United States doesn't accept the right to health, but the Indian citizen has a strong right that the government must be respect. system of health care is examined for its high cost and its fractured nature and there was a high administrative expenditure without guarantees of the services. Efforts to improve affordability, like the Affordable Care Act (ACA), The U.S system in a reduction in broad health coverage. The absolute objective is to establish a legal foundation for the right to health. through. The Constitution of India guarantees is a fundamental right which is health. The intromission of the judiciary has founded strong legal principles about this right. However, at this time in the world, improvements are needed like better doctors with experience and proper equipment for patient care. This research paper is repugnant to national and international visions.

## **KEYWORDS**

HEALTH LAW, MEDICAL AFFORDABILITY, HEALTHCARE, HIGH COST, INEQUALITY, ARTICLE 21.

## **MYTHOLOGICAL BACKGROUND**

When the Constitution of India was made in 1950, health was not included in the list of fundamental rights (like equality or freedom). Meaning, at that time, health was not a directly enforceable right. When the Constitution of India was made in 1950, health was not included in the list of fundamental rights. This means that health was not directly made a "legally

enforceable right” at that time. Health was only included in the Directive Principles of State Policy (Articles 39, 41, 42, 47), which were "guidelines" for the State but could not be enforced in the courts. Later, the Supreme Court broadened Article 21 (Right to Life) and said that health is also a basic part of life. Some important Supreme Court judgments (cases) have clearly decided that it is the duty of the government to provide medical help to the citizens. PILs also brought the poor and marginalized people to the courts and made health a strong legal right. The situation in the USA is different. Health is not even mentioned in their Constitution. In the USA, the Constitution never granted health as a fundamental right. Rather, the health system there developed through government policies and schemes. The U.S. Supreme Court did not make health a right, but only reviewed and approved laws like the ACA. Therefore, health in the USA is a policy-based system, not a constitutional right like in India. Health is globally recognized as a basic human right. First, Article 25 of the Universal Declaration of Human Rights (1948) stated that every human being has the right to food, housing, and medical care. In 1966, an international agreement called ICESCR was made, in which it was clearly written in Article 12 that every human being should have the right to the best possible health. India has ratified the ICESCR, hence it has a duty to make health a right. In 1966, an international agreement called ICESCR was made, in which it was clearly written in Article 12 that every human being should have the right to the best possible health. International law (ICESCR, 1966) made health a global human right and said that every citizen should get the best health facilities according to his or her circumstances. USA has signed the ICESCR but has not ratified it. Meaning, it has not become a binding duty for the USA. Therefore, health is not provided as a human right, but through government policies and programs (like Medicaid, Medicare, Affordable Care Act).

## INTRODUCTION

This article is associated with the debates that health care should be a human right.

The government of India was restricted to provide ‘affordable health’.

The constitutional perspective on this right, in India its dignity, & the supreme court's role in public health and societal wellbeing. In this world where health is a precious and expensive asset. it's just not a requirement but it is a fundamental human right. In our constitution, according to Article 21 included two terms are right to life and right to health. In USA, The laws deal with ‘OBAMACARE’ health affordability. if we discuss about both private and government hospitals/schemes, diagnostic labs, clinics, pharmaceuticals companies so, the probability will be that, in India, health care of the public is moderate but in private, health care

is effective.

THE UNIVERSAL DECLARATION OF HUMAN RIGHT, said that every citizen has the right to be born freely and the right to equality and these rights are universally applicable. India establishes the international covenant on economic, social and cultural rights, but the USA did not immobilize this.

So, that's the biggest reason; the right to health is not a constitutional guarantee.

A human right based approach, equality is used as a framework in public health to Recognize and address inappropriate and remedial health issues. The important of this issue is the fundamental and basic right impact on public health, rules and regulation and harm human dignity and socio-economic equality. When we Linken INDIA and USA, help us to perceive the contrasting perspective. the research gap in this right for the India, comparative studies are necessary to examine various legal outlooks. Research could focus on developing legal Framework. In U.S.A, the system is designated by high and expensive cost.

This means that the healthcare of USA is based on respect for rights, and healthcare is primarily regulated through a framework of government law and accountability. That is, healthcare is treated within a legal structure where the government fixes its responsibilities through laws and policies. An intensive examination is demanded of long-term public law. The supreme court of India said that ARTICLE 21 imposed on the state government or health related problems and grants remedies through public interest litigation. AYUSHMAN BHARAT /PM-JAY scheme refers to providing comprehensive public insurance for beggarly families. Scholars' characteristics that there is a shortage of human needs, estate and kingship. The USA constitution, there is such dimension of healthcare and medical affordability as in article 21 of the Indian constitution.

The us scholars' characteristics that the framework of this system, based on the high cost which cannot be afforded by the beggar. This creation affects medical Affordability. The major gaps are high cost, guarantee concern, etc.

## **RESEARCH QUESTIONS**

Scrutinize Constitution of India and us constitution? How much does healthcare cost in India compared to the US? Which country has better healthcare India or USA?

## LITERATURE REVIEW

The landmark judgement of India, supreme court declared that article 21 decode to include affordable treatment, personal liberty, medical care right to health. Key judgment case NOVARTIS AG V. UNION OF INDIA& OTHERS [2013], the supreme court said that section 3[d] is valid and Glivec patent not an appropriate, and the object of the patent not just about the benefits of the companies but also inexpensive affordability to the nationwide. The patient's journey is influenced first and foremost by the doctor's compliance with the medication. It is calculated that more than 95% of the Indians patient can't afford immune - oncology therapy such as interventional oncology suggested by their doctors. The gap is that the citizens of India buy the medicine through out-of-pocket. People don't think even about buying medicines for major illnesses like [cancer, heart diseases, kidney related problems] because they can't afford them. The government of India should mention affordable price rate of medicine of every Disease in the essential medical list in the national pharmaceutical pricing Authority. In the USA constitution, there is no distinction about the right to health and medical care although courts have rare counsel informed right to approach Services but not guaranteed. Key judgement case NATIONAL FEDERATION OF INDEPENDENT BUSINESS V. SEBELIUS [2012], the Supreme court comprehensively support AFFORDABLE CARE ACT [ACT] individual to buy health Insurance and medical elaboration, if they did not do then they must pay for a fine. more than 90% of residents are insured. There is no right to health in the US constitution. The biggest gap is that, in some states, it is denied that beggars will not get insurance. The government of the US should enhance medicine, fix drug prices, which everyone can afford, and have a strong health care system.

## RESEARCH AND METHODOLOGY

India has a decentralized public health care system. India spends about INR 3524.71 per person annually on medical health care and the United States spends INR 749001.62 per person. The overall GDP is \$1.6 trillion, and the US is \$2.6 trillion.

### 1. RESEARCH FORMATION

Its, in the first instance on investigate the provision of constitution, legislation and judicial precedent and scientific work concern right to health and medical affordability in India and united states of America. The extant study devours doctrinal and comparative legal research formation. As a general rule, it has a secondary database.

## 2. SOURCES OF DATA

- **PRIMARY SOURCE:**

The Prime source of data from right to health and medical affordability in India consists of NATIONAL SAMPLE SURVEY [NSSO], NATIONAL FAMILY HEALTH SURVEY [NFHS], HEALTH STATISTICS INFORMATION PORTAL. The main objective of their survey is to gather health related data, policy making, to help in public health planning and evaluation, resources for research and invigilate. In the USA, CENTERS FOR MEDICARE AND MEDICAID SERVICES [CMS], BEHAVIOURAL RISK FACTOR SURVEILLANCE SYSTEM [BRFSS] and diverse state-level legislative database. Thus, the Indian primary sources stand on constitutional esteem of health and public health programs helped by national sample surveys and judicial interpretation. In contrast, the USA focuses on constitutional based framework, landmark ruling and comprehensive utilization and cost database.

- **SECONDARY SOURCES:**

The second sources of data from right to medical affordability and right to health in India include NATIONAL HEALTH PROFILE [NHP], NATIONAL SAMPLE SURVEY [NSS], NATIONAL FAMILY HEALTH SURVEY [NFHS]. The main goal of all of this is that all three are large datasets at the national Level. They are applied in policy making, academic research, and mapping. They all provide acquaintance. IN USA, it consists of federal health surveys such as HEALTHCARE COST AND UTILIZATION PROJECT [HCUP], BEHAVIOURAL RISK FACTOR SERVILLANCE SYSTEM [BRFSS], NATIONAL HEALTH INTERVIEW SURVEY[NHIS]. The objective of all of the health survey is that to identify the health imparity, to design interference, and to reforming healthcare & financing system. Both countries have state data portals, but India is more focus on large scale demographic and household data for affordability, whereas the USA outlook is more fragmented, used federal funding programs and spacious survey to seize healthcare access, expenses and data quality.

## ANALYSIS

The comparative study right to health and medical affordability in India and the USA disclosed that striking resist as well as shared challenges.

## **1. EQUALITY AND FAIRNESS IN SOCIETY**

In India, rural and urban divides, socio-monetary status and caste differences obstruct equal approach to Medicare .in the USA, national inequities, immigration status and finance gaps produce systematic interrupt to affordability. The proportion shows that while the factor dissociates. Both nations face a common scramble in realizing healthcare as a tool for social justice.

## **2. COMPARATIVE INSIGHTS**

From the above analysis, India distinguishes health as a right. But shortage adequate infrastructure resources, however, the USA receive advance resources but protest treating as a fundamental right. This suggests the perspective of a cross outlook. India could cognize USAs advance financing and infrastructure norm. While the USA could advantage from India's right based possibility that structure health as integral to human respectability.

## **3. CONSTITUTIONAL AND LEGAL OPINION**

In India, the right to health has been study under article 21 and right to life is also a part of this article of the constitution with the DIRECTIVE PRINCIPLES OF STATE POLICY[DPSP] ahead reinforcing the duty of the state to provide healthcare and medical affordability. In resist, USA doesn't distinguish health as a statutory right. The law of health care is largely legislative, formed by federal and state provisions such as the affordable care act. This signalizes a fundamental disparity: India uses health as a human right while the USA carry it as a policy driven entitlement.

## **4. JUDICIAL AND POLICY PERSPECTIVE**

The Indian judiciary has shown an activist role in establishing he right to health, illustrate by cases like PASCHIM BHAGA KHET MAZDOOR SAMITY V. STATE OF WEST BANGAL, BANDHUA MUKTI MORCHA V. UNION OF INDIA, PARMANAND KATARA V. UNION OF INDIA, however the court mandated state responsibility for emergency medical care .in contrasts , the judiciary of USA has adoptive restraint, mostly stave off to legislation and executive judgment .policy improve have create the healthcare landscape in both jurisdictions - Ayushman Bharat and the national health mission in India , and the affordable care act in the USA –but both face execution hurdling.

## 5. CASE LAW ANALYSIS

### KEY CASE & ANALYSEIS:

- **Paschim banga khet mazdoor Samity v. state of west Bengal (1996)**  
The state has the responsibility to provide state health facilities and emergency medical treatment and health is considered a part of the right to life.
- **Common cause v. union of India (2018)**  
The court said that the territory must provide emergency medical care to its citizens and burden on government accountability.
- **State of Punjab v. Mohinder Singh Chawla (1997)**  
The court said that right to health is necessary to right to life and the obligation of the state is to provide basic health services to the citizens.

## 6. CONTRIBUTION PUBLIC INTEREST LETIGATION (PILs)

In the case of health, firstly public interest litigation expanded the scope of the right to life under article 21 to make health a judicially enforceable right. Public Interest Litigation (PIL) is very important in India to protect the right to health. "Right to health" is not directly mentioned in the Constitution, but the Supreme Court broadened the meaning of Article 21 (Right to Life) and made health a part of it. For example, in the Paschim Banga Case (1996), the court said that if a government hospital does not provide timely treatment, then it is a violation of Article 21. Similarly, in the Mohinder Singh Chawla Case (1997), the court said that it is the duty of the state to provide minimum healthcare facilities. Meaning, it was through PIL that the court accepted health as a fundamental right. The role of PIL is not only limited to recognition but also in making the state accountable. Many times, NGOs, activists or common citizens have filed PILs to raise issues of shortage of government hospitals, shortage of medicines, negligence and high cost of healthcare. In Common Cause v. Union of India (2018), the court clearly said that health should be affordable and accessible, otherwise the right to life has no meaning. PIL is a system through which poor, deprived and marginalized people, who cannot afford normal court cases, can directly present their problems before the Supreme Court or High Court.

In normal cases, approaching the court is costly and complex, lawyer fees are charged, and the procedure is tough.

But through PIL, any individual or NGO can file a petition in the public interest. Due to PIL, the voices of those people also reach the court who are generally ignored or whose voices are suppressed (like poor, marginalized, deprived groups). If a village or poor community is not getting medicines, hospitals, or emergency care, then they themselves, NGOs or activists can protect their rights by filing a PIL. Courts then direct the government to make healthcare accessible and affordable. However, PIL also has a limitation. Courts deliver strong judgments, but their implementation is slow because budgets are low, bureaucracy causes delays, and monitoring is not proper. Because of this, the impact of PIL is sometimes limited to paper only.

This is happening in the Indian Judiciary (Supreme Court & High Courts). Meaning, through PIL, the courts have made healthcare a strong legal right, which is protected under Article 21 (Right to Life).

But in reality, providing affordable and easily available healthcare to everyone is still difficult. Comparing India and the USA: India: The right to health has developed primarily through judiciary (courts) decisions (through PILs). USA: There, health is protected by laws and government policies, such as the Affordable Care Act, Medicaid, and Medicare.

There, the courts do not take such an activist role, but healthcare access depends more on political and legislative decisions. Therefore, we can conclude that PIL played a significant role in making health a constitutional right in India, but healthcare problems will not be solved solely through PIL. For that, the government will also have to implement appropriate policy reforms, budget allocation, and ground-level implementation.

In India, the Public Act (PIL) is a tool through which the courts have protected health under the right to life, but its full benefits will only be realized when the government properly implements it. In the USA, this role is played not by courts, but by laws and policies.

## COMPARATIVE PRESPECTIVE

### 1. JUDICIAL PREFACE

- **INDIA**-the Indian judiciary readily apply right to health and holding the state responsible.

- **USA-** the judiciary of USA, court avert declaring health as a constitutional right avoid to legislature.

## **2. EQUALITY AND SOCIAL JUSTICE**

- **INDIA-** health approach is highly unequal and based on rural and urban divide, poverty, caste prevent access.
- **USA-** inequality revealed differently racial minorities, class and immigration status restrict access.

## **3. INSURANCE AND FINANCING MODELS**

- **INDIA-**in India has a limited access [Ayushman Bharat,Rashtriya swasthya Bima Yojna, ESIC]. Healthcare spending as a percentage of GDP is low [-3%].
- **USA-**in USA, insurance –focal system, with Medicare, Medicaid and private insurance governing.

## **4. AFORDABILITY AND APPROACH**

- **INDIA-** the Healthcare of India is theoretically affordable in public hospitals; public healthcare is low-cost. Heavy reliance on the private sector leads to a high out-of-pocket outlay.
- **USA-**in USA, the health and medical care is more costly than India or even on the world, advanced medical techniques and infrastructure but unaffordable without insurance.

## **5. POLICY CONSEQUENCES**

- **INDIA-** the healthcare system of India is very uneven; there are differences between villages and cities and people do not have access to proper healthcare facilities due to poverty and caste.
- **USA-**In USA, The Affordable Care Act (2010) broad coverage to millions of unrepresented Americans. Healthcare costs have continued to increase, and political obstruction has limited its full implementation.

## **6. CONSTITUTIONAL OPINION**

- **INDIA-**the Indian Constitution does not clearly mention right to health under article

- 21.the courts have given detailed explanations regarding health rights in these cases.
- **USA**-the U.S. Constitution does not declare and guarantee healthcare as a right. Healthcare rights are created by a provision that is Affordable Care Act with courts generally averse to enlarge it as a constitutional right.

## FINDINGS

### 1. JUDICIAL VS. LEGISLATIVE ROLE

- **INDIA**- the Indian judiciary has been proactive in extensive health rights [*Paschim Banga, Parmanand Katara, Bandhua Mukti Morcha v. Union of India, 1984*].
- **USA**-the judiciary of USA, has been restrained, leaving healthcare to legislative policy debates [*NFIB v. Sebelius, California v. Texas, 2021*]

### 2. PARADOX OF RESOURCES VS. RIGHTS

- **INDIA**-India considers health as a right but there is a lack of money and infrastructure like hospitals, doctors, medicine and health.
- **USA**-The USA has world range infrastructure and high spending, but resists announcing health as a right, avoidance gaps in access.

### 3. NEED FOR HYBRID STANDPOINT

- **INDIA**- it needs to take possession of stronger monetary and infrastructure models.
- **USA**- it must inclusive rights-based perspective to ascertain universal dignity in healthcare.

### 4. CONSTITUTIONAL OPINION

- **INDIA**- article 21(right to life) includes right to health but it is not a direct constitutional provision, and it is not expressly guarantee.
- **USA**-in this, health is not considered as a fundamental right, here acts like affordable care act have been made for health laws.

### 5. COMMON CHALLENGES IN INDIA AND USA

- **INDIA**-due to lack of insurance, people spend from their pockets, due to medical technology they cannot afford medicine easily, depends on private sector, still, India

is not able to provide equal health and medical care access to citizens, lack of doctors in the hospitals in rural areas.

- **USA**-even after being insured, they remain financially burdened by premiums and co-payment, lack of facilities related to health in rural areas, this is making affordability a major challenge, in USA, millions live in it unsatisfied.

## CONCLUSION AND CLOSING REMARKS

The comparative study of India and the USA characteristics a paradox in the universal objective of health as a human right. India, through judicial activism and constitutional and interpretation, distinguish health as an essential factor of the right to life, already continues to struggle with resource compel, infrastructural damages, and unequal approach across territory and socio-economic groups. The United States, healthcare is treated more like a privilege than a guaranteed right. This means that healthcare available here often depends on income, insurance coverage and location. People who can afford private insurance receive quality treatment and people who are poor live in rural areas or are uninsured find it difficult to access healthcare. This creates inequity in society as not everyone receives equal treatment. Healthcare in the US is not an equal right for everyone, but a privilege available primarily to those who can afford it. healthcare should be a sure and guaranteed right for every person. It should not depend on chance, location or village. If healthcare is considered a privilege, only the wealthy or those living in cities will be able to access proper treatment, the rest will be left out. Therefore, the true commitment of a society to human dignity is visible only when it provides equal and timely healthcare to all its citizens. Every country should create a universal and human health and medical care system that covers every citizen equally, with strong hospitals, doctors and a financing system. Ultimately, Healthcare should not be considered a privilege but a fundamental right for all. Healthcare is never based on chance, geography or involvement. Meaning it should not be the case that someone can get treatment simply because they live in a city, are wealthy or have good luck. India and USA despite their different approaches can learn from each other and move forward. If the principles of rights are combined with practical steps towards affordability and accessibility a new, fair and human universal healthcare system can be created that covers everyone. The true value of a society lies not in its wealth or technology, but in how it provides all its citizens with access to healthcare when needed. If countries create a system combining rights-based laws, funding and strong infrastructure, healthcare will no longer be a privilege of a few but a guaranteed right to all.

## SUGGESTIONS/RECOMMENDATIONS

### India:

- In India, The Right to Health and medical affordability should be given evident legal or constitutional opinion to decrepitate enforceability and responsibility.
- The health of public expenses must be extended to at least 2.5% of GDP within a line universal level and to ensure adequate financing.
- The scheme of Ayushman Bharat–PMJAY should be reinforced through timely payoff to empaneled hospitals, powerful deception control mechanisms and superior transparency.
- A higher focus should be established on prime healthcare by enhancing village-level health and wellness centers side by side, middle and tertiary services.
- A global system of digital medical records should be encouraged to reform transparency, capacity and continuity of observation.
- To ensure that judicial intervention only translates into actual services.

### USA:

- In the USA, Medicaid spread should be made compulsory across all states to track current coverage interlude and ensure inclusivity.
- A stable regulation of medicine and medical service value is desired, including the acquisitions of medicine price negotiation and essential service caps.
- A global ultimate health package should be guaranteed, ensuring that defensive and necessary health services are free or intensely subsidized.
- Exclusive community-based plans are needed to trace strong racial, ethnic, and income-based health imparity.
- Greater regulation of private assurer and hospital networks is needed to stop monopolistic practices and encourage affordability.
- The court must monitor that the equity of the statutory frameworks (laws & regulation) is maintained.

### Cross-Country Recommendations:

- The USA and India, should classify their national strategies with universal Sustainable Development Goal (SDG) 3.8, focusing on global health range and monetary risk protection.

- To strengthen the healthcare system, it is important to first focus on the healthcare workforce (doctors, nurses, staff). They should receive good training. There should be fair and neutral distribution, and they should be motivated to work in rural and underserved areas.
- Public consciousness action is needed to educate citizens about their health rights and available health programs.
- Fraternal learning can be profitable for India may devour advanced technologies and insurance management practices from the USA, while the U.S.A can cognize from India's experience with price-effective service distribution and regular medicine policy.
- The India and USA should powerful health system ready for emergencies such as pandemics, with substantial infrastructure and elastic funding mechanisms.

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