



A LEGAL PERSPECTIVE ON PUBLIC HEALTH INSURANCE AS A HUMAN RIGHT IN THE INDIAN CONTEXT

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Abstract

This paper examines whether public health insurance in India can be recognized as a legal human right, grounded in constitutional provisions and judicial interpretations. It begins by exploring the expansive interpretation of Article 21 (right to life) to include the right to health. It then analyses relevant Directive Principles of State Policy Articles 38, 39(e), 42, 43, and especially Article 47 which impose obligations on the State to ensure public health. The paper reviews leading judicial decisions that have bridged these directives and fundamental rights. The focus then shifts to public health insurance schemes such as Ayushman Bharat PM-JAY as mechanisms through which the right to health may be realized. Concerns such as privacy, accessibility, and adequacy are highlighted, and the constitutional duty of the State to fund, regulate, and expand insurance coverage is examined. The paper concludes with recommendations for legal reform, policy design, and statutory guarantees to solidify public health insurance as an enforceable human right.

Keywords: *Article 21, Public Health Insurance, Directive Principles, Article 47, Ayushman Bharat, Right to health, Indian Constitution, Judicial interpretation*

INTRODUCTION

Health is widely recognized internationally as a fundamental human right. However, in India it does not explicitly guarantee right to health in its Fundamental Rights (Part III). Instead, the Constitution provides Directive Principles (Part IV), notably Articles 38, 39(e), 42, 43 and 47, which mandate the State to promote social welfare and public health. Meanwhile, the Supreme Court has interpreted Article 21 (right to life and personal liberty) expansively to include the right to access health care of adequate quality and dignity. This interplay suggests the possibility of treating public health insurance as a mode of fulfilling the constitutional duty to ensure health. The question is Can public health insurance be considered a human right enforceable under Indian law? And what mechanisms are needed to make it rights-based rather than welfare-based?

ARTICLE 21 AND THE RIGHT TO HEALTH

Article 21 guarantees that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” The Supreme Court has decisively interpreted “life” in a broad sense—beyond mere survival to include dignity, health, and access to livelihood. Landmark cases include:

- *Pramand Katara v. Union of India*, holding that refusal to provide basic first aid or medical examination violates Article 21.

- Consumer Education & Research Centre v. Union of India, where Article 21 was read with Articles 39(e), 41, and 43 to declare a worker's right to medical aid and health protection as constitutional.
- Paschim Banga Khet Mazdoor Samity v. State of West Bengal, which confirmed that the right to health of vulnerable group including worker derives from Article 21 and correlates to duties under Article 47.

Together, these precedents establish that the State has a constitutional obligation to protect and facilitate access to healthcare.

DIRECTIVE PRINCIPLES & PUBLIC HEALTH

Directive Principles though non-justiciable set forth the State's normative obligations:

- Article 38 mandates securing a social order that promotes welfare, including public health.
- Article 39(e) calls on the State to protect the health of workers.
- Article 42 ensures maternity relief and humane conditions for women and infants.
- Article 43 directs the State to secure just and humane working conditions and promote living standards that promote health.
- Article 47, central to public health discourse, imposes a primary duty on the State to raise nutrition, living standards, and improve public health; it also directs prohibition of intoxicating substances injurious to health.

Judicial jurisprudence has emphasized that though DPSPs are not enforceable, they inform and reinforce the interpretation of enforceable rights like Article 21 and sometimes inspire statutory innovation such as the Rajasthan Right to Health Care Act, which directly invokes Article 47 + Article 21 to guarantee state-funded care to all residents.

PUBLIC HEALTH INSURANCE IN INDIA: AYUSHMAN BHARAT & PM-JAY

India's flagship public health insurance scheme, Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (PM-JAY), provides a cover of ₹5 lakh per family per year for secondary and tertiary healthcare to the poorest 40% of the population over 50 crore citizens. It aims to reduce catastrophic out-of-pocket spending. In some states (e.g. Punjab), state schemes top up central coverage to ₹10 lakh per family and universalize access beyond income criteria. These schemes operationalize the constitutional mandate public health insurance functions as a delivery mechanism for the right to health, satisfying Article 21 (by protecting individuals' right to life with dignity) and fulfilling obligations under Articles 39(e), 42, 43 and 47. Yet, critical questions remain: is enrolment universal? Is coverage adequate? Are privacy and data secured?

LEGAL CHALLENGES & PRIVACY CONCERNS

Though providing health coverage aligns with constitutional duties, implementation raises legal concerns:

- Privacy violations: Under Ayushman Bharat Digital Mission, certain patient data full names, discharge details, and payment amounts have been publicly displayed on portal dashboards, allegedly without proper consent or anonymization. The Supreme Court's Puttaswamy judgment (2017) affirms that medical data is protected under Article 21 and that any state action must satisfy legality, necessity, proportionality, and procedural safeguards.
- Lack of statutory enforceability: Public insurance remains welfare-based rather than rights-based. There is no enabling law- making insurance entitlement a justiciable right.

ANALYSIS: IS PUBLIC HEALTH INSURANCE A HUMAN RIGHT IN INDIA?

De jure, India has not enacted a law that grants an unconditional legal right to public health insurance. However:

- De facto, the Supreme Court has interpreted Article 21 so expansively that it implies the State must provide accessible healthcare; many judgments reinforce that DPSPs, especially Article 47, further obligate the State to improve public health infrastructure and services.
- Public health insurance can therefore be viewed as a legally required instrument to realize constitutional rights—not merely a policy.
- The Rajasthan Right to Health Care Act 2022 is the first state statute explicitly invoking Article 21 and Article 47 to guarantee free OPD/IPD services in public and selected private facilities to residents at no cost.
- This statutory model could serve as a blueprint for other states or central legislation to turn health insurance into a justiciable entitlement.

RECOMMENDATIONS

To solidify public health insurance as an enforceable human right, the following reforms are recommended:

1. Enact a National Right to Health Insurance Act, stipulating clear eligibility, scope of coverage (including primary, secondary, tertiary care), grievance redressal, portability, minimum quality standards, and privacy safeguards.
2. Mandate statutory data protection for patient information under insurance schemes (aligning with privacy jurisprudence)—including anonymization, strict consent for disclosures, and oversight mechanisms.
3. Expand universal coverage: transition from targeted schemes to rights-based universal health coverage, drawing lessons from Rajasthan's legislation and Punjab's ₹10 lakh per family top-up scheme.
4. Judicial oversight: Empower courts to enforce entitlements, monitor scheme implementation, and require State action plans when coverage gaps exist—thereby operationalizing Article 21 protections.
5. Strengthen infrastructure and financing: Provide sustained budgetary support to government hospitals and empanelled providers so coverage is meaningful and accessible.
6. Awareness and legal literacy: Publicize the right to insured health care and equip beneficiaries to demand services.

CONCLUSION

Though India does not yet define public health insurance as a constitutional right per se, the legal landscape constitutional text, judicial interpretation, and emerging statutes—supports a rights-based approach. Article 21, when read with Directive Principles (especially Article 47), implies a constitutional duty to provide health care access. Public health insurance schemes like Ayushman Bharat PM-JAY function as vital tools in meeting that duty. To shift from aspirational welfare to enforceable right, India must codify entitlements through legislation, protect privacy under such schemes, and ensure coverage is universal, adequate, and accessible. In doing so, public health insurance can—and should—be recognized as a legal human right in the Indian context.

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