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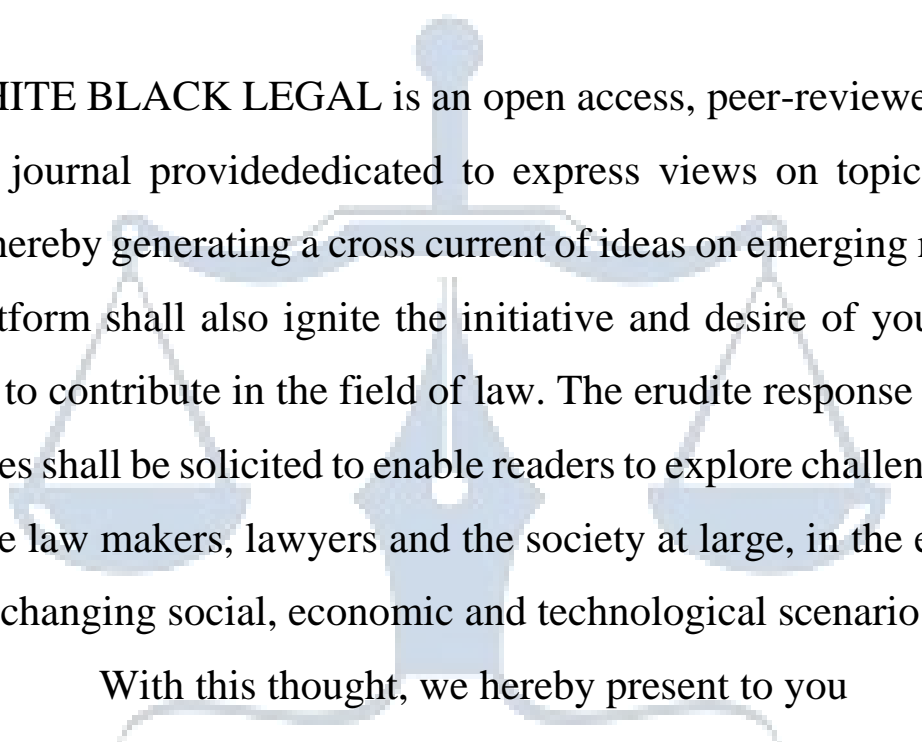


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With this thought, we hereby present to you

W H I T E   B L A C K  
L E G A L

# NECESSITY OF HEALTH INSURANCE IN INDIA: CHALLENGES & SOLUTIONS

AUTHORED BY- AYUSH VERMA<sup>1</sup>

## **Introduction**

Health is an essential aspect of human life. Without good health, it becomes impossible for people to live life in the complete sense. The concept of health can be better understood by the definition of health as given by the World Health Organisation: *"It is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"*.<sup>2</sup> This definition provides a wide angle of health, which talks about overall health as we feel it rather than just feeling corrupted by any disease or infirmity. Having disease or infirmity is a manifestation of overall bad health that includes a not-so-healthy diet full of nutrition, poor lifestyle with regard to health, and unawareness about one's own health, etc.

Issues with overall health lead to physical health deficiency, which further increases the burden on material and human resources. When such problems become common in society, the burden caused thereby leads to depleting resources, a rise in medical inflation, and growth in unethical practices, etc.

The heavy rise in medical inflation in modern times has become a menace to tackle by anyone alone. Therefore, here comes the role of insurance support to manage the rising prices of treatment in the healthcare sector. Broadly, three kinds of health insurance support are available in the country. First is fully funded by the government, second is partially funded by both the employer and the employees and third is fully funded by self. About 2/3<sup>rd</sup> of the entire population is not yet covered by any sort of health insurance, which poses a serious question about the state of healthcare in the future.

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<sup>1</sup> Ph.D. Scholar, Dr. Ram Manohar Lohiya National Law University, Lucknow.

<sup>2</sup> Health and Well-Being, World Health Organisation, available at: <https://www.who.int/data/gho/data/major-themes/health-and-well-being#:~:text=The%20WHO%20constitution%20states%3A%20%22Health,of%20mental%20disorders%20or%20disabilities.> (last visited on May 01, 2024).

In this paper, the author has attempted to look into the reasons for the rapidly growing costs of healthcare in the country and the unwillingness of a larger number of the total population to have any health insurance for themselves and their loved ones. The author concludes the paper by providing some solutions in the legal domain to deal with the current situation and have a healthy and aware India.

## **Understanding Rising Medical Inflation**

India has passed China as the most populous country in the world, and an increase in disease burden has also been observed in the country. This rise in disease burden is not only due to communicable diseases but also due to non-communicable or lifestyle diseases, which are because of not-so-nutritious diets and unhealthy habits. This rising disease burden has resulted in a constantly increasing burden on material and human resources for the provision of healthcare services in the country.

As reported, India has improved its doctor-patient ratio, which is 1:834, better than the WHO standard, which is 1:1000.<sup>3</sup> However, this is not the entire picture; though India has done better in terms of the number of registered medical practitioners per number of patients, the situation is still grave. For this, let us quickly look at India's healthcare sector. It is broadly divided into public and private healthcare sectors. In the public healthcare sector, healthcare services are subsidized by health insurance schemes launched by the governments, i.e., Health Insurance schemes like Ayushman Bharat– Pradhan Mantri Jan Arogya Yojana (PMJAY) to provide Health Insurance coverage for low-income families, thereby delivering services free of cost or for nominal amount while in private healthcare sector healthcare services are delivered for actual or higher costs. Therefore, in a country like India, where a large number of people are struggling to attain financial stability in their lives or live in poverty, they prefer to visit the public healthcare sector over the private healthcare sector.

In addition to government efforts, private healthcare providers and non-profit organizations are also making efforts to improve access to healthcare by increasing awareness about healthcare, providing training to healthcare professionals, and making investments in research and development to improve healthcare services. Such efforts to come up with better ways of

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<sup>3</sup> Update on Ratio Of Patients And Doctors Nurses, PIB, *available at*: <https://pib.gov.in/PressReleasePage.aspx?PRID=1985423> (last visited on May 11, 2024).



service delivery, knowledge, and technology led to an increase in the costs of healthcare services. As the private healthcare sector is doing better in terms service delivery, knowledge growth, technological advancements, and comfort for patient and relatives, whoever can afford the healthcare services in private hospital they prefer to go there and avail service of private healthcare service providers, even though they have to pay higher costs.

Considering the rapid growth of private healthcare in the country because of its multifaceted services, it also gives birth to corrupt practices like overcharging, prescribing unnecessary treatments, and lack of transparency in pricing. Such practices flourish in the absence of effective regulations to regulate medical practices.

Another reason for the rise in medical inflation is a lack of awareness about preventive steps to be taken to prevent diseases at the first step. These preventive steps include timely vaccinations, regular routine health checkups, and healthy lifestyles.

### **Significance of Health Insurance Companies**

Due to rising demand for quality healthcare services, shifting burden towards private healthcare sector causes deep blow in the pocket of many people. This blow sometimes badly impacts the lives of other family members, too. Health insurance services, as introduced by the government, are either not available or partially available in the private sector. But voluntary and contributory health insurance schemes are there as cushion for healthcare expenditure to be borne by people in private healthcare settings.

Voluntary healthcare insurance companies play significant role in lowering down the healthcare expenditure. These companies provide free regular checkups, radiological-diagnostic tests, lab tests, and vaccinations, which act as preventive measures to protect people from falling ill or diagnosing the problem at the initial stages, which then is cured at the same stage without any delay to make it more serious. Wellness initiative is also one such measure in which if the insured person does some activities like having a proper diet and workout as per the requirements of the company, they are given discounts on premiums or some other incentives, as this leads to low cost towards healthcare expenditure.

Healthcare insurance companies have their medical experts to assess before any approval is

granted for any healthcare service. This is helpful in managing the cost of healthcare by reviewing the cost utilisation, avoiding unnecessary treatments, tests, medications, other procedures etc.

To make healthcare more accessible by avoiding crowding in hospitals, long queues, and waiting hours in hospitals, healthcare insurance companies encourage using telemedicine. It helps patients to have consultations from the convenience and comfort of their home, which further results in keeping costs lower.

### **Health Insurance Coverage in India**

In India, health insurance products can be classified into three broad categories: government-subsidized health insurance schemes, social health insurance schemes, and private voluntary health insurance schemes. Government subsidised health insurance schemes provide fully or partially coverage to specially financially weaker sections of the society and people belonging to informal sector workforce. Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY), which was launched in September 2018 is the single most significant health insurance scheme, which replaced the erstwhile Rashtriya Swasthya Bima Yojana.<sup>4</sup>

Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) provides annual coverage of 5 lakhs rupees to the beneficiary family on a floater basis by fully subsidizing in secondary and tertiary healthcare areas.<sup>5</sup> In addition to this, some states across India have their own healthcare subsidy schemes that target specific groups of people in the states known as State Extension Schemes. State Extension Schemes may be fully or partially subsidized, unlike AB-PMJAY, which is a fully subsidized scheme.

Social Health Insurance Schemes are compulsory health insurance for organized sector employees covering both in-patient and out-patient healthcare expenditure. These include Employees State Insurance Schemes and Central Government Health Scheme. Under social health insurance schemes, contributions towards premiums are made by both employers and employees in both the public and private sectors. In addition to these schemes, some

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<sup>4</sup> Health Insurance for India's Missing Middle, Niti Ayog, available at [https://www.niti.gov.in/sites/default/files/2023-02/Health-Insurance-for-India%E2%80%99s-Missing-Middle\\_08-12-2021.pdf](https://www.niti.gov.in/sites/default/files/2023-02/Health-Insurance-for-India%E2%80%99s-Missing-Middle_08-12-2021.pdf) (last visited on May 13, 2024).

<sup>5</sup> *Ibid.*

government departments provide healthcare support at their own dispensaries and hospitals, i.e., railways and the defence sector.<sup>6</sup>

Third is private voluntary health insurance schemes, which, as the name suggests, are voluntary and contributory in nature. These schemes provide financial support regarding healthcare expenditure as per the retail insurance products. Retail insurance products are broadly of two types: one being Individual and the other being family or group basis coverage.<sup>7</sup>

In the fiscal year of 2023, over 550 million people across India were covered under health insurance schemes. Of these, the highest number of people were insured under government-sponsored health insurance schemes, while individual insurance plans had the lowest number of people.<sup>8</sup> Of this total 55 crore lives covered, about 29.77 crore belong to the Govt. sector, 19.94 crore belong to group business, and 5.29 crore lives are covered under individual category.<sup>9</sup>

This 550 million is little more than one-third of the total population of the country; this shows that about 2/3<sup>rd</sup> (87 crores) of the entire population is missing the benefits of health insurance coverage. About 87 crore people are not being covered under health insurance, which is a cause of concern in modern times' rapidly growing prices in the healthcare industry.

The upper-class or high-income groups people are sufficiently covered by the best plans provided by the voluntary and contributory health insurance companies, while lower-class or low-income groups people are supported by the health insurance schemes provided by the government like Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) and its extension schemes. This makes middle-class population of the country, the most vulnerable class with regard to coverage under health insurance schemes. Neither are they considered weak enough to be covered under government-funded schemes, i.e., Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY), nor are they rich enough to choose the best

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<sup>6</sup> *Id* at 08.

<sup>7</sup> *Ibid.*

<sup>8</sup> Number of lives covered under health insurance in India FY 2016-2023, Statista, *available at* <https://www.statista.com/statistics/657244/number-of-people-with-health-insurance-india/#:~:text=In%20the%20fiscal%20year%20of,the%20lowest%20number%20of%20people> (last visited on May 12, 2024).

<sup>9</sup> Annual Report 2022-23, IRDAI, *available at* <https://irdai.gov.in/document-detail?documentId=4273788> (last visited on May 14, 2024).

retail health insurance products for themselves. They are the class that constantly strives to attain and maintain financial stability, which mostly prevents them from opting for health insurance.

## **Challenges for Health Insurance Sector**

*Lack of Awareness:* People lack awareness about the need for health insurance as they generally consider it a waste of money. They don't get anything in return so it is a terrible investment. This belief is the cause behind low penetration of health insurance in tier 3 and lower categories of the cities and towns.<sup>10</sup> People's belief that they are very fit and healthy and therefore don't need any health insurance meet setbacks when any sudden healthcare crisis comes to them, and they are left with no other option but to regret it. Therefore, making people aware of the benefits and necessity of health insurance is crucial to save families from sinking.<sup>11</sup>

*Delayed and refusal to payment:* Fear that the refusal to approve claims from the side of the health insurance company at a time when they need it badly is another challenge that prevents people from opting for health insurance. Though there is fear, this is not much of a concern in present times as the regulator, the Insurance Regulatory and Development Authority of India (IRDAI), is keeping a check on health insurance companies to protect the interests of policyholders and provides mechanism for redressal of their grievances.<sup>12</sup>

*Fear of getting scammed:* Relating to the abovementioned concern, there exists a fear of getting scammed. However, the regulator advises people buying health insurance to read all the documents carefully and then make any decision according to their own needs. This does not seem practical because terms and conditions written in policy documents are technical ones, which usually are difficult for a layman to understand by his own. The option left here is to consult any health insurance adviser or understand terms from the agent of the health insurance company. As the middle-class population is the most vulnerable, for them, affording an independent health insurance adviser would cause more burden on their budget while they already struggle with maintaining financial stability. If they seek to understand it from an agent,

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<sup>10</sup> Sunaina Chadha, "Unaffordable and complex: Why Indians stay away from health insurance" *The Business Standard*, available at [https://www.business-standard.com/finance/personal-finance/high-premiums-and-more-what-s-keeping-indians-away-from-health-insurance-123070600113\\_1.html](https://www.business-standard.com/finance/personal-finance/high-premiums-and-more-what-s-keeping-indians-away-from-health-insurance-123070600113_1.html) (last visited on May 10, 2024).

<sup>11</sup> Nandini Jain, Why Indians DON'T Buy Health Insurance, Nova Benefits, available at: <https://www.novabenefits.com/blog/why-indians-dont-buy-health-insurance>

<sup>12</sup> Grievance Redressal Mechanism, IRDAI, available at: <https://irdai.gov.in/grievance-redressal-mechanism1> (last visited on May 09, 2024).

it is not to forget that he is an agent of a company, so he will make all the attempts to sell the company's products. The complexity of the terms can be understood from the following example:

Mr. A bought a health insurance plan from X Company. His sum insured under this plan was 10 lakhs rupees, but room rent had a capping of 1 % (which means he could take rooms up to 10,000 rupees only). Mr. A got diagnosed with a serious disease and had to spend 4 days in the hospital. Believing he has a policy for 10 lakhs rupees and his room rent would be covered under this, he opted for a suite room costing him rupees 15000 only. The final bill he received at his discharge included treatment-related costs of 3 lakhs rupees and room rent costs of 60,000 rupees only. He was shocked to see that his approved claim amount from company X was 2 lakhs for treatment and 40,000 rupees only for room rent, and the rest of the amount he had to bear on his own.

Here, in the above case, it is clear that the room rent capping is 1%, but if room rent is upgraded to a higher one than permitted, the entire treatment cost goes up and the company doesn't approve more than the permissible amount, which is not usually explained in detail at initial stages while buying a health insurance product.<sup>13</sup>

*Demotivation due to inadequate coverage:* Generally, health insurance policies do not cover OPD treatment and allied expenditures like pharmacy, lab test, and radiological-diagnostic tests, etc., and if any company provides an optional cover for such healthcare expenditures that also require additional payment and up to a certain percentage of total sum insured, as an add-on rider. People consider getting admitted to a hospital a rare chance, and visiting for OPD treatment is frequent, which is not covered, so for them, it seems futile to invest in health insurance.

### **Legal Response to Existing Challenges**

The Insurance Regulatory and Development Authority of India (IRDAI) is the regulator responsible for regulating the companies in the insurance sector and protecting the interests of the policyholders. By coming to know about frauds/ scams, the IRDAI made an alert that

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<sup>13</sup> Health Insurance SCAMS in India 2024, available at: <https://www.youtube.com/watch?v=JLQHvD7BJCE> (last visited on May 12, 2024).

insurance companies, their intermediaries, or those pretending to be either of them may also perpetrate frauds.<sup>14</sup> Further, emphasizing the need for the elimination of such fraudulent activities, called out all the stakeholders to be alert and actively do their bits in this regard.

The IRDAI has provided a mechanism to take action against fraudulent activities. First step, according to the IRDAI should be to approach the Complaint/Grievance Redressal Cell of the concerned insurer. If they don't get a proper response within a reasonable time or they are not satisfied with the response of the insurer, they may approach the Grievance Redressal Cell in the Policyholder's Protection & Grievance Redressal Department of the IRDAI.<sup>15</sup> Only the insured or the claimants can register complaints with the IRDAI.<sup>16</sup>

Other than registering a complaint with the IRDAI, one can register a complaint under the Consumer Protection Act, 2019, because a beneficiary of an insurance policy is a consumer in accordance with the definition of 'consumer' as per section 2(7) of the Consumer Protection Act.<sup>17</sup> The one seeking justice against the wrongful actions of the insurance companies must act in proper way and disclose all the necessary information correctly. If he fails to do so, company's failure to pay the insurance amount won't be considered as deficiency in service.<sup>18</sup>

In case the health insurance provider fails to provide approval to the insured, he will be responsible for such failure,<sup>19</sup> and against him, product liability action may be initiated as defined under section 2(35) of the Consumer Protection Act, 2019. A product liability action can be initiated by the claimant only<sup>20</sup> and for such action the claimant shall have to prove that he has suffered harm.<sup>21</sup> Liabilities of a product service provider arise if-

1. The service provided was faulty or imperfect or deficient or inadequate in quality, nature, or manner of performance, which is required to be provided according to any law or any contract;

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<sup>14</sup> Be Alert, Consumer Education Website, *available at*: <https://policyholder.gov.in/be-alert>(last visited on May 13, 2024).

<sup>15</sup> *Supra* note 12.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Canara Bank v. United India Insurance Co. Ltd.*, (2020) 3 SCC 455

<sup>18</sup> G. B. Reddy & Bagelkar Akash Kumar, *Consumer Protection Act: A Commentary* 56 (EBC Publishing (P) Ltd., Lucknow, first edition, 2022).

<sup>19</sup> The Consumer Protection Act, 2019 (Act 35 of 2019), s. 2(34)

<sup>20</sup> *Supra* note 18 at 92.

<sup>21</sup> *Id* at 93.

2. There was an act or omission or negligence or conscious withholding of information which resulted in harm;
3. The product service provider fails to adequately warn so as to avoid any harm;
4. The services provided by the product service provider did not conform to any express warranty or the terms and conditions of the contract.<sup>22</sup>

Under section 19 of the Consumer Protection Act, 2019, the Central Consumer Protection Authority after the preliminary inquiry regarding the violation of consumer rights or adoption of unfair trade practices or any false, misleading advertisement, may, if it is of the opinion that the matter should be dealt by the regulator (herein this case the Insurance Regulatory and Development Authority of India (IRDAI)), refer the matter to the concerned regulator.<sup>23</sup>

### **Conclusion**

Rising medical inflation due to technological advancements, more research and developments, constantly growing requirements of well-qualified medical professionals, etc., is causing a burden on the pockets of individuals. Insurance schemes are available there to ease this burden. Of these insurance schemes' coverage, only about 1/3<sup>rd</sup> of the total population is covered, leaving behind about 2/3<sup>rd</sup> of the total population uncovered and on their own when any health crisis approaches them. Having larger chunk of the population with no health insurance coverage compels us to consider what is hindering health insurance penetration to the country's last person.

Looking into the reasons, the author came to know that people are unaware of how serious one's health could become in a sudden, however healthy they appear. And it is not a bad investment instead it is like having an umbrella for rainy days. Another reason surfaces is fear of not getting claim approval when it is needed and refusal of claim, and getting scammed by the health insurance companies. Lastly, the reason that came to the attention of the public reflects the inadequacy of coverage, as it only covers in-patient treatment and not OPD and related treatment expenditures. If any company provides OPD cover under any additional rider that also to a limited amount.

Of such issues, few issues including possibility of fraudulent activities by the insurance

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<sup>22</sup> The Consumer Protection Act, 2019 (Act 35 of 2019), s. 85

<sup>23</sup> The Consumer Protection Act, 2019 (Act 35 of 2019), s. 19

companies and their intermediaries have been recognised by the regulator. In this regard, the regulator has taken crucial steps by providing a mechanism for reporting about the fraudulent activity. Other than that, the policyholder is considered a consumer under the Consumer Protection Act, 2019 and, therefore, can initiate action for violation of his consumer rights.

In addition to the above steps taken, to protect the interests of policyholders, the regulator should take necessary steps to ensure confidence in health insurance products by keeping a check and ensuring that the terms and conditions in the policy documents are precise and clear enough so that a layman could also understand and there remains no possibility for manipulation of terms and conditions.

The regulator should keep specific cut out of the premium paid by policyholder to ensure that in case the insurer fails to approve claim of any policyholder, while the policyholder has duly performed his part, the policyholder's interest is not affected thereby and his claim should be approved speedily to address any emergency condition. The rest of the paperwork and procedure can follow.

The government should take necessary steps to spread awareness and sensitize people regarding the necessity of having a health insurance to deal with any adversity. And buying a health insurance should be considered as an utmost investment because this is for health, and health is wealth for us all.

The author also proposes for creation of a consumer-friendly health insurance product providing basic cover to meet the essential requirements, including adequate cover for OPD and related health expenditures, of a policy holder without any sort of technicalities. Such product should be made mandatory especially for people who do not have any other health insurance cover active for them. This would ensure the penetration of health insurance to even the last person in the country.

Hence health is an essential aspect of life, therefore, in the view of author, the terms and condition of any health insurance should be created and interpreted by prioritising the interests of policy holders and beneficiaries. These should not be driven by mere profit motive.