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Digital Healthcare, Legal Care: Analyzing Doctors' Rights Amidst Technological Growth in Indian Medical Tourism

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ABSTRACT

This paper argues how advancements in science and technology impact doctors' rights and patient safety in the ever-expanding field of medical tourism in India. The digital transformation of health care due to telemedicine, artificial intelligence (AI) diagnostics and electronic health records (EHRs) brings about various complexities. This includes legal challenges like data privacy, informed consent, legal enforceability of healthcare contracts and cross-jurisdictional health care delivery. The paper opines how the legal framework of medical practice in India, evolving under the Indian Medical Council Act, Telemedicine Practice Guidelines, and a proposed data protection law, ensures doctors' rights and patient safety. Against the rapidly changing legal landscape of medical tourism and digital health care, the legal instruments ensure the easy growth of the sector in India as a medical tourism mecca.

Keywords: *Digital Healthcare, Medical Tourism, Doctors' Rights, Telemedicine, Artificial Intelligence (AI), Electronic Health Records.*

I. INTRODUCTION

Technological advancement with success was a turning point for the holistic healthcare. It changed the way the world saw healthcare. The increase in scientific prowess along with newer technological advancement paved way for newer medical practices. Consider India for a little while. It's claim to fame as one of the largest medical tourism destinations for patients from abroad happens to be one among the advantages of growth of newer technology and scientific development. The numbers in the past few years speak for themselves, it seems there has never been a more critical time (internationally) for these developments. It has also increased the influx of patients from foreign countries to countries like India, where medical care is of high quality as well as relatively affordable. It has also brought forward more economical healthcare. The patients affording the treatment at affordable cost benefit by having access to excellent

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medical care as the technology brings in better treatment outcomes. The patients themselves benefit immensely, saving costs as well as time. The process has been relatively smooth. However, along with all the positives that have emanated from this concoction of medical tourism and technological advancement, there is an added and different set of legal issues that arise. Doctors' rights and legal protections form an integral part of the framework of consideration in present times. While new technology has its pros widely accepted, the issues surrounding doctor's rights are rather complicated. Doctors' rights hold large implications for all concerned. This paper is a brief attempt at exploring the legal issues around digital healthcare in connection with the nature of medical tourism in India, one of the major destinations for Indian healthcare. It will engage with an analysis of the present rights of doctors in legal terms by tracing the journey of technological advancement and its implications to inform the analysis in layman terms.

India's medical tourism industry has grown dramatically. Its low cost, modern medical services and providers have attracted many foreign patients seeking to benefit from the advantages of medical tourism. To the thousands of medical tourists who come to India for a wide range of procedures including complex surgeries, high-end plastic surgery, cardiovascular procedures and alternative therapies, India offers healthcare at half the price and waiting time as in their home countries. The government actively encourages and assists with medical tourism as a promising source of foreign income. These measures have consolidated India as a major destination for medical tourists because the country's 'medicalization' of society and its 'hospitality' infrastructure offer immediate services to foreign patients.

Rapid adoption of technology has led to the development of innovative healthcare solutions in India. Digital health solutions, telemedicine, AI-aided diagnostics, and electronic health records (EHRs), among others, have made patient care better. Apart from enhancing the efficiency and effectiveness of clinical delivery of medical treatments, these solutions help to personalize healthcare in every way, thus making it safer and more comfortable for the medical tourist, who often travels to a foreign country in search of treatment.

It is the end of the road for doctors of another kind as the decade-long frenzy, over the past several years, has pushed health care in India into unfamiliar terrain – a consummation of sorts, over the past decade or slightly more, of the rapid growth of health tourism, especially medical tourist packages, and of the rapid growth of digital health solutions. These changes have brought a fresh set of legal and ethical challenges, and it seems that the latest battleground will be the slow but complete transformation of the protections and rights of doctors in this new landscape. It is possible to see how the forces of rapid growth in medical tourism and digital health are

reshaping the demands on the rule of law.

II. THE EVOLUTION OF MEDICAL TOURISM IN INDIA

Medical Tourism in India is a service industry that has come out of the crease and been in the field for many decades now. It is not just a big business in India, but also delivering the service of ensuring quality medical care to a growing set of customers from all over the globe is a new terminology in India. Due to them, it is now able to deliver world class medical corners of the world. The first point that I would like to release for India is that it is a health destination for cardiology, orthopedics, transplantation and surgeries, Yoga and Ayurveda which are remedies that originate in India and practiced thousands of years ago is now revered all over the globe.

In other words, the tale of medical tourism's rise in India is as much a cultural-technological-legal as it is an economic success story, in which the state stands to change policy, ease the visa route, and accept international accreditation of hospitals, all steps that not only demonstrate the greater globalization of India's healthcare system but also appear to require, as a result of its new politico-economic interventions in the market for healthcare, the development of a legal regime to answer for the host of 'medical tourism' problems – whether they be related to the rights and responsibilities of health care providers.

(A) Introduction to Technological Innovations in Healthcare

Digital healthcare solutions like telemedicine, artificial intelligence (AI) in diagnostics, electronic health records (EHRs) and mobile health (mHealth) applications suddenly opened up new vistas for medical tourism by modernizing the way healthcare was being provided in India. Digital healthcare solutions have already had a major impact on healthcare delivery models as these solutions bring ease of access to healthcare services, allow their centralized monitoring, facilitate building of structured, individualized treatment care plans for patients, enhance diagnostic precision and enable optimization of hospital operations. At the same time, they have also opened up complex issues related to patient data privacy, informed consent and legal ramifications of medical errors for the healthcare providers.

- **Telemedicine:** With the advent of telemedicine allowing patients who are residing in remote locations or who want to take an opinion from foreign experts, the delivery of care has become more accessible and less dependent on physical travel. The Indian government through the Telemedicine Practice Guidelines, 2020 provided the framework of standards and norms that healthcare providers and other stakeholders have to adhere to, while delivering telehealth services. It also deals with some of the pressing legal issues such as privacy and confidentiality of personal data and informed

consent, cross-border data flow from the health sector, and rights and obligations of doctors engaging or delivering healthcare across jurisdictions.

- **AI in Diagnostics** Technology-driven diagnostics, involving artificial intelligence (AI) and machine learning (ML), have seen a steep increase in progress in medical diagnostics delivering high statistical accuracy with increasing efficiency. Diagnostic tools using AI learn how to interpret complex medical data and images, including identifying patterns in large data sets that aid doctors in treating illness and recommending cures. The legal challenge in diagnostics revolves around issues of accountability, good medical practice, and patient data privacy. The Indian legal system is consciously adjusting to these challenges, after which legislative discussions are taking place with a view to regulate AI technology in healthcare to ensure that it does not compromise legal or moral considerations.
- **Electronic Health Records (EHR):** Intended to manage the secure and efficient storage of patient information, it is increasingly a basic requirement of the modern health service with particularly enhanced relevance for those involved in medical tourism, often receiving treatment from numerous providers in various countries. The IT Act, 2000, in combination with and ahead of the Personal Data Protection Bill, currently forms the legal framework for EHRs and focuses on data protection, privacy and the rights of persons regarding their own personal health information, especially in an electronic environment.

III. LEGAL FRAMEWORK GOVERNING MEDICAL PRACTICE IN INDIA

The legal components framework of medical practice in India is very complex because it is a spraddle framework consisting of inter woven multiple legal components i.e., statutes, regulations and guidelines with the common objective that assures good, safe and ethical medical care in the best possible way. It becomes more convoluted when one takes into account the emerging technologies in medical practice like medical tourism, etc which adds new dimensions to medical practice. It is very important from the perspective of right of a doctor, health safety of a patient and privacy available to a patient in these emerging dimensions of medical tourism under technological growth in medical practice.

(A) The Legal Framework Surrounding Medical Tourism and Technology

In this complex scenario, these new forms of medical tourism collating with digital healthcare technology call for a sophisticated sense of legal milieu, together with innovation in regulation and policy. With legal milieu in India taking these evolving forms, it is important to note that

the legal order has also been changing and morphing to keep pace with the growing risk at this intersection.

(B) The Indian Medical Council Act, 1956

Somewhat predictably, the major piece of legislation that governs medical practice in India is the result of legislation: the Indian Medical Council Act, 1956 (following amendments since its inception), which created the statutory body Medical Council of India (now renamed National Medical Commission) and set out the rules governing medical education, registration and ethics in India – the basic piece of medical legislation in India that sets the criteria for ensuring that medical tourism will be performed by adhering to the standards of professional conduct and ethics that is expected of all professional doctors worldwide. The law has also set down rules relating to redress – for medical negligence, professional misconduct and the qualifications required of those who practice medicine – three of the major aspects that have influenced the image and the acceptability of medical tourism in India.

(C) The Clinical Establishments (Registration and Regulation) Act, 2010

Another notable legislation is Clinical Establishments (Registration and Regulation) Act, 2010 which aims to register and regulate all the clinical establishments to ensure they maintain minimum standards of facilities and services. The Act is currently being implemented in some states since October 2012. Once in effect all over the country, this Act is likely to standardize the healthcare services for better quality and reliability, thus touting the medical tourism sector.

(D) Telemedicine Practice Guidelines

Acknowledging the significance of telemedicine, and the need to expand India's medical tourism industry, the Board of Governors in supersession of the Medical Council of India launched the Telemedicine Practice Guidelines in March 2020. The guidelines are a comprehensive set of guidelines to build upon the medical profession's nascent experience with telemedicine practice and 'enable telemedicine practice in a manner which is in conformity with good medical practice, law and ethical issues. The guidelines categories the technologies used for telemedicine into two: synchronous or real-time virtual consultation, and asynchronous or store-and-forward consultation. The guidelines also address patient consent, considerations to bear in mind during the course of life cycle of telemedicine services, standards of care, privacy and confidentiality, jurisdictional considerations and standards to be considered by medical institutes and healthcare providers. The guidelines are an effort to provide a regulatory framework to formalize telemedicine practice, so that it is not undertaken arbitrarily. This is made slightly complicated by the fact that two doctors, one of whom cannot see or check

physical symptoms, are providing a consultation. These guidelines seem to offer clarity on the legal standing of such a telemedicine consultation – these allow doctors to conduct consultations while offering some level of protection to patients.

(E) Data Protection Laws Relevant to Patient Information

Digital healthcare technologies need patient information, and the relevant legal question now demands the protection of such information. India does have data protection laws to regulate it for now, through the Information Technology Act, 2000, complemented by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. Though these laws are not specific to the healthcare sector, they apply to the practice of data protection in the country including health information. Personal Data Protection Bill, a proposed legislation to replace the existing data protection law, promises harsher measures for health data protection in future. Since patient information is pivotal to the claim of success for medical tourism and telemedicine, like anywhere else, the legal framework in India is poised to realize the ability to treat and protect a patient's information. This protects patient privacy, and offers legal protection for healthcare providers.

Legal aspects specific to medical practice in the context of medical tourism and digital healthcare in India are plenitude and constantly changing. As the technologies progress and medical tourism demand grows at the international market, the relevant laws and regulations will also be developing over time. A familiarity with these legal aspects is not just important for the compliance of doctors practicing in these sectors, but is also essential for doctors to render the best possible care to their patients, while protecting their own rights and interests. The structured development of the laws surrounding the utilization of technologies in healthcare with due emphasis on the peculiarities of digital healthcare and medical tourism is a positive step towards keeping India as a preferred destination for medical tourists across the globe.

(F) Doctor's Rights within the Legal Framework

As the Indian medical tourism landscape gains pace, with the aid of dual technological progress, the rights of doctors seem to occupy the front seat of what is regulated by the law. As the delivery of healthcare becomes heavily integrated with digital technologies, the legal rights of medical professionals as well as the regulatory structure, become ever more relevant to keep pace with their needs, while preserving and promoting the quality of medical services for their patients. This section looks at the three most important aspects of rights for medical professionals under a legal framework to grant them the right to practice and innovate as doctors, the right to be protected from malpractice accusations, and the right to be treated fairly

in a legal court of law, if they are at the receiving end of a medical malpractice lawsuit.

a. Right to Practice and Innovation

The right of medical practitioners to practice their profession in India is enshrined in the Indian Medical Council Act that has been amended to accommodate the creation of the National Medical Commission (NMC). Like any work permit, these gatherings grant doctors the right to practice medicine across India as long as they clear all the required regulatory hurdles and follow the rules of their specified profession, as spelt out in the ethical guidelines of the NMC. In the new landscape, for example, of medical tourism and digital health, this guarantees the right to use new technologies and innovations that improve patient care.

Moreover, as medical laws continue to recognize novel medical practices, they invite innovative medical practice by setting standards for the increasing use of technologies that medical practitioners wish to incorporate into their practice, such as advanced AI-supported diagnostics and treatment; telemedicine in the form of contactless doctor's appointments, consultations, diagnosis and treatment; and electronic health records. To take one concrete example, the Telemedicine Practice Guidelines set forth the lawful practice of telemedicine, codifying its application in the safety and wellbeing of the patient and ensuring that the doctor can perform her core function of healing remotely, thus inviting, by its very authorship and existence, this form of medical practice. This, in turn, helps make Brazil a desirable destination for medical tourism by ensuring that the medical practitioner is empowered to provide cutting-edge treatments to international patients.

b. Right to Protection from Malpractice Claims

Given that the health care industry is increasingly digitalized, there is a need for a robust and erudite law to protect doctors against undue liability claims. The Clinical Establishments (Registration should provide care as well as how they are allowed to behave, and thus provide the basis for a legal defense in case of malpractice claims.

The legal picture becomes more complicated where digital technology is deployed. The Telemedicine Practice Guidelines enumerate the specific procedures for informed consent, documentation, confidentiality and such other protocols to mitigate the risk of malpractice claims flowing from telehealth services. Consequently, the pending Personal Data Protection Bill incorporates prescription for consent and safeguarding patient data features, providing an impeccable legal aegis to service providers in digital healthcare, whose mishandling could put medical professionals on the wrong side of law.

Such assessment should be based on accurate information and a just conception of the role of

medicine in society. Doctors have a right to contested malpractice claims, and the legal system has means of settling such disputes, including peer review. When making decisions, courts should consider the context of the care delivery, including the strengths and weaknesses of the available technologies.

c. Right to Fair Treatment in the Event of a Legal Dispute

When in a legal conflict, doctors have the right to be treated as with any other participant in the judicial process. This implies the rights to legal representation, the rights to present evidence and argue one's case, and the rights to a neutral judgment. The laws in India have evolved over several decades through several statutes and regulations to safeguard the doctor from penalising outcome when the underlying causes are interpretations of inherent risks of medical practice or deficiencies in current technology.

Even the judiciary has developed relevant case law interpreting the law in light of the realities of medical practice, for example recognizing subtle gradations between mistakes in medical judgment (i.e., passing off an adverse outcome to 'bad luck') and negligence. And vital cases have carved out legal protections for doctors over against the reality of bad outcomes that were not attributable to negligence: for example, the conceptions of *res Ipsa loquitur* ('the thing speaks for itself') that releases operators from liability in the event of a fatal operating-table fire.

Further, the legal system has mechanisms to adjudicate disputes in a way that respects the medical technicalities raised by use of technology, such as third-party mediation and arbitration. By agreeing to an arbitration, the parties basically designate the person who hears the dispute as the adjudicator.

IV. THE IMPACT OF TECHNOLOGICAL ADVANCES ON DOCTORS' LEGAL LANDSCAPE

The introduction of digital healthcare technologies has fundamentally transformed the legal landscape for doctors, particularly in relation to the medical tourism sector that is expanding rapidly in India. The adoption of these technological tools, although promising significant opportunities for improving patient care and overall efficiency in medical care delivery, have also introduced a variety of legal issues. This section examines the manner in which these technological tools (ranging from diagnostic technologies, therapeutic technologies, telemedicine and digital health records, to artificial intelligence) reshape the legal landscape for doctors in the context of medical tourism in India..

(A) Enhanced Diagnostic and Treatment Capabilities

Ever more sophisticated diagnostic and treatment technologies are empowering doctors and enabling new forms of care: targeted therapies, increased diagnostic precision, and more personalized treatment recommendations. But with the power of expanded diagnostic and treatment options comes a new set of legal obligations for doctors. On the one hand, sophisticated diagnostic tools and new treatment modalities might be expected to enable more accurate – even precise – care; and when applied with clinical expertise, they can achieve that. But advanced technologies might also raise expectations that efforts will always tend toward greater accuracy and improved results – and failure to achieve those ‘improved results’ applications of advanced technology may result in increased legal exposure, such as malpractice claims.

The standard of care framework, embodied in the principles and code of medical ethics and laws such as the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, obliges doctors to exercise their expertise in a way that is consistent with the highest standards of professionalism and ethical conduct. As standard care evolves with technology by recognizing the latest advancements as de facto standards, doctors need to be watchful about the implications that the use of high levels of medical technology carries in terms of their legal obligations regarding due care and the use of these tools commensurate with the standard of medical practices and care.

(B) Telemedicine and Remote Healthcare: Legal Implications and Responsibilities

Telemedicine has presented new ways to provide medical services to the globally mobile patient and the post-COVID era has further advanced that possibility. The 2020 Telemedicine Practice Guidelines signal the legal intent behind these developments recognizing that a mere desire to provide health care services or obtain such services from persons who are not within the same jurisdiction does not automatically establish the necessary consent needed to satisfy the requirements of the due process clause or any person’s reasonable expectation of privacy. These guidelines seek to establish the standard of due care applicable to a doctor rendering health care consultations to a patient in a jurisdiction that may be remote and the legal approach to address the potential health care crisis faced by medical tourists.

Sensitive issues such as patient confidentiality and privacy, and healthcare standards including informed consent, have a legal dimension. Additionally, if the patient is a medical tourist, best practices dictate that the rules of the juridical location to which the tourist is traveling apply to both medical interactions and payment made. This makes telemedicine services typically cross-border in nature, and exposes doctors to the risk of legal action not only in India but possibly

elsewhere in the world.

(C) Digital Health Records: Confidentiality, Privacy, and Legal Compliance

Along with the extensive adoption of digital health records (EHRs), the information age has played a key role in cutting the red tape for healthcare delivery, which in turns improves healthcare continuity, but at the cost of major legal risks to a provider relating to privacy, confidentiality, and patient data protection. The Information Technology (IT) Act, 2000, and the various rules framed subsequently thereunder, form the legal landscape regarding the protection of electronic data in India. The challenges posed by healthcare data, however, are subtle.

The Digital Personal Data Protection Act, 2023 – which can be expected to provide a much clearer and more stringent legal framework for protection of data – will be brought into play, and doctors and health-care providers will have to be absolutely scrupulous about these matters in order to avoid breaches of patient confidentiality-driven legal actions.

V. ARTIFICIAL INTELLIGENCE IN HEALTHCARE: ETHICAL AND LEGAL CONSIDERATIONS

This has raised deep ethical and legal concerns about whether, how, and to what extent such AI can be used in healthcare applications. The primary legal fantasy arising from AI in healthcare is that of attributing liability for harm that may be caused by automated decisions. Algorithmic mechanisms for diagnostic and treatment decision making may fall into the category of error-prone ways of making inaccurate predictions that ultimately carry significant risks for adverse patient outcomes.

The development of the legal framework that defines the use of AI in healthcare is in a nascent stage in India. Doctors harnessing AI technologies are caught in a legal space of uncertainties where the limits of human-freedom in medical interventions, the ethical issues surrounding the decision-making powers of AI, the consent of the patient for use of AI as a tool in their medical care, and the liability of the doctor using AI in patient care, are all up for argument and negotiation. In the absence of clear regulations on the use of AI in healthcare, the responsible course of action is to emphasise the primacy of human oversight, to ensure transparency in the use of AI technologies, and to ensure that ethical considerations maintain primacy in medical care.

The developments in technology are evolving the boundaries of medical practices, and so do the legal perimeters for the doctors in the medical tourism industry in India undergo a

transformation. The legal implications due to advancements in diagnostic and treatment capabilities, telemedicine, digital health records and artificial intelligence require a comprehensive and evolving legal system. This must meet the current and future challenges of technology and patient care while protecting the rights of the doctor. Doctors also need to stay abreast of the legal laws applicable to them on a continuous basis so that there is no abandonment of technological advancements in healthcare although it is accompanied by the risks of a legal violation. A consequential shift in the role of legal systems towards mediating technology naturally follows. Technology, by itself, does not care whether a software is used to kill the sick or to cure them. The ethical and legal imperatives associated with patient care and doctor's rights must then be mediated by the legal system that upholds the sanctity of patient life and bodily integrity. Yet it should not become an obstacle in the achievement of the noblest goals of technology in healthcare.

(A) Challenges and Legal Risks for Doctors in Medical Tourism

The boom in the medical tourism business in India, which is a big foreign exchange earner as well as showcases how India has come of age in the field of high-end healthcare, also brings with it gigantic legal challenges and risks for doctors where digital medical technology, which is a boon in the delivery of healthcare services, has added newer dimensions to the legal risks of doctors. Analyzing mesmerizing cross-border legal challenges and risks based on case studies and the legal frameworks is the theme of this section. Thousands of doctor's travels to different countries, including India, for foreign training and career purpose. In most cases, they obtain a visa in that country as a student or guest worker. The legal issues that arise from this come under the purview of Foreign Practice Clause (FPC). This clause is a material term of the doctor's contract.

(B) Cross-Border Legal Issues and Jurisdictional Challenges

Cross-border legal risks are a prominent legal risk, especially for practitioners in medical tourism. Due to the cross-border nature, medical tourism requires doctors to be aware not only of the Indian legal system but also the possible legal ramifications in the patient's home country. Many cross-border objectives gave rise to issues such as questions of jurisdictional competence, and issues such as the protection of privacy through online healthcare. In telemedicine, healthcare is provided across national borders. These objectives illustrate the need of international legal cooperation and agreements, as in order to obtain clarity and legal predictability.

(C) Negligence and Malpractice Claims: Understanding the Risks and Protections

Negligence and malpractice claims can be among the worst cases of the liabilities doctors face in medical tourism. The light at the end of this endeavor has been the Indian Penal Code (IPC) and the Consumer Protection Act, 1986 (and 2019 amendment) which lay down for consumers the responsibilities and liabilities of the healthcare providers. Doctors involved in this process have to be careful about the standards of care they follow, maintain a proper medical record, get an informed consent, and clearly communicate the risks and limitations of the treatment with their patients.

Indian protection against malpractice claims is multifaceted. The syllabus of Instruction on Professional Ethics and Conduct of the Medical Council of India (MCI) – the national regulator for medical practice – stood as a minimum measure against which to judge what was and what was not professional conduct. In most instances, Indian judges took a rational approach in malpractice cases, referring to the standard of care which an ordinary and reasonable person may expect from their doctor or surgeon under the particular circumstances, with liability sparing bad outcomes when they were not the results of negligence.

For example, in the now-famous 2011 judgment in the case of *Dr Laxman Balkrishna Joshi v. Dr Trimbak Babu Godbole*, in which the Supreme Court of India laid down criteria for judging the ins-and-outs of negligence, it stated: The skill and competence to take the risk, or the way a doctor reaches his decision to take a risk, are more important than the result of the risk which the doctor takes ... *Yeh Gulabi Aanch* works with doctors to help them see the feel of doubt A reported death or failure might therefore be a simple fact, but proving negligence is not straightforward. This nuanced understanding on the part of the judiciary, along with the substantive laws based on it, gives a measure of legal immunity to doctors who remain within the standards of their professional practice.

VI. SAFEGUARDING DOCTOR'S RIGHTS IN THE TECHNOLOGICAL ERA

Any means of digital telemedicine has to be protected by robust regulations It also cannot ignore the rapidly growing medical tourism industry in India. This sector is likely to grow fourfold from \$2 billion to \$8 billion by 2020. To survive and ultimately thrive in this tech-driven world of healthcare, the framework to protect doctors' rights must be robust. The digital world offers novel legal questions that can impact a doctor's professional and legal future. Efforts to protect doctors' rights should ideally occur across multiple domains: following legal best practices, mandatory legal protections and professional lobbying by medical associations.

(A) Legal Best Practices for Doctors Engaging in Medical Tourism

For medical tourism doctors, navigating the grey areas that exist around obligations and rights

on both sides requires a series of best practices that help mitigate risks, safeguard the doctor against potential legal issues, and also help comply with Indian and international laws.

- **Keep your knowledge and activity up to date on the laws and guidelines:** Always keep the latest legal developments in mind, be they national regulations or international directives on medical tourism and digital healthcare, such as Telemedicine Practice Guidelines, data protection laws and ethical guidelines issued by the National Medical Commission. NMC recently issued medical ethics code that addresses medical tourism on 31 January 2021.
- **Informed Consent:** Informed consent should be broad and fulsome, particularly for medical tourism where patients may not be familiar with the healthcare system or service available nor with the specific risks where treatment is being done in another country. All aspects of the treatment including its risks, alternatives, data sharing and the use of digital technologies should be included in the consent form.
- **Keep good records** Maintaining detailed, well-documented medical records is a legal obligation as well as an aid in defending against negligence or malpractice complaints. Medical records include all communications with the patient, consent forms, treatment plans and other details, along with the outcomes. In the digital context, maintaining the safety and privacy of such records, in line with data protection laws, becomes an additional driver.

(B) Implementing Legal Safeguards: Contracts, Consent Forms, and Insurance

Therefore, we should put legal safeguards in place. Indeed, the core rights of doctors become acceptable when it has legal safeguards as its basis, not as a “negotiation field” between medical professionals and patients, but as a legal safety net.

- **Contracts with Medical Tourism Facilitators:** Many doctors and hospitals contract with medical tourism facilitators to attract international patients. Entering into well-drafted contracts with these facilitators can help to articulate whose responsibilities, scope of services, and who ultimately bears liability for what.
- **Extensive consent forms:** Provision must be made within consent forms to address medical tourism specifically and the use of digital healthcare technologies, and these forms should be written in such a way that they are understandable to the layperson, and translated into the native language of the patient in so far as this is practicable.
- **Professional Liability Insurance:** There are a number of professional liability policies

available, which should cover the standard practice scenario, outpatient service, work at overseas branches and the services provided to international patients. These policies usually have a number of benefits they offer, such as covering costs of medical negligence claims and helping the defendant with the relevant legal procedure.

(C) The Role of Professional Medical Associations in Advocating for Doctors' Rights

Professional medical associations are increasingly advocating for doctors' rights, particularly in the context of globalization and medical tourism as well as digital healthcare. These organisations could:

- Lobby – Physicians' groups can lobby for laws and regulations that protect the rights of doctors, encourage high standards of care, and serve the interests of physicians while discouraging frivolous lawsuits.
- Legal Resources and Support: Professional associations with sufficient funds can provide or support mechanisms that supply legal resources to members of their profession, such as legal information about complying with the law and regulation, model best practices, and lawyers to consult.
- Programmes — The provision of continuing education programmes to update administrators and practitioners on the tools of medical tourism, its legal obligations and relevant medical ethics.
- Standards and guidelines: Professional bodies should develop and standardize guidelines and rules for practicing medicine in the 21st century, including for advanced telemedicine, data protection, and international patients.

VII. CASE LAWS AND JUDICIAL INTERPRETATIONS

Given that the legal framework governing doctors in India (specifically, the areas of digital healthcare and medical tourism) are significantly shaped by judicial pronouncements and landmark judgments, a discussion of noteworthy judgments related to medical negligence vis-à-vis emergent technologies, and the legal interpretation of doctors' rights and responsibilities, is intricate. It also involves scrutinizing the impact of judicial adjudication on the practice of telemedicine and the use of artificial intelligence (AI) in medicine. This part delves into the notable judgments on medical negligence and technology; the interpretation of doctors' rights within the framework of medical tourism; and an analysis of the judicial pronouncements on the practice of telemedicine, and the use of artificial intelligence in medicine.

Dr Laxman Balkrishna Joshi v. Dr Trimbak Babu Godbole: The Supreme Court landmark

judgment on the legal doctrine of standard of professionally accepted norms in medical negligence jurisprudence effectively has set the standard in India that the liability of the doctor would arise only in case the patient succeeds in demonstrating that the latter did not act in accordance with the standard of reasonably competent medical practice. This precedent is of particular relevance in this age of digital healthcare due to a special emphasis on adhering to evolving medically accepted practices with technology.

V Kishan Rao v. Nikhil Super Specialty Hospital: Adjudicated by the highest court in India, the case portrays the applicability of consumer laws to medical services. The use of technology for health enhances the status of medical services as a consumer product and, thus, of the consumers and their rights, and of the regulators of medical services and their obligations (for example, that the doctor must provide a standard of medical care that is at par with / higher than the prevailing professional standards).

(A) Interpretations of Doctor's Rights in Medical Tourism Contexts

The fledgling industry of medical tourism in India creates a unique challenge in interpreting laws that govern doctors' rights and duties in light of differing legal jurisdictions across the globe. There is regrettably no specific case law on medical tourism, but several principles lay down the judiciary's approach towards accountability and rights of service providers and consumers in the medical services industry. The judgment in the case of *Balram Prasad v. Kunal Saha* – in which the courts were dealing with the issues of negligence and compensation in the medical arena – sets the tone for treatment of international patients within the medical tourism discourse. It highlights the duty of care of a medical practitioner to his patients.

VIII. FUTURE PERSPECTIVES AND RECOMMENDATIONS

The blend of a booming digital healthcare industry and the rise of medical tourism in India pose new challenges and opportunities for the regulatory system for medical practice. This is a blend of new technologies like telemedicine, artificial intelligence (AI), electronic health records (EHRs) and medical tourism. Furthermore, the legal system needs to anticipate likely challenges arising in the realm of future digital healthcare and medical tourism. Such legislation and guidelines will not only provide protection to doctors when things go wrong, but will also facilitate the filing of novel applications for medical tourism and e-Health endeavors so as to create newer avenues for economic growth. This concluding section aims to explore the anticipated legal challenges in the realm of medical tourism and technology, make certain amendments to the existing legislation and provide logic for a more judicious way of innovation and legal responsibility.

(A) Anticipating Future Legal Challenges in Medical Tourism and Technology

In addition, the future of the medical tourism industry – deeply imbricated with developments in digital healthcare – is likely to face issues such as:

- Jurisdictional Complexity – when telemedicine dissolves geographical boundaries, the jurisdiction of the country where legal disputes of international patients will take place is not clear. The legal system will have to be designed to answer which laws apply in a patient in one country receiving a doctor in another.
- Data Protection and Privacy: Most alarming is the fact that digital health data doubles every two years, directly impacting the privacy and susceptibility of patients, and the fact that the global nature of medical tourism only increases the risk of future data leaks and identity thefts. Our next wave of laws must ensure more serious protections for the privacy of patients around the world.
- 1. AI + Liability: As more doctors make diagnostic and treatment decisions using AI, how will we allocate responsibility when an adverse outcome results from an AI recommendation? Who is to blame – the human doctor who's performing the diagnosis, or the tool-developer? 2.
- Standard of care: As new technologies emerge; it will take ongoing legal and regulatory adaptation to define the standard of care: should all medical practitioners adopt them?

(B) Proposed Amendments to Existing Legislation to Better Protect Doctors

To overcome these challenges and better protect doctors practicing in the field of medical tourism as well as digital healthcare, several bills were put forth to update the law: 1.

- Telemedicine Guidelines: Revise the current Telemedicine Practice Guidelines to include detailed regulations for care involving international patients, including clarity about jurisdiction, the protection of data, and the standard of care in cross-border consultations.
- Data Protection Legislation: Pursue the Rapido passage of the Personal Data Protection Bill (PD) (with sector-specific provisions), including provisions for the international transfer of medical data, and compliant with global data protection norms.
- Regulations for AI in healthcare: Develop specific regulations regarding who can create and use AI in the healthcare domain, detailing the level of transparency expected, methods of developing AI that is accountable to healthcare professionals and their patients, and providing clarity on matters of liability. These rules should encourage

doctors to build on AI's capabilities as an augmentation of their knowledge rather than a replacement for it.

- Medical tourism consumer protection laws: rewrite consumer protection laws given the new character of medical tourism, to set clear standards of what constitutes negligence both for patients and doctors in the context of digital healthcare and international patient services in general.

(C) Encouraging a Balanced Approach to Innovation and Legal Responsibility

The future of healthcare in India depends on striking the correct balance between promoting technical innovation and upholding the legal and ethical duties relating thereto. This balance is achievable through the following means:

- Stakeholder engagement: Engage healthcare providers, technology developers, lawyers and patients at an early stage in the legislative process to ensure that new laws and guidelines are feasible, equitable and capture the perspectives of the key stakeholders.
- Continuing Education: Provide continuing education and training programmes to physicians on digital healthcare and medical tourism legal issues to ensure their preparedness and integration into the law.
- Ethical Standards for Innovation: Promote the creation of ethical standards for innovation in healthcare, for example, on patient safety, data privacy, and the equitable distribution of the benefits of innovations.
- Support for Research and Development: Support research and development relating to digital healthcare technologies, with a focus on projects that enable the medical tourism industry to meet the requirements of medical tourism businesses, patients or healthcare providers. Prime focus on projects that address ageing, connect all age levels and that adhere to legal and ethical standards.

IX. CONCLUSION

When digital healthcare services and medical tourism come together in the medical arena of India, they usher in a new era for global healthcare, and the potential for medical innovation to remodel patient care in unprecedented ways; bringing along with it a legal thicket and perplexity. This new legal marsh will certainly test lawyers. Indeed, the rapid growth of medical tourism in India reflects its comparative advantage as a low-cost and high-quality medical haven that attracts millions of patients from all over the globe. This growth has accelerated with the virtual availability of medical care across the globe, ushered in by telemedicine, artificial

intelligence (AI)-based diagnostics and electronic health records (EHRs) among other technologies. All these aspects of digital medicine offer greater efficiency and customized healthcare for patients, both within India and abroad.

However, there arises important legal questions, especially concerning data privacy, informed consent and the cross-jurisdictional delivery of healthcare services. The use of digital tools in medical practice for care and therapy is a developing reality in healthcare practice, which presents medical decision-makers with legal pitfalls, such as in the area of telemedicine where the cross-border nature of delivery of services creates additional complexities for legal compliance and liability.

In India, we have carved out the legal landscape, through the Indian Medical Council Act, Telemedicine Practice Guidelines, and pending data protection legislation, to tackle these problems. At least, these legal instruments are important for property lovers because we will continue to pursue the good parts of technology (without getting frustrated and giving up) and still live ethically valued stories as doctors. Simultaneously, the law stream allows landmark cases to open up new avenues for creating our own practice and technologies in healthcare with the protection of not getting sued for malpractice and filthy-rich lawyers contesting them for decades.

Furthermore, the legal framework applicable to medical practice in India has been given a dual mandate of expediting medical tourism and digital healthcare on the one hand and the protection of a medical doctor's right to practice and innovate in the legal and ethical ambit, against frivolous malpractice claims, a fair trial, etc on the other hand. Technology is changing the healthcare landscape, and the law has to pivot parallelly in keeping up with it. It has to make available clear guidelines and protect the rights of people facing novel issues with digital healthcare solutions and medical tourism.

What is clear is that the rapidly shifting landscape of technology, law and medicine in India requires constant legal and regulatory reform to anticipate greater call for jurisdictional complications and the arrival of AI-enabled healthcare, while crafting legislation prepared for the contingencies of India's future as the hub for medical tourism. An urgent revision of the existing legislation and guidelines is necessary to better uphold doctors and patients alike. India will continue to be a global center for medical tourism, but as it does so, it will have to reckon with the far-reaching ethical and legal demands of digital medicine.

To conclude, the roles and working dynamics of digital healthcare in India's rising medical tourism scenario bring to light the need for a proactive legal regime, one that seeks to answer

contemporary challenges while approaching future ones — both securing the rights of doctors, protection of patients and an enabling of surgical technology as the future of healthcare. With India firmly establishing itself as a preferred destination for medical tourism, the legal system plays an instrumental role in striking a balance between the benefits of technological advancement and the need for ethical and legal standards in the practice of medicine.

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