

Medical Tourism in India: Analysing Legal Obstacles and Proposing Frameworks for Sustainable Growth

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KEYWORDS

Medical Tourism,
Treatment, Quality,
Ethical, Legal

ABSTRACT

India is known for its medical facilities worldwide and developed as a best Medical Tourist place. Millions of peoples across the developed countries travelling to India for medical treatment and related facilities. Medical tourism is one of the lucrative industries that has expanded rapidly worldwide, including India. The development is due to factors such as seeking quality medical treatment at lower costs. However, there are certain ethical and legal issues arising from the development of the industry. These issues should be addressed because it may affect the development of medical tourism in the future. Lack of legal recourse and lack of regulation are some examples of legal issues that are discussed in this paper.

This paper analyses the legal obstacles in the field of 'Medical Tourism' in India and puts forth suggestions on how to promote further growth of medical tourism in the India.

Introduction

Asian countries witnessed huge development in the field of Medical Tourism, specially in India. This new transformation can easily see in the various reports published by medical groups and even by the World Health Organisation. Millions of patients are chosen India for medical treatments. India developed a 'Medical Tourist' place due to the lowest cost of medical facilities and treatments⁸.

The research was conducted using by questioners based method. The result indicated that the main motivation that attracts foreign patients was the low cost of medical treatment. Other factors included excellent medical facilities and cultural and religious similarity.

Evolving society must be changed according to the social change and as per the need of the humanity. 'Medical Tourism' is also the one of the emerging segments. Our Constitution additionally require and mandate the guarantee of welfare and healthful nourishment. Medical services are the important part of this. If we adopt the standard of right to health according to the definition outlined by WHO, which is a series of rights, and the factors that exist as an enabler and an aspect of health, and our life will only have the nature of a comprehensive definition Which is useful for us because it has a good definition about health. These elements or parts can be termed as 'hidden determinants of well-being' and includes non-toxic drinking water, satisfactory disinfection, safe diet, sufficient nutrition, sound conditions, access to related schooling and clearly medical, access and Freedom is included.⁹

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⁸ Ajmera P., Singh M., & Satia H. K. (2015). Prioritization of strengths, weaknesses, opportunities and threats of Indian medical tourism sector using integrated SWOT AHP analysis. *International Journal of Innovative Research in Science, Engineering and Technology*, 4(5), 3665–3673 (as accessed on 24.11.2024)

⁹ www.Ohchr.org/publications/factsheets. (Last visited on 25.11.2024)

Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity¹⁰. Health policies should be integrated into, and should be seen as affected by, all aspects of international development policy¹¹.

Justice K.G. Balakrishnan, addressed at a seminar, said that the health care approach that exists in the society is completely individualistic and its focus is limited to medical treatment process and medicine. Collectively, Life Expectancy Mortality Rate and Pharmaceutical have been shown through the medium of statistics, but through such evidences it can be inferred that no absolute standard of health exists which confirms the concept of medical security¹². Healthcare also comes under the ambit of the Human Right. For this purposes the concept of Medical Tourism is comes in light.

To know about the concept of the Medical Tourism in India. A questioners based survey was conducted. In which Advocates, Medical Practitioners, Hospital management, Management Professionals, Government officials, Academicians and research scholars were participated.

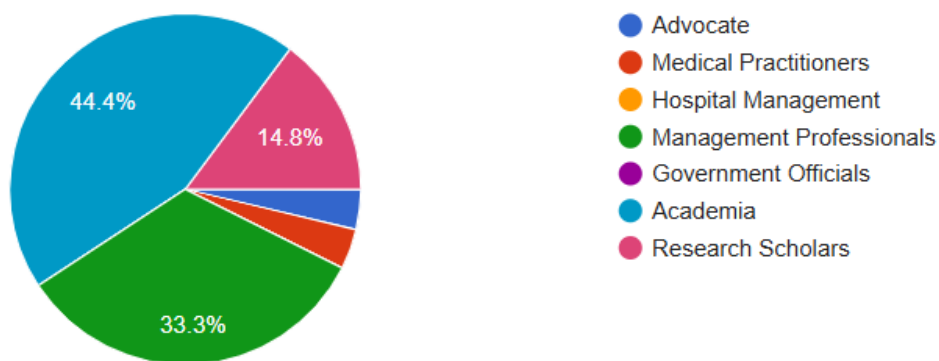


Figure 1

On the question of how many persons are familiar with the concept of 'Medical Tourism', it is find that only 22.2% were known about the concept, while 40.7% had little bit familiar with the concept of medical tourism, but 37% person were even not familiar with the term.

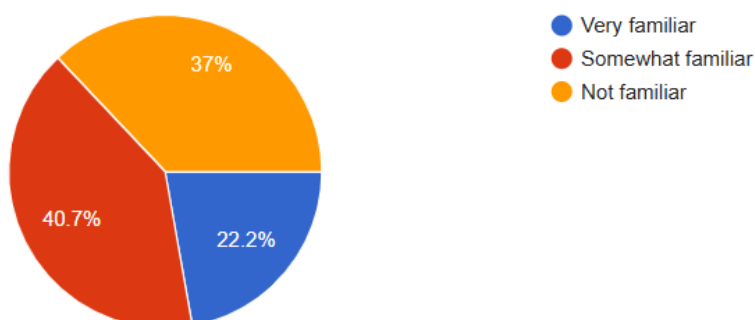


Figure 2

¹⁰ World Health Organization

¹¹ Basic Document, forty fifth editions Supplement October 2006 adopted by the fifty first World Health Assembly

¹² www.supremecourtindia.nic.in. (last visited on 24.11.2024)

44.4% were recognize India as the popular destination for the medical tourism, 18.5% decline the same and 37% take neutral stand.

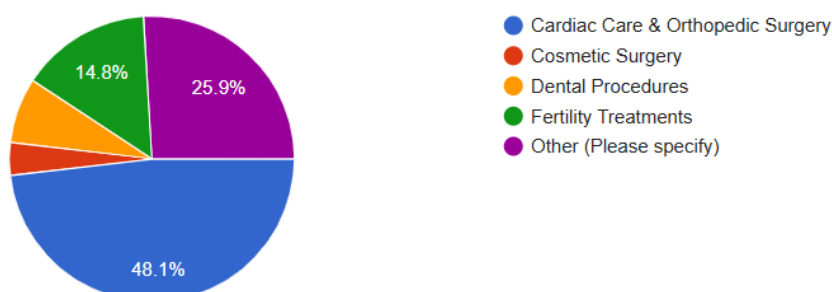


Figure 3

As per the survey 48.1% considered that India is the best place for the treatment of the Cardiac Care & Orthopaedic Surgery, 3.7% for Cosmetic surgery, 7.4% for dental procedures, 14.8% developed for the fertility treatment purpose and 25.9% for other medical treatment related.

On the question that what are the main reasons why patients choose India for medical tourism?

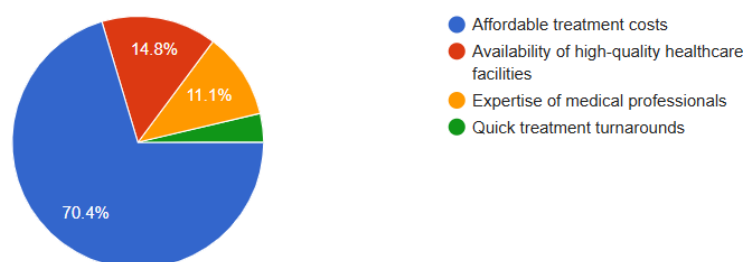


Figure 4

70.4% think that India is best place for medical treatment with affordable treatment costs, 14.8% thinks that persons visited India due to the availability of high-quality healthcare facilities. 11.1% persons recognised that India have good number of Expertise of medical professionals with respective fields knowledge. Although 3.7% thinks that in India quick treatment is provide.

While we try to find out the knowledge about that whether they are familiar with the any legal or regulatory challenges faced by the Medical tourism in India? The answer was that 37% were aware about the same, 25.9% had no answer, while 37% were not sure about the answer.

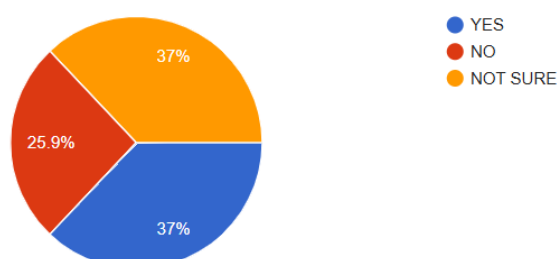


Figure 5

On the question How do you think India can improve the regulatory framework for medical tourism? The answer is -

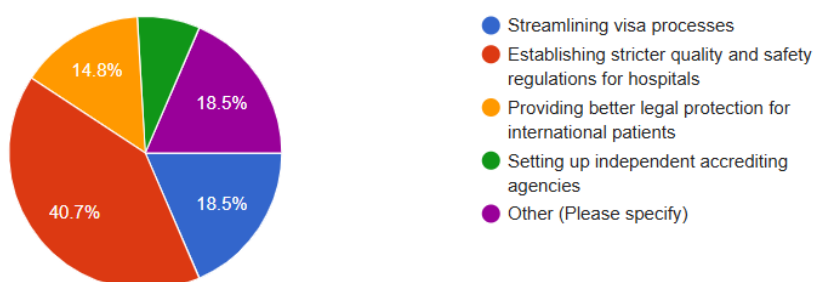


Figure 6

18.5% requires the need of Streamlining visa processes, 40.7% said for the Establishing stricter quality and safety regulations for hospitals, 14.8% said to Providing better legal protection for international patients, 7.4. % said for the Setting up independent accrediting agencies and 18.5% suggested other improvement suggestions.

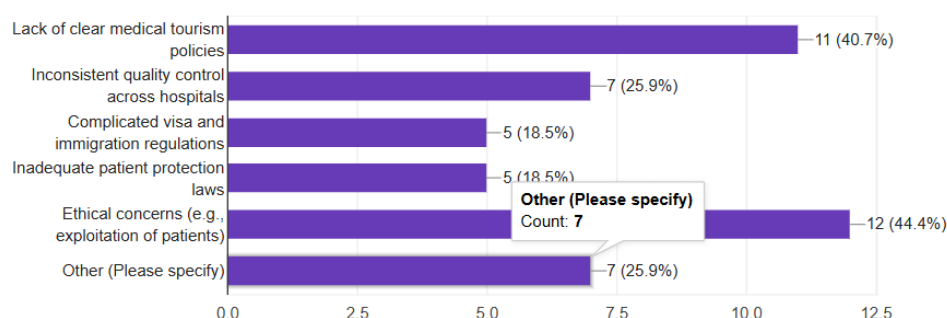


Figure 7

Following legal obstacles are impacted the medical tourism in India most are-

- ❖ 40.7% discussed that it is the lack of clear medical tourism policies
- ❖ 25.5% said that it is the inconsistent quality control across hospitals
- ❖ 15.5% said that due to the complicated visa and immigration regulations
- ❖ 18.5% again said that Inadequate patient protection laws demonises the medical tourism in India
- ❖ 44.4 % discussed about the ethical concerns (e.g., exploitation of patients)

In India 40.7% are not sure about the legal safeguards for foreign patients who come to India for treatment, 29.6% thinks that there is no proper legal safeguard available for the same. Only 29.6% thinks positive that there is a proper safeguards available in India for the foreign patients who come to India for treatment.

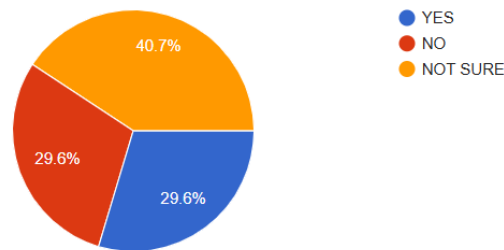
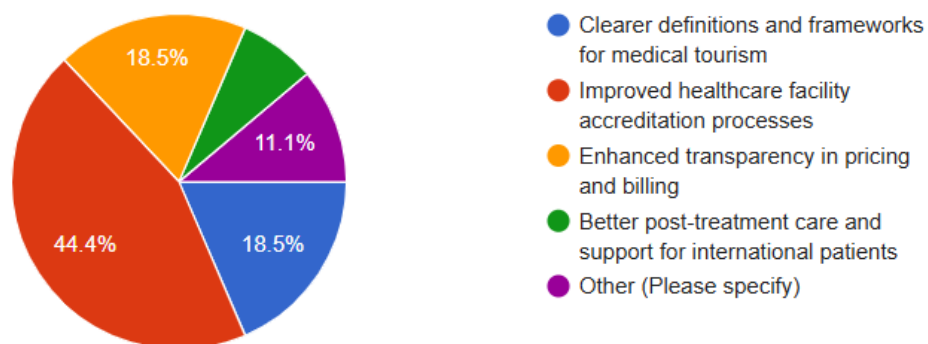


Figure 8

What legal reforms do you think are essential to sustain the growth of medical tourism in India?



On the question of legal reforms following answers were comes into the light-

- 18.5% stakeholders thinks that there should be a Clearer definitions and frameworks for medical tourism
- 44.5% thinks that Improved healthcare facility accreditation processes
- 18.5% thinks that Enhanced transparency in pricing and billing
- 7.5% said for the Better post-treatment care and support for international patients

In your opinion, what is the most important factor for ensuring the sustainable growth of medical tourism in India?

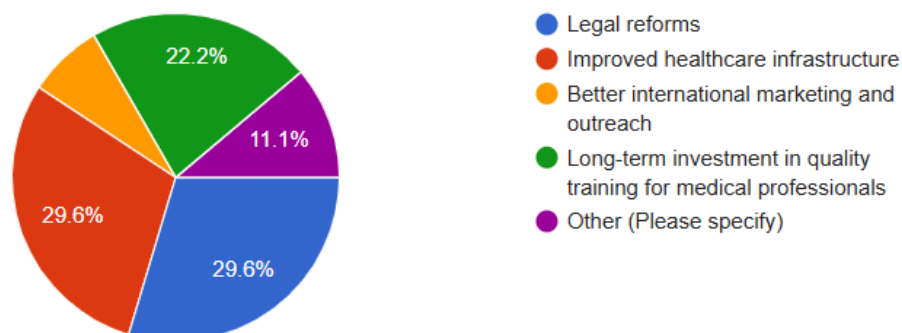


Figure 9

For the sustainable growth of medical tourism in India following factors are responsible-

1. Need Legal Reforms (29.6% thinks this)
2. 29.6% said for the Improved healthcare infrastructure
3. 7.4% said for the Better international marketing and outreach
4. 22.2% said that Long-term investment in quality training for medical professionals

How important is it to balance the needs of local patients with international medical tourists in India?

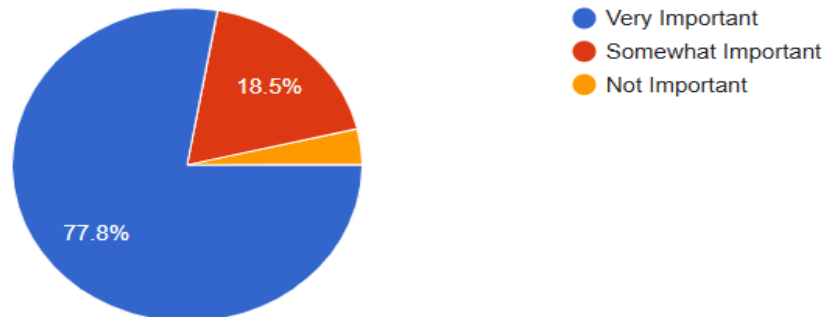


Figure 10

77.8% said that it is very important that there must be a proper balance between the local and International medical tourists in the India.

What role do you think the government should play in the future of medical tourism in India?

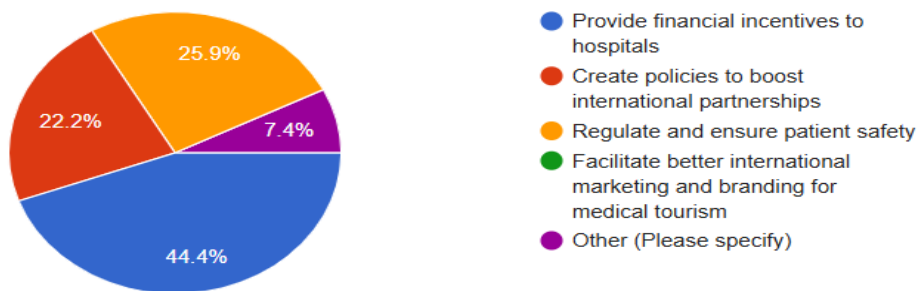


Figure 11

44% Indian thinks that by providing the financial aid by the Government of India, Medical tourism can grow. 22.2% emphasis on the policy making by the Government of India for the Medical tourism in India. 25.9% thinks that Indian Government should focuses on the Regulate and ensure patient safety.

Do you think medical tourism in India could negatively affect the accessibility or affordability of healthcare for local populations?

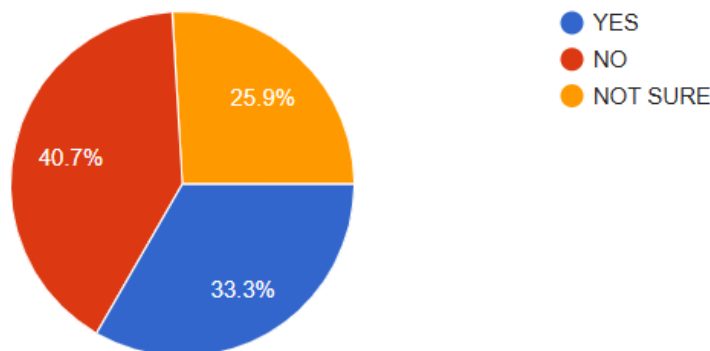


Figure 12

33.3% affirmatively said that medical tourism in India could negatively affect the accessibility or affordability of healthcare for local populations, while 40.7% negatively answered and 25.9% were not sure on this part.

What steps should hospitals in India take to improve patient experience for medical tourists?

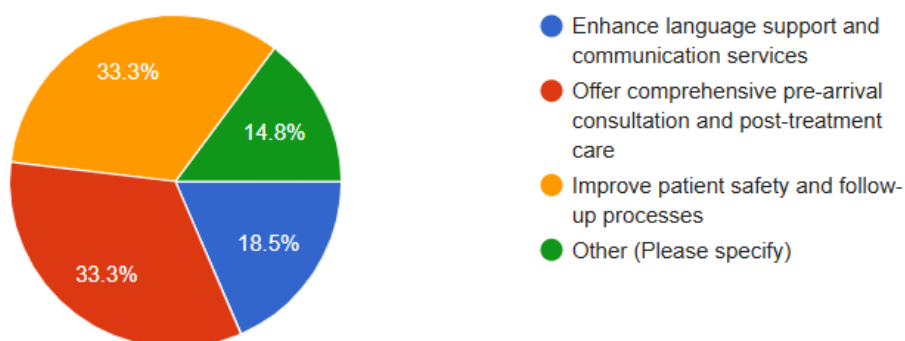


Figure 13

18.5% said to Enhance language support and communication services

33.3% said for the Offer comprehensive pre-arrival consultation and post-treatment care

33.3% similarly said for the improve patient safety and follow-up processes

What do you envision for the future of medical tourism in India? Will it continue to grow or face significant challenges?

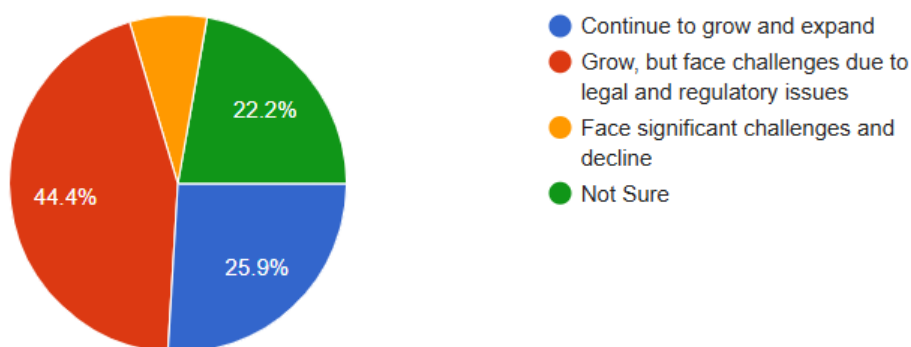


Figure 14

25.9% believes for the Continue to grow and expand of the medical tourism in India. 44.4% worried and said that its Grow, but face challenges due to legal and regulatory issues.

Overall modifications needed for sustainable growth and Hospitals and government should care for their patient as well the service providers n new laws should be implemented safety laws etc.

As per above mention study it is find that world class healthcare services are now easily available in India in the name of 'Medical Tourism'. Indian medical facilities are rich with cutting edge medical technology, experts with affordable care. Indian ranks 10th in medical tourism favourite place worldwide. 1600 NABH-accredited hospitals and growing list of joint commission International accredited facilities Indian maintain the standards of the medical facilities provider.

Historical Background

In India Medical tourism rooted from ancient time with the development of the civilization in the Indus valley. However, the modern incarnation of medical tourism, characterized by the international pursuit of medical treatment, has been a relatively recent development. It was during the late 20th

century, amid the liberalization of the Indian economy and the advent of globalization, that India began to mark its territory on the global medical tourism map¹³.

Medical tourism known as the significant economic contributor and promoter of international goodwill. Medical tourism also is a good reason of visa liberalization for medical tourists, the establishment of public-private partnerships to upgrade medical facilities, and the launch of targeted international marketing campaigns. Private healthcare providers also played a pivotal role, investing heavily in the accreditation of hospitals, adoption of cutting-edge medical technologies, and recruitment of top-tier medical professionals.

The early 2000s marked a turning point as India began to attract patients not only from neighboring countries but also from the Middle East, Africa, and even the Western world. The allure was multifaceted: cost-effectiveness coupled with high-quality care, minimal waiting times, and the unique proposition of traditional therapies like Ayurveda and Yoga alongside modern medical treatments¹⁴.

Global Collaborations

Indian sign various Memorandum of understand with various international healthcare and medical service providers in the field of service, medical facilities and research. Maldives, UK, Africa etc. are the main cooperators.

Legal Frameworks Governing Medical Tourism in India

The health care law of the ministry of health doesn't cover international patients, which is a setback for Indians looking for legal protection. There are still other ways one can try to navigate legal boundaries without putting forth too much effort, this less complicated approach is ideal for many people. Medical tourism regulations exist mostly at the sub - national level. The latter requirement of law also exists by virtue of the fact that in India, humanitarian issues prevail. The laws that support India's medical tourism will be discussed in this part.

Indian Laws and Policies on Medical Tourism

The Indian Medical Council Act, 1956: This Act¹⁵ establishes guidelines for the standards of medical education, recognition of medical qualifications, and registration of medical practitioners in India. For international patients, the quality of medical care is paramount, and this Act, 1956 ensures that healthcare providers adhere to stringent standards.

The Clinical Establishments (Registration and Regulation) Act, 2010: A pivotal piece of legislation for medical tourism¹⁶, it mandates the registration and regulation of all clinical establishments. It sets benchmarks for facilities, services, staff, and pricing, aiming to enhance the quality of healthcare services provided to both domestic and international patients.

The Transplantation of Human Organs and Tissues Act, 1994: Given that organ transplants are a significant draw for medical tourists, this act is crucial. It regulates organ donation and transplantation activities, ensuring ethical practices¹⁷ and preventing illegal trade in human organs.

Foreign Exchange Management Act (FEMA), 1999: While primarily a financial regulation, FEMA has implications for medical tourism related to the payment processes for medical services by foreign nationals, facilitating a smoother financial transaction process for international patients.

State-specific Regulations and Policies

In addition to national laws, various Indian states have introduced specific guidelines and policies to promote medical tourism within their jurisdictions. These policies¹⁸ often include incentives for

¹³ Gupta, A., "The Evolution of Medical Tourism in India," Journal of Health Studies, vol. 12, no. 1 (2023): 45-60 (visited on 08.12.2024)

¹⁴ Indian Ministry of Health and Family Welfare, "Healthcare Infrastructure Upgrades and Their Impact," 2022.

¹⁵ Indian Medical Council Act, 1956, Ministry of Law and Justice, Government of India.

¹⁶ Clinical Establishments (Registration and Regulation) Act, 2010, Ministry of Law and Justice, Government of India.

¹⁷ Sharma, D., and Kumar, P., "Ethical Considerations in Medical Tourism: A Critical Analysis," Ethics in Health, vol. 15, no. 3 (2023): 134-145

¹⁸ National Health Policy, Government of India, "Addressing the Equity Challenge in Healthcare," 2017 (<https://mohfw.gov.in/sites/default/files/9147562941489753121.pdf>) (visited on 8.12.2024)

healthcare providers, streamlined processes for medical visas, and initiatives to ensure patient safety and satisfaction.

Accreditation and Standards

The role of accreditation in the medical tourism sector cannot be overstressed. Accreditation from recognized bodies assures international patients of the quality and safety of medical care. In India, two primary bodies oversee accreditation:

- **National Accreditation Board for Hospitals & Healthcare Providers (NABH):** NABH accreditation is a seal of quality that assures patients of the standard of care they can expect in India. It covers a comprehensive set of parameters including patient rights, medication management, and hospital infection control.
- **Joint Commission International (JCI):** Many leading hospitals in India that cater to international patients seek JCI accreditation, which is recognized globally as a benchmark for healthcare quality.

The Role of Insurance in Medical Tourism

International legal considerations, insurance policies, and regulatory compliance are all part of the intricate legal relationship between medical tourism and insurance. Many foreign patients depend on their health insurance to pay for their overseas medical care. However, negotiating a complex web of legal agreements and regulations is necessary to determine whether Indian hospitals accept foreign insurance and to what degree these treatments are covered. India's appeal as a medical tourism destination can be greatly increased by fortifying the legal framework to facilitate the processing of insurance claims for patients from other countries.

Cross-border Ethical and Legal Considerations

Medical tourism's cross-border nature raises a number of ethical and legal issues, ranging from the morality of healthcare commodification to the legality of specific medical procedures in various jurisdictions. In order to ensure that the legal framework is strong enough to manage the complexities of international healthcare services while upholding international ethical standards, Indian laws must be adjusted to these complexities¹⁹.

Socio-legal Challenges and Ethical Considerations

Even though India's legal system seeks to foster a favorable climate for medical travel, a number of socio-legal issues and moral dilemmas still exist. These include concerns about healthcare access and equity, the possibility of exploitation, and the effects on regional healthcare systems.

Equity and Justice

The fairness of access to healthcare is one of the most important ethical issues. There is a continuous discussion about how the emphasis on medical tourism may take funds away from the need for healthcare in the area, which could lead to a wider disparity in healthcare access among India's various socioeconomic groups.

Legal Challenges for Medical Tourists

Particularly when it comes to medical malpractice and liability, medical tourists face particular legal difficulties. Jurisdictional concerns and the difficulties of navigating a foreign legal system make it difficult for international patients to pursue legal recourse. Furthermore, miscommunications and conflicts may arise from disparities in legal requirements pertaining to patient care and consent.

Privacy and Data Protection

The privacy and security of medical records are critical for patients from other countries. Healthcare providers that serve medical tourists must make sure that their data protection procedures are strong and in line with international standards and expectations, as India's data protection laws are constantly changing.

¹⁹ Masoud F, Alireza J, Mahmoud K, Zahra A. A systematic review of publications studies on medical tourism. J Educ Health Promot

Addressing the Healthcare Divide

Despite being profitable, India's growing medical tourism industry highlights the disparity in access to healthcare between wealthy foreign patients and the local populace, particularly in rural and underserved areas. This gap presents serious ethical concerns about the prioritization of healthcare services in addition to being a resource allocation issue. In order to prevent the surge of medical tourists from undermining the country's citizens' healthcare needs, the Indian government and private sector must carefully negotiate these waters. Initiatives might include improving infrastructure, increasing access to healthcare for the local population, and reinvesting a portion of the money made from medical tourism back into the public healthcare system²⁰.

Informed Consent in a Cross-cultural Context

In a cross-cultural setting, the idea of informed consent—a fundamental component of moral medical practice—presents particular difficulties. Making sure that foreign patients fully understand the treatments they are consenting to can be complicated by linguistic, cultural, and medical procedure differences. In order to overcome this obstacle, healthcare providers must put in place strong communication systems, such as offering translators and culturally appropriate consent forms, which guarantee that consent is genuinely voluntary and informed²¹.

Green Medicine

India is rich in the field of Green Medicine. This Green healthcare system covers a vital scope to prevent human being.²²Green Medicare is totally different from the traditional. The idea encompasses a variety of factors, including lifestyle, social dynamics, health, consumption patterns, and the biophysical environment. Thus, the green Medicine framework of India is popular worldwide. A range of wellness and prevention are covered by healthcare. Dietary management and lifestyle change are economical ways to lower the risk factors for ill health and to keep oneself healthy, which saves money on healthcare costs overall. It differs from standard medical procedures for illness and disease.

However, the environment is an outside influence that can also affect our health. The goal of integral methodological pluralism was to create a hospital framework that was both healthy and green²³. The framework suggests taking into account a number of variables that may have an impact on one's state of health, including environmental factors, social structures, cultural influences, mental and emotional well-being, and physical fitness. Healthcare workers can also benefit from a healthy work environment created by this model. It is recommended that the healthcare infrastructure be constructed with sustainable technologies and run with energy conservation and responsibility, including recycling, waste reduction, lowering CO2 emissions, conserving water, and preventing pollution²⁴.

One crucial step in developing green healthcare is shifting work habits to lean procedures. Every modification falls under the patient's rights. For instance, the medication take-back program can stop people from using deteriorated or expired goods. Doctors are urged to prescribe a small quantity of pills in order to minimize medication waste, save hospital expenses directly, and reduce indirect costs associated with disposing of hazardous materials. Furthermore, because the economy directly affects resource consumption, it is also regarded as a component of sustainability and equity. The promotion

²⁰ World Medical Tourism & Global Healthcare Congress, "India's Role in the Future of Global Medical Tourism," 2023.

²¹Ibid

²²World Health Organization. Public health, environmental and social determinants of health. Available from: <http://www.who.int/sustainabledevelopment/en/> (as visited on 11.12.2024)

²³ Kreisberg, J. (2007). Green medicine: An integral approach that benefits physicians, patients, communities, and the environment. *Integrative Medicine*, 6(6), 38–41

²⁴ Thompson, T., and Ballard, T. (2011). Sustainable medicine: good for the environment, good for people. *Br J Gen Pract*,

of healthy living can also lessen the impact of illness and lower the demand for health services generally²⁵.

Conclusion & Suggestions

It is anticipated that India will continue to grow steadily as one of the most popular medical travel destinations in the world. Five main factors—cost competitiveness, medical expertise, healthcare service quality, a strong private sector, and cultural adaptability—are responsible for this growth. India is moving forward thanks to these factors, but there are still some significant gaps that need to be filled. The lack of a supportive policy framework, poor tourism and logistics infrastructure, inconsistent service quality standards, and India's unfavorable view of macroeconomic issues like safety, corruption, and the environment are the biggest issues facing the Indian medical tourism sector. Regarding global healthcare systems, the COVID-19 pandemic has also rocked the foundations of the Indian healthcare sector. The medical tourism industry also experienced the first setback due to business and health restrictions. Government agencies, travel agencies, and healthcare providers are finding it difficult to restructure their operations in order to adapt to the current situation, survive the pandemic, and hasten the healing process. The future is uncertain because the COVID-19 pandemic's trajectory is unclear. The need for industry participants to focus on realigning and reevaluating their business models as well as working to improve resilience and agility has increased due to the pandemic and the uncertainty surrounding it.

²⁵ Malerba, L. (2010). *Green Medicine: Challenging the Assumptions of Conventional Health Care*. California: North Atlantic Books