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Scope of Medical Tourism in India & The Legal Scenario

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ABSTRACT

This paper looks at the potential impact of medical tourism on the health workforce and health system in India. Besides the definite cost advantage, the presences of a well-trained and English speaking work force, a mix of modern and indigenous systems of medicine, and super specialty centers which boast of the best technologies available in the world are some of the factors in favor of India. Along with the corporate sector, the government of India has also responded to the growing sector of medical tourism in India, through the National Health Policy, 2002, and by issuing medical visas for tourists seeking treatment in India. As a medical visitor one might face certain legal challenges, like in the event of malpractice suits one might find it difficult to claim for damages, simply because insurance laws vary based on country. Even though hospitals and dental care clinics in India have insurance for medical malpractice, the actual settlement for incorrect diagnosis, negligence or incompetence might not be the amount will not be same. Likewise, there are several challenges in terms of legal aspects. .Through this paper, the author would be analyzing the challenges in regulation of the medical tourism in India and how there can be a balance between not restricting the business unreasonably and at the same time maintaining effective regulations and guidelines for the smooth functioning as well as development of the sector.

I. BEING CONCEPT OF MEDICAL TOURISM

Medical tourism is a problematic term because it is not defined and applied consistently. Generally speaking, medical tourism is travel across national borders with the aim of improving one's health . Although many definitions concur that medical tourism entails medical treatment via travel, there is no consensus over the types of treatments. Goodrich and Goodrich , defined health tourism as “the promotion by a tourist destination of its health care facilities and services”.³

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³ Laws, E.(1996) : “Health tourism : A business opportunity approach . In S. Clift and S.J. page (Eds.) Health and the International Tourist (pp. 199-214), Routledge : London and new York.

Since health is a broader term than medical, some researchers are reluctant to interchange “health tourism” with “medical tourism.” Some use “health” synonymously with “wellness,” and sometimes “health” is used to mean both medical and wellness, or even a subset of medical tourism or wellness tourism. Bookman and Bookman use the term “medical tourism” and “health tourism” interchangeably: “the sale of high-tech medical care to foreigners has come to be called medical or health tourism” .In contrast, Tabacchi defines health tourism as “any kind of travel to make yourself or a member of your family healthier” .⁴Tabacchi’s definition is closely associated with wellness tourism, which involves people who travel to a different place to proactively pursue activities that maintain or enhance their health and well-being. Wellness tourists stay in specialized hotels and seek unique, authentic, or location-based experiences that are not available at home.⁵

II. BRIEF ABOUT THE MEDICAL TOURSIM IN INDIA:

Medical tourism in India is a multibillion dollar provider industry and attracting millions of foreigners and domestic to visit incredible heritage of country and enjoy the medicinal blessings of traditional Vedas and Upanishads. India is full of well trained, qualified and experienced professionals and doctors. Most of them have earned their professional degrees from abroad and have practices over there, and achieved a confidence of their people. India’s doctors are most competent and making India a very money-spinning destination for the people who want to undergo treatment for their medical problems and who have frustrated from the long waiting list of medical diagnostic centers of their own country. It is projected that India will capture 2.5% of the total international medical tourism market by the year 2012, with concurrent foreign exchange revenue of \$ 2.3 billion. It is also estimated that medical tourism in India will receive around 1.1 million health tourist from all over the world, by the end of 2012. India ranks second for medical tourism in the world. Though it spends less than 1.2% of its GDP on medical services but makes extra efforts to provide extra care and services to the foreign tourist while dealing with them. Medical treatment in India is very cost effective as it charge 20% less than any other foreign country for providing health facilities.⁶ It has been seen in the recent past that patient from US, UK, and other foreign countries in a maximum number are coming to India for their treatment. Besides cheaper cost of the treatment other factors are also contributing towards an increase of international health tourist traffic in India. Today Indian clinical and paramedical talent is universally recognised and JCI accreditation to some

⁴ Kerrie S. Howze, Note, Medical Tourism: Symptom or Cure?, 41 GA. L. REV. 1013, 1031–32

⁵ *Ibid.*

⁶ *Ibid.*

hospitals of India has proven a boon to Indian medical system which is helping in gaining the faith of foreign patients in India's hospitals and professionals. In India they do not have to wait long and to pay extra money for their treatment. The per capita health care cost in Korea is \$720, whereas it is \$94 in India. Thus India is offering 20% cheaper treatment to them in comparison to US, UK, Singapore and Thailand. Unlike India various Asian countries are coming forward to initiate steps to explore medical tourism potential. Recently Singapore incorporated a collaboration of industry and government representatives to form a medical hub. Unlike Singapore, Taiwan is working on a \$318million project to develop medical facilities and South Korea is planning to develop medical institutions for foreign patients.⁷

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⁷ Vijayanambi KS, Kannan R. Recent Trends in Medical Tourism in India. *Ind J Appl Res* 2014; 4 (5): 619-621

⁸ *Ibid.*

comparison to US, UK, Singapore and Thailand. Unlike India various Asian countries are coming forward to initiate steps to explore medical tourism potential. Recently Singapore incorporated a collaboration of industry and government representatives to form a medical hub. Unlike Singapore, Taiwan is working on a \$318million project to develop medical facilities and South Korea is planning to develop medical institutions for foreign patients.

III. GOVERNMENT INITIATIVES IN MEDICAL TOURISM

Over 40 governments across the globe are involved in supporting medical tourism and the number is growing each year. Ministries of Tourism, Ministries of Health, Secretaries of Economic Development and other branches are all working together on medical tourism initiatives to promote their city, region or country as a destination for medical tourism (MTA 2010). There is no special policy on Medical Tourism by Government of India but through extensive literature reviews it was found that in other policies there are references of medical tourism. The Medical Tourism activity is mainly driven by the private sector. The Ministry of Tourism only plays the role of a facilitator in terms of marketing and promoting in the key markets. The steps taken by Ministry of Tourism to promote India as a Medical and Health Tourism Destination includes promotion at international platforms such as World Travel Mart London, ITB Berlin, ATM, etc. Yoga/Ayurveda/Wellness has been promoted in the past years in the print, electronic, internet and outdoor media under the Ministry of Tourism's "Incredible India Campaign" . Ministry of Tourism Govt. of India have started some schemes for the promotion and development of medical tourism like MVISA, MXVISA, MDA Schemes and Wellness Tourism promotion schemes. ⁹

Ministry of Tourism has published promotional material brochures on medical tourism and VCD and information has been put on website. The title of this brochure is 'Incredible India, Global Healthcare Destination'. Detailed information has been given in the brochures which is very attractive and informative where medical tourist will get information about the healthcare service providers in India, specialty, super specialty services available in India. It also include information about Cardiology, Orthopedics, Oncology, Minimally invasive surgery, Cosmetology, Rejuvenate, wellness and patient testimonials. VCD is more attractive and audio-visual promoting specially Ayurveda and Wellness product holistic medicinal services with yoga, meditation, Ayurveda, allopathic and other system of medicines. It offers a unique basket of services to an individual that is difficult to match with other countries.

⁹ Biswas W. Medical Tourism – A Growing and Potential Segment in Indian Scenario. *J Managemnt* 2016; 3(1): 19-26.

IV. ETHICAL LEGAL ASPECTS OF MEDICAL TOURISM:

Traveling outside their home country for medical care, medical tourists may encounter unfamiliar ethical and legal issues. While some countries currently presenting themselves as attractive medical tourism destinations provide some form of legal remedies for medical malpractice, these legal avenues may be unappealing to the medical tourist. If problems arise, patients might not be covered by adequate personal insurance or might be unable to seek compensation via malpractice lawsuits. Hospitals and/or doctors in some countries may be unable to pay the financial damages awarded by a court to a patient who has sued them, owing to the hospital and/or the doctor not possessing appropriate insurance cover and/or medical indemnity. Since medical tourism is aimed at attracting foreigners, local masses in developing economies do not get equal access to healthcare facilities. The cost of medical services in these countries is sometimes beyond the reach of local population, resulting in a lack of ethical fairness towards the locals. Also, technologies like Stem Cell treatment is banned in the United States owing to the unethical perspective from which it is viewed. Hence, the credibility of such a practice is again questionable to a certain extent. Legal and Ethical issues have marred the popularity of medical tourism to a large extent.¹⁰

However, to its credit, the sector has continued to grow at a steady rate. A prospective medical tourist should also be aware of possible legal issues. There is presently no international legal regulation of medical tourism. All medical procedures have an element of risk. The issue of legal recourse for unsatisfactory treatment across international boundaries is a legally undefined issue at present. Medical tourism has received an increasing amount of attention from the media, there has been a remarkably little commentary about medical tourists who have fallen victim to medical malpractices abroad.¹¹

For these unlucky patients, the website for India's largest medical-tourism hospital, Apollo, presents a grim message: "A prospective medical tourist should also be aware of possible legal issues. There is presently no international legal regulation of medical tourism. All medical procedures have an element of risk. The issue of legal recourse for unsatisfactory treatment across international boundaries is a legally undefined issue at present." About medical brain drain and medical tourism, the Director of the WHO's Human Resources for Health Department, Dr. Manuel Dayrit noted: 'Although there are no ready figures that can be cited

¹⁰ CII-McKinsey (2002): "Health Care in India: The Road Ahead", CII, McKinsey and Company and Indian Healthcare Federation, New Delhi

¹¹ *Supra* f.n. 12

from studies, initial observations suggest that medical tourism dampens external migration but worsens internal migration.”^{12 13}

V. PATIENTS SAFETY & CONCERNS:

Patients safety is a new healthcare discipline that emphasizes the reporting, analysis, and prevention of medical error that often leads to adverse healthcare events .Process errors happen due to administrative errors, investigation errors, treatment errors, communication errors, payment errors and errors on health workforce management treatment decision.¹⁴

Although medical tourism in India offers significant cost savings to U.S. patients, it comes with increased risk to them. There are concerns for the patients visiting countries, such as India, Thailand, or Malaysia have very different infectious disease-related epidemiology. Another consideration is the quality of post-medical care which can vary dramatically, depending on the hospital and country, and may be different from U.S. and European standards. A further risk factor relates to the resolution of litigation in the event of a problem. If U.S. patients receive medical care abroad that is less than satisfactory outcome, what recourse do they have? Of course, the patients could work through the host country legal system. However, this could be difficult and burdensome if the patients live far from the place they received medical treatment. If patients take the matter to U.S and European courts, the lawsuit will not commence until the defendant is served with a summons and complaint. Service can be facilitated if there are any treaties, conventions or international agreements between U.S. and the country where treatment occurred, but not all countries are signatories to such international agreements.¹⁵

VI. LITIGATION ISSUES

Even if the countries have some form of agreement for cooperation in civil litigation, serving a summons and complaint on the healthcare providers may be difficult, expensive and extremely time consuming . The foreign hospitals or medical care providers which are located outside their country and have no offices or employees in the state where the suit is filed can easily challenge the court jurisdiction. Even if the court finds that “minimum contracts” exist, a defendant physician or hospital can argue that the exercise of personal jurisdiction may be unreasonable or unfair. Thus, patients who are thinking about medical tourism must be clear

¹² *Ibid.*

¹³ Iyer, M. (2004): “India out to heal the world”, Times of India, October 26.

¹⁴ Dogra, Sapna (2003): “Can Delhi Be a Successful Model for Medical Tourism?” Express Healthcare Management, 1-15 September. Also at: <http://www.expresshealthcaremgmt.com/20030915/focus01.Shtml>

¹⁵ . Peacock, L. (2009) : “ Medical Tourism in India”, Smart Travel Asia Accessed from [Http://www.smarttravelasia.com/medical_Tourism.htm](http://www.smarttravelasia.com/medical_Tourism.htm)

that limited compensation in the event of an unsatisfied outcome is one of the tradeoffs for going abroad for medical care.¹⁶

VII. PRIVACY CONCERN

Privacy protection is another legal issue. For example the U.S. privacy law for the protection of health information is the Health Insurance Portability and Accountability Act (HIPAA). HIPAA protects health information that is “individually identifiable” or that can be tied to the subject of the information. HIPAA does not apply to medical information obtained outside the U.S. Thus, the security of patient’s medical information would be at greater risk. On the other hand, when someone who needs medical care in the United States from someone, who is not his/her usual medical provider, may find that HIPAA may adversely impact the sharing of medical information unless it is clear that the subject of the information has authorized its disclosure. Therefore, patients should take complete medical records when they travel abroad seeking medical care. If not, the sharing of medical information for medical treatment will be difficult.

VIII. ISSUE OF ILLEGAL ORGAN TRANSPORTATION

Another ethical issue in medical tourism involves illegal organ transplants. The illegal purchase of organs and tissues for transplantation is very rampant in some developing countries. This is one reason that why medical tourism grows rapidly in some countries. Currently, many Indian cities have become hubs for kidney transplants, despite a 1994 nationwide ban on human organ sales (the Transplant of Human Organ Act states only relatives of patients can donate kidneys). So many patients, mainly foreigners, seeking kidney transplants have stimulated the demand for illegal organ transplants. The British transplantation Society said that "an accumulating body of evidence suggests that the organs of executed prisoners are being removed for transplantation without the prior consent of either the prisoner or their family". Many patients travel to China seeking kidney or liver transplants because of the shortages of donor organs in their own country. Most patients come from Japan and Korea. Treatment based on embryonic stems, not available in the US, can sometimes be obtained legally or illegally in some foreign locations.¹⁷

IX. CONCLUSION

India is looked upon as the most favorite destination of medical and wellness tourism. It

¹⁶ Sen Gupta A. Medical tourism in India: winners and losers. *Indian J Med Ethics*. 2008;5:4-5

¹⁷*Supra* f.n. 16

provides medical treatment to the international patients at lower cost with quality services. The international accreditation of hospitals will surely boost the medical tourism and wellness tourism in India. Low cost of treatment, highly qualified pool of doctors and supporting paramedical staff, English speaking man power and latest equipment technology are boosting medical tourism in India.¹⁸ Traditional medical therapies available in India are also becoming popular in wellness tourism. India is in advantageous position to tap the global opportunities in the medical tourism sector. The government's role is crucial to the development of medical tourism. The government should take steps in the role of a regulator and also as a facilitator of private investment in healthcare.¹⁹

Though the economic recession has caused a temporary slowdown in the growth of medical tourism, the industry is still young in India. India has various advantages like cost, no waiting period, English speaking staffs, Ayurveda, naturopathy and foreign trained doctors/nurses. Many legal, regulation, and ethical issues are being addressed and resolved by governments and medical institutions. As long as differences in medical techniques and costs exist among countries, medical tourism should continue to develop and evolve India as sought after destination. Government of India, ministry of tourism has set up a section called Marketing development assistance (MDA) and Medical Visa (M-visa) for promoting the patient arriving for Medical Tourism. Tourism ministry of India conducts road shows among potential countries to uphold India as Global Medical Tourism destination.

¹⁸ *Supra* f.n. 18

¹⁹ *Ibid*