

# The IUP Law Review

Medical Tourism in India

Dispute Resolution in India's Constitution  
A Legal Perspective

Meera Kumari Singh

Appreciable Adverse Effect on Competition:  
Determining the Contours Specifically  
in an Indian Context

Karn Gupta

32

An Outline for Criminal Law Amendments

Amardeep Singh Sandhu

59



IUP Publications  
(A Division of the ICFAI Society)  
[www.iupindia.in](http://www.iupindia.in)



# The IUP Law Review

Vol. 11 No. 2

April 2021

## Contents

<b>Focus</b>	5
<b>Medical Tourism vis-à-vis Right to Health of Indian Citizen: A Critical Study</b> <i>Pradipkumar Tambe</i>	7
<b>Dispute Resolution in India's Construction Industry: A Legal Perspective</b> <i>Meera Kumari Singh</i>	22
<b>Appreciable Adverse Effect on Competition: Determining the Contours Specifically an Indian Context</b> <i>Karn Gupta</i>	32
<b>An Outline for Criminal Law Amendments</b> <i>Amardeep Singh Sandhu</i>	59

---

# Medical Tourism vis-à-vis Right to Health of Indian Citizen: A Critical Study

Pradipkumar Tambe\*

Medical tourism is a recent phenomenon to boost Indian economy. Foreigners are fascinated to get medical treatment in India especially in private hospitals due to quality medical treatment, low medical cost, modern and world-class infrastructure, best hospitality and favorable governmental policies. These reasons forced India to emerge as the preferred destination for medical treatment among the foreigners. Private hospitals are the basis for medical tourism in India. One of the main causes behind the establishment of series of private hospitals is the promotion of medical tourism in India. India is the world's second highly populated country. Most of the population is living below poverty line in rural areas. They are not able to afford costly medical treatments in private hospitals. The number of government-sponsored hospitals is very less and not well-equipped with advanced medical facilities. These reasons ultimately affect the people's right to health as granted by the Indian Constitution under Article 21. This paper aims to find out a balanced solution to promote medical tourism and also focuses on the right to health of every person in this regard.

## Introduction

Indian economy has been considered as an agro-based economy across the world. Consequently, India has made successful attempts to boost the economy and shifted the approach from agro to other industry sectors including tourism. Tourism has proved to be a leading industry on the economic front of the nation and has become popular due to advancement of information technology, infrastructure, government policy, etc. Tourism sector has brought revolutionary changes and opportunities in employment, infrastructure, transportation, hotel, lodging and service sectors. European countries and Singapore, Malaysia and Bangkok are some of the countries that have proved to be the profitable upshot in the development of the economy of the nation through tourism sectors. The significance and potential of the tourism industries has attracted the developing countries to prefer tourism as an opportunity to create employability and accordingly modified their strategy, including India. 'Incredible India' is the best example of the promotion of tourism industries across India and globe. Medical tourism has been a part of the campaign to promote medical services across the globe.

\* Assistant Professor, Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune, Maharashtra, India. E-mail: tambopradi17@gmail.com

Medical tourism is the idea of traveling for the purposes of obtaining healthcare or wellness services. It can range from driving to a hospital in a neighboring state to take advantage of discounted foot surgery, to flying to Costa Rica for a tummy tuck, or to India for an artery bypass. People in developing nations may travel to the West for a highly specialized procedure they cannot find at home, or residents of the United States or Europe may travel to a developing country to take advantage of lower-cost medical services.<sup>1</sup> Medical tourism is driven by a number of factors such as healthcare services, governmental policy, societal acceptance and adoptability, advanced infrastructure and political will. Like other industries, its main driver is economy. People want the best medical care, and they want it at the lowest cost.<sup>2</sup> Low medical cost, quality medical treatment and care, affordable and easy availability of world-class accommodation, shortage of waiting period, simple legal procedures, convenient e-process for visa, etc. are the foremost causes behind the advancement of medical tourism in India.

## Concept of Medical Tourism and Various Governmental Policies

### Definitions of Medical Tourism

Medical tourism can be defined as the process of traveling outside the country of residence for the purpose of receiving medical care. Growth in the popularity of medical tourism has captured the attention of policy-makers, researchers and the media. Originally, the term referred to the travel of patients from developing countries to developed nations in pursuit of the treatments not available in their homeland.<sup>3</sup>

Medical tourism involves patients' intentional travel to privately obtain medical care in another country.<sup>4</sup> The reasons behind increasing number of patients are affordability, accessibility and limitless care. Medical tourism (also called medical travel or health tourism) refers to the practice of traveling across international borders to obtain healthcare.<sup>5</sup> Most studies have given the same interpretation of medical tourism. One of the early interpretations was given by Goodrich & Goodrich as follows: "the attempt on the part of a tourist facility (e.g., hotel) or destination (e.g., Baden, Switzerland) to attract tourists by deliberately promoting its healthcare facilities, in addition to its regular tourist amenities".<sup>6</sup>

<sup>1</sup> Kathy Stolley and Stephanie Watson (2012), *Medical Tourism*, 2, (1<sup>st</sup> Publication), Oxford, England: ABC-CLIO.

<sup>2</sup> *Ibid* note at 1.

<sup>3</sup> Tomislav Mestrovic (2020), *What is Medical Tourism?* (April 30, 09:30 pm), available at <https://www.news-medical.net/health/What-is-Medical-Tourism.aspx>

<sup>4</sup> L. Hopkins, R. Labonté, V. Runnels et al. (2010), *Medical Tourism Today: What is the State of Existing Knowledge?*, 31, *J. Public Health Policy*, 98.

<sup>5</sup> "Medical Tourism - What is Medical Tourism", available at [www.news-medical.net/health/Medical-Tourism-What-is-Medical-tourism.aspx](http://www.news-medical.net/health/Medical-Tourism-What-is-Medical-tourism.aspx). Accessed on March 3, 2013, 10:05 PM.

<sup>6</sup> J. Goodrich and G. Goodrich (1987), "Healthcare Tourism - An Exploratory Study", *Tourism Management*, Vol. 8, No. 3, p. 217.

Carrera and Bridges define Medical Tourism as, "The organized travel outside one's natural healthcare jurisdiction for the enhancement or restoration of the individual's health through medical intervention".<sup>7</sup>

Medical Tourism is a term used to describe the rapidly growing practice of traveling across international borders to seek medical services. Services typically sought by travelers include elective and essential procedures as well as complex surgeries, etc.

### Kinds of Medical Tourism

There are three kinds of medical tourism:

1. Outbound: Patients traveling to other countries to receive medical care.
2. Inbound: Patients from other countries traveling to India to receive medical care.
3. Intrabound: Patients traveling within the country to receive medical care outside their geographic area, typically to a Center of Excellence in another state or region.<sup>8</sup> Many of the countries, including India, offer incentives to attract more inbound traveler. Noticeable reason is to stimulate business and extend medical services to the people at large with an object to get recognition as authentic, sincere and scientific medical service provider in the world. Considerably, outbound category of patients has brought foreign currency to India.

This research paper covers intrabound medical tourism and seeks to highlight a prominent alarming issue which has been arisen due to the promotion of medical tourism in India. The paper confines itself to examining the policies regulating medical tourism in India.

### Development of Medical Tourism

Medical tourism is not a new phenomenon and historically, the idea of medical tourism started thousands of years ago when Epidauria, a place in the Saronic Gulf where the healing god, Asklepios resides, was reached by Greek pilgrims after traveling all over Mediterranean. Thus, Epidauria has been recorded as the original destination of medical tourism in medical tourism history. Spas and sanitariums are also recognized as an early type of medical tourism and popular among the people of England in the 18<sup>th</sup> century, as the high mineral water provided by spas treated a lot of diseases including psoriasis.<sup>10</sup>

<sup>7</sup> Carrera and J. Bridges (2006), "Globalization and Healthcare: Understanding Health and Medical Tourism", *6 Expert Review of Pharmacoeconomics & Outcomes Research*, Vol. 447, pp. 447-454.

<sup>8</sup> "Revised Guidelines for the Promotion of Wellness and Medical as Niche Tourism Products", Government of India, Ministry of Tourism (Niche Tourism Division), No. 7-1 (4)/2014-NT - Part 1, 2016 (India).

<sup>9</sup> M. Habeesh Chatala and B Lakshmi (2020), "A Case for Medical Tourism in India", May 17, 08:32 AM, available at [www.indus.org/healthcare/Scientific\\_Sessions/Prof. M.](http://www.indus.org/healthcare/Scientific_Sessions/Prof. M.)

<sup>10</sup> S Maheshwari, B Anbinasahun and O Njokanna O (2012), "International Patients with Congenital Heart Disease: What Brings Them to India?" *Indian Heart Journal*, Vol. 64, No. 1, pp. 50-53.

The 'traditional international medical travel' took place in the latter part of the 20<sup>th</sup> century. The traditional international medical travel involved patients from developing countries traveling to developed countries for better facilities and advanced technologies.<sup>1</sup> Afterwards, United States and Europe played a predominant role in the medical field in providing best medical treatments to patients. Due to advanced medical science and application of technology and machines in the treatment, they provide a better result to the patients in medical treatment and consequently became popular and preferred place to get medical treatment by the foreigners.

Recently, one of the first countries that experienced the current medical tourism was Cuba.<sup>2</sup> In the early 1990s, the country promoted sun and surfers package which included services like organ transplant and cosmetic procedures. The Cuban government encouraged the admission of foreign patients as a way to alleviate its economic crisis, which occurred from 1989.<sup>3</sup>

### Historical Aspect of Medical Tourism in India

In India, Ministries of Tourism, Ministry of Health and other sectors of Government of India have collectively taken lead to stimulate medical tourism in the state, city or region, etc. Recently, Yoga, Ayurveda and Alternate Medicine, Wellness and Rejuvenation, Medical Treatment, etc. are the promotional schemes published worldwide. Ministry of Tourism (Niche Tourism Division), Government of India has issued Revised Guidelines for the Promotion of Wellness and Medical as Niche Tourism Products in December 2016. The object of the guidelines is to become a preferred destination for the Wellness and Medical Tourism, wellness being an integral part of the Indian way of life. Realizing the potential to develop and promote Wellness and Medical Tourism as the niche tourism products among international tourists, the Ministry of Tourism has formulated guidelines with an object to promote India as a holistic tourism destination for 365 days offering varied niche tourism products.<sup>4</sup> Accordingly, several associations have been formed Wellness Tourism Association of India or Medical Tourism Association of India or Wellness and Medical Tourism Association of India. Along with this to promote wellness and medical tourism across the globe, different category of facilitators and service providers have been appointed such as The Wellness Tourism Service Providers including Wellness Centers, SPAs and Wellness Tourism Facilitators (WTFs) i.e., Travel Agents and Tour Operators engaged in Wellness Tourism and Medical Tourism Service Providers (including Hospital and

<sup>1</sup> M. D. Horowitz and J. A. Rosensweig, (2008), "Medical Tourism vs. Traditional International Medical Travel: A Tale of Two Models", 3, *International Medical Travel Journal*, pp. 3-9.

<sup>2</sup> K. Smith (2020), "Medical Tourism: For Richer or Poorer", May 21, 10:18 AM, available at [https://www.academia.edu/261656/Medical\\_Tourism\\_For\\_Richer\\_or\\_Poorer](https://www.academia.edu/261656/Medical_Tourism_For_Richer_or_Poorer).

<sup>3</sup> *Id.*

<sup>4</sup> H. L. Cline (2010), "Medical Tourism and the State in Malaysia and Singapore", *Global Social Policy*, Vol. 10, No. 3, pp. 336-357.

<sup>5</sup> "Revised Guidelines for the Promotion of Wellness and Medical as Niche Tourism Products", *supra note at 3* p. 2.

Medical Tourism Facilitators (MTFs) i.e., Travel Agents and Tour Operators engaged in Medical Tourism, etc.<sup>16</sup>

### Medical Tourism and National Health Policy, 2017

The National Health Policy, 2017 primarily distinguished from the earlier 1983 and 2002 versions of National Health Policies in four major concerns. First, the health priorities are changing. Although maternal and child mortality have rapidly declined, there is growing burden on account of noncommunicable diseases and some infectious diseases. The second important change is the emergence of a robust healthcare industry estimated to be growing at double digit. The third change is the growing incidence of catastrophic expenditure due to healthcare costs, which are presently estimated to be one of the major contributors to poverty. Fourth, a rising economic growth enabled enhanced fiscal capacity. Therefore, a new health policy responsive to these contextual changes is required.<sup>17</sup> Primarily, the third and fourth major concerns are to incidentally and relatively promote medical tourism in India. Poverty and low economic growth are the issues that can be resolved up to a certain extent through medical tourism. Another key principle of National Health Policy, 2017 is the inclusive partnership with the other healthcare sectors.

### Maharashtra Health Tourism Policy

India has lately developed as one of the most trusted destinations for medical tourism because it scores high over a range of factors that determine the overall quality of care. In India, complex surgical procedures are being done in a national and international accredited hospitals by renowned medical specialists at very low costs. From quality of therapy, range of procedural and treatment options, infrastructure and skilled manpower to perform any medical procedure with zero waiting time, the benefits of traveling for medical treatment in India are many.

Government of Maharashtra has taken a step towards working with hospitals in synergy to make the state a preferred destination for medical tourism, which can serve as the stepping stone for India to be a leader in providing affordable and holistic healthcare.<sup>18</sup> Government of Maharashtra has described the advantages of medical treatment such as reduction in costs, advanced technology, quality of care, qualified and experience professionals, fast and effective treatment and hospitality, etc. to attract and promote medical treatment in Maharashtra. Maharashtra Tourism Policy, 2016 is issued by the Department of Tourism and Culture Affairs, Government of Maharashtra wherein the objectives of the policy are: (1) India has been continuously benefitting from medical tourists from South Asian and African regions. The government wants to leverage this opportunity. (2) Position Maharashtra as a first choice medical tourism

<sup>16</sup> Ibid at 2.

<sup>17</sup> National Health Policy (2017), Ministry of Health and Family Welfare, Government of India, 2017, p. 1.

<sup>18</sup> <https://arogya.maharashtra.gov.in/1169/Medical-Tourism-In-Maharashtra>. Accessed on April, 10, 2020, 10:00 am.

destination.<sup>19</sup> Mumbai, Pune and Nagpur are home to some of the best state-of-the-art hospitals in South Asia.<sup>20</sup> Government of Maharashtra is one of the states engaged in promoting medical tourism in Maharashtra.

### E-Medical and Attendant Visa

To promote medical tourism in India, Bureau of Immigration, Government of India has made a simple process to get E-Medical and Attendant Visa. Medical and Attendant Visa can be granted for six months from the date of arrival into India on case-to-case basis.<sup>21</sup> To promote medical tourism in India, Bureau of Immigration has simplified procedure to get visa; hence, e-visa process has been adopted by the Ministry of Home Affairs, Government of India.<sup>22</sup>

Thus, the above discussion indicates the inclination of the Central Government towards the promotion of the medical tourism mainly due to the following reasons:

- Well-qualified and trained medical practitioners and surgeons
- English language fluency by doctors and staff
- Availability of advanced medical and diagnostic equipment used at global level
- Low cost for world-class medical procedures and services in comparison with other countries
- And observance of international standards in the administrative process in the hospital and quality services to the patients and relatives.<sup>23</sup>

India has the potential to become the most favored destination of the foreigners for medical treatment. The Government of India aims to explore all domains of competent industry for economic interest. Medical tourism is one of the significant industries which have been proved to be a major contributor to economic activity. Of course, medical tourism industry has been driven predominantly by the private sector.

People travel to India for a variety of complex procedures, including cardiovascular surgery, knee and hip replacements, eye sight issues, dentistry and cosmetic surgery. Today, India's highly educated doctors are leading the world in cutting-edge treatments, as well as in genetic, diagnostic, and stem cell research. In addition to offering traditional medical therapies, the country has a rich history of alternative therapies, including spa rejuvenation, holistic medicine and Ayurveda—a practice that incorporated herbs, massage and Yoga.<sup>24</sup> The idea of promotion of medical tourism has its own merits and

<sup>19</sup> Maharashtra Tourism Policy (2018), Department of Tourism & Culture Affairs, Government of Maharashtra, Govt. Resolution No.: TDS-2015/11.C.R. 1021/Tourism, (July 8, 2020, 02:36 pm)

<sup>20</sup> *Id.*

<sup>21</sup> <https://indianvisaonline.gov.in/evisa/tvoa.html>. Accessed on May 7, 2020, 11:02 am.

<sup>22</sup> *Ibid.*

<sup>23</sup> Revised Guidelines for the Promotion of Wellness and Medical as Niche Tourism Products, *supra* note at 8 pp. 1-2.

<sup>24</sup> Kathy Stolley, *Supra* note 1 at 14.

demerits. Medical tourism paves the way to extend medical services to the outboard patients for the economic reason mainly, which has ultimately affected the right to health of Indian people.

## Provisions of Right to Health at International and National Levels

Health is the basic and fundamental issue of serious concern of every human being irrespective of the gender, age and economic condition. Priority of human being and great asset is to live a peaceful and healthy life. As a result, health has been accorded extreme importance and recognized as a basic natural right of human being. Right to health has various facets well recognized at international and national levels. The right to health is comprehensive in nature, which broadly covers freedoms, entitlements, accessibility, etc. Access to healthcare and essential medicines is an indispensable part of the right to health. This right to health is a fundamental part of our human rights and of our understanding of a life in dignity.<sup>25</sup>

### World Health Organization and Right to Health

After the development of the United Nations, a separate agency was established, on April 17, 1946, namely, the World Health Organization (WHO), to deal with several issues involved in the health sector. The main aim of the WHO is the attainment by all people of the highest possible level of health. The definition of health is "a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity".<sup>26</sup> As has been established by the theory of health, the essence or nature of health is threefold. Health is (1) a norm, (2) a state, and (3) a habit. First of all, health is a norm, i.e., a standard. At its core, this standard deals with the quality of our lives. A healthy life is considered a good life. The idea of health depends upon the variety of determinants such as available material resources, atmosphere, and responsibility taken by the state to provide basic facilities to the people, etc.<sup>27</sup> Further, the Preamble to the Constitution of the WHO says that enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition, and the widely acceptable definition of health is given by the WHO in the Preamble to its Constitution: According to the WHO, health is a state of complete physical, mental and social wellbeing and not merely the absence of disease.<sup>28</sup>

<sup>25</sup> <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>, Accessed on July 9, 2020, 10:00 am

<sup>26</sup> <http://www.who.int/en/>, Accessed on August 14, 2020, 11:00 pm.

<sup>27</sup> Chrisitan Erk (2011), *Health, Rights and Dignity: Philosophical Reflections on an Alleged Human Right*, pp. 300-301, Gazelle Books Services Ltd., Lancaster.

<sup>28</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, June 19-22, 1946; signed on July 22, 1947 by the representatives of 61 States (Official Records of the World Health Organization, No. 2, p. 100) and entered into force on April 7, 1948.

Obligations are imposed upon the State to create such atmosphere to enjoy the right to health by the person. Therefore, it is the liability of the state to provide standard medical services to the subjects of the state at reasonable and affordable prices. Accordingly, the right is vested with the subjects of the state. State sponsored Hospitals, Charitable Hospitals, State-Owned Primary Healthcare Centers, Corporation Hospitals, etc., are the examples wherein right to get medical treatments is offered to the people.

### **Universal Declaration of Human Rights, 1948 and Right to Health**

Under the Universal Declaration of Human Rights (UDHR), right to health is defined as "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance." All children whether born in or out of wedlock, shall enjoy the same social protection".<sup>29</sup>

### **International Covenant on Economic Social and Cultural Rights, 1976 and Right to Health**

International Covenant on Economic Social and Cultural Rights (ICESCR), 1976 was adopted by the United Nations General Assembly on December 16, 1966 and entered into force on January 3, 1976. The object of the ICESCR is to ensure the protection of economic, social and cultural rights.

Art. 12<sup>30</sup> deals with duties of the state to realize right to health. It is not especially concerned with the right to health, but broadly the concept covers the environment hygiene, preventive healthcare and occupational diseases. Also, in paragraph 12 General Comment 14 has laid down the set of principles:

- Availability
- Accessibility
- Acceptability
- Quality

<sup>29</sup> Art.25 of the UDHR, 1948.

<sup>30</sup> The state parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the states parties to the present covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; and
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

**Availability:** It expects the functioning of public health and healthcare facilities and the availability of goods and services as well as programs in sufficient quantity within the state.

**Accessibility:** Accessibility has four attributes:

- a. Nondiscrimination among the persons who intend to exercise right to health
- b. Physical Accessibility: Health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups such as ethnic minorities and indigenous populations, women, children, adolescents, older persons with disabilities and person with HIV/AIDS'.
- c. Economic accessibility should be affordable to all. Payment and other medical services should be based on principle of equity, private or public.
- d. Information Accessibility: The right to seek, receive and impart information and ideas concerning health issues.

**Acceptability:** All health facilities, goods and services are respectful of medical ethics and culturally appropriate.

**Quality:** It implies that "health facilities, goods and services are scientifically and medically appropriate and of good quality".<sup>31</sup>

Analysis of the paragraph 14 of general comment in brief is that every person is entitled to receive quality right to health on priority basis without any discrimination, in an affordable manner. Also, General Comment 14 concerns the state obligations i.e., "to respect, to protect and to fulfill." It means the state should not interfere in the person's right to health. The duties to protect and fulfill are positive state obligations, requiring states to take measures that prevent third-parties from interfering with this right and to adopt appropriate legislative, administrative, judicial or other measures towards the full realization of the right to health. Further, General Comment emphasized that governments must ensure that the privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services. It also requires that these services, whether privately or publicly provided, be affordable for all, including socially disadvantaged groups.<sup>32</sup>

At international level, prime acknowledgment has been accorded to the significance of the right to health through the incorporation of several provisions in different covenants and international documents. It is the basic natural human right of every person to get quality medical assistance from the public or private hospital. Duty is imposed upon the state to provide a platform to access and exercise the right to health by every person in affordable manner. State should give priority to make it available and accessible quality medical services to their citizen in an affordable manner.

<sup>31</sup> Committee on Economic, Social and Cultural Rights (2000) general comment No. 14, The Right to the Highest Attainable Standard of Health, (May 8, 2020, 10:04 AM), available at [http://www.unhcr.org/refugees/pdf/cescr\\_2000\\_14.pdf](http://www.unhcr.org/refugees/pdf/cescr_2000_14.pdf)

<sup>32</sup> Committee on Economic, Social and Cultural Rights (2000) general comment No. 14, Para: 12, 24 and 35. (May 10, 2020, 11:04 PM).

The right to health is also specifically enshrined in other international human rights instruments, such as International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (Article 5 [c][iv]), the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (articles 11[1][1] and 12), the Convention on the Rights of the Child, 1989 (Article 24), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (Articles 28, 43[1][c], 45[1][c], and 70).

### Right to Health as a Fundamental Right Under Indian Constitution

The Constitution of India highlights the significance of the social and economic justice cherished in the preamble to the Constitution. Preamble marks the basic nature, and objectives to be achieved by the Constitution. Part III of the Constitution guarantees the fundamental right to every person including right to health. Art. 21 of Indian Constitution provides that no person shall be deprived of his life and personal liberty except by the procedure established by law.<sup>33</sup> In *CESC Ltd. vs. Subash Chandra Bose*, the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health not merely absence of sickness: "The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development".<sup>34</sup> The Supreme Court in *Regional Director, E.S.I. Corporation and another vs. Francis De Costa and another*,<sup>35</sup> held that concomitant to Article 21 read in the light of Articles 38 and 39, right to medical and disability benefit to a workman is his/her fundamental human right. The right to health, a fundamental human right stands enshrined in socioeconomic justice of the Constitution and the Universal Declaration of Human Rights. In the series of the cases, Apex Court has enumerated various aspects of right to health under Article 21 of Indian Constitution.

Additionally, Art. 39(e),<sup>36</sup> 39(f),<sup>37</sup> 42,<sup>38</sup> 47 and 48A of the Directive Principles of State Policies enunciates the prominence of right to health and prime duty of the state. Art. 47 deals with the duty of the state, and among its primary duties—the raising of the level of nutrition and the standard of living of its people and the improvement of

<sup>33</sup> Indian Const. Art.21.

<sup>34</sup> *CESC Ltd. vs. Subash Chandra Bose*, A.I.R. 1992 S.C. 573;585 (India).

<sup>35</sup> *Regional Director, E.S.I. Corporation and another vs. Francis De Costa and another*, S.C.C. 4 (1993) 100 (India).

<sup>36</sup> Indian Const. Art.39 (e): "that the health and strength of workers, men and women, and the tender age of children are not abused and that citizen are not forced by economic necessity to enter avocations unsuited to their age or strength".

<sup>37</sup> Indian Const. Art.39(f): "that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood youth are protected against exploitation and against moral and material abandonment".

<sup>38</sup> Art.42: "State shall make provision for securing just and human conditions of work and for maternity relief".

public health. Also, Art. 48A imposes obligations upon the state to endeavor to protect and improve the environment in view of the public health. The state should take necessary steps for protection and improvement of healthy environment, consistent to preserving and maintaining good public health.

The above discussed provisions indicate that in order to perform the said duties, the state should provide sufficient infrastructure such as world-class hospitals, nursing homes, maternity homes, etc. These hospitals should be well-equipped with the globally advanced medical technology, well-qualified and trained medical practitioners and other staffs, advanced pathological equipment at affordable prices with sufficient numbers. State is constitutionally obliged to set up and make available medical services to the people due to their fundamental right to health. But unfortunately, government hospitals are not able to compete with the private hospitals due to lack of facilities as discussed above. The government is still concentrating on Primary Healthcare Centers only. Failure of the government could be seen even after 73 years of independence, still the focus is to strengthen the Primary Healthcare Centers only.

In India, both public and private sectors are authorized to render medical services to the people at large. Public hospitals are not enough to accommodate patients due to its lack of advanced medical treatments and machineries, human resources, infrastructures, etc. Resultantly, private sectors have boosted up and become a pioneer in extending world-class medical facilities to the Indian citizens. Huge investment in infrastructure and medical machineries, advanced medical techniques and accurate result of the diagnosis, multiple choices of therapies, positive approach to get medical treatment, economic capacity of the people and approach of the government have encouraged the private sector to establish modern private hospitals which at the end resulted in costly modern advanced medical treatment.

### Major Issues at a Glance

Lack of resources in the government hospitals, compared to advanced private medical hospitals, is an issue. The new concept of medical tourism has significantly contributed to the violation of right to health.

### Doctor-Patient Ratio and Medical Services in the Rural Areas

Recently, WHO has promulgated desirable doctor-population ratio as 1:1,000.<sup>39</sup> No doubt in India, the current status of the Doctor-Patient ratio on paper is satisfactory. India has successfully achieved the target set by WHO. India's population as on May 2020 is 13,93,614,074.<sup>40</sup> The undisputed issue for the discussion is the availability of the doctors to address the huge population of the nation particularly at rural level. As per the data issued by the Medical Council of India, the number of Doctors Registered with State Medical Councils/Medical Council of India up to December 31, 2018 is

<sup>39</sup> [http://www.who.int/gho/health\\_workforce/physicians\\_density/en/](http://www.who.int/gho/health_workforce/physicians_density/en/). Accessed on May 10, 2020, 04:00 pm

<sup>40</sup> <https://countrymeters.info/en/India>. Accessed on May 18, 2020, 03:90 am.

1,154,686.<sup>41</sup> The number of AYUSH (Ayurveda Unani Siddha Naturopathy Homeopathy) Doctors in India as on January 1, 2018 is 799,879.<sup>42</sup>

And out of the above doctors, 27,567<sup>43</sup> government recruited medical practitioners, are providing medical services to the rural areas in India. That means the rest of the doctors either joined private hospitals or started their own medical practice. Private hospitals are situated in mega cities and in urban areas. Due to the economic reason, most of the medical practitioner have started their medical practice in urban areas. As per the census of 2011, there are 6,49,481<sup>44</sup> villages in India. Considering the number of villages in India, one can understand the gross violation of villagers' access to right to health. The villagers are being deprived of their right to health. Availability of the doctors is an essential component of right to health, which is being denied to the villagers.

Medical practitioners are least interested to start medical practice in rural areas due to less income opportunities and non-availability of other facilities such as infrastructure and other paramedical staff. Article 21 of Indian Constitution guarantees fundamental right to health to every citizen. How could rural people gain access to at least primary health in rural areas in the absence of qualified doctors?

### Approach of the Medical Practitioners

It is a well-known fact that one needs to invest huge amount to complete medical education in India and to start medical practice too. Consequently, the approach of the doctors would be in revenue generation. Medical practitioners are interested in worthy income opportunities to start their medical career in the urban areas due to economic capacity. Recruitment of doctors in government-funded hospitals is almost a rare case nowadays. Obviously, these doctors are attracted either towards private hospitals or they start their own hospitals. Most of the reputed private hospitals are located in the mega cities or urban areas. Due to huge investment in hospital establishment and high paid salaries to the staff, obviously the cost of the medical treatment is high which is beyond the reach of common person. Private hospitals are interested to recruit qualified and experienced medical professional to serve the rich patients, the reason being the unaffordability of medical treatment for all in these hospitals due to high cost of the treatment. Therefore, private hospitals are keen to admit rich and especially foreigners to generate revenue. Medical tourism is a favorable source to attract foreigners for the medical treatment. The current list of large number of private hospitals available to accommodate foreigner indicates the approaches of the private hospital to make money.

<sup>41</sup> National Health Profile-2019. (14<sup>th</sup> Issue); Central Bureau of Health Intelligence, Ministry of Health & Family Welfare, Govt. of India, 2019 p. 221.

<sup>42</sup> *Ibid* at p. 228.

<sup>43</sup> *Ibid* at p. 231.

<sup>44</sup> <http://vlist.in/>. Accessed on, May 12, 2020, 12:08 PM.

Almost, 2697.8 lakh people, i.e., 21.9% population, are living below the poverty line in India.<sup>45</sup> Average medical expenses start from ₹15,800 to ₹15-20 lakh depending upon nature of medical treatment.<sup>46</sup> These people are absolutely deprived of advanced medical treatments due to low income level. Public hospitals are not well-equipped with the advanced medical facilities. Central and state governments have announced many health policies<sup>47</sup> to address this neglected issue, but these schemes have several limitations. Ultimately, these people are absolutely denied access to right to health. Due to lack of economic capacity of the poor people, private hospitals focus on attracting foreigners.

### Promotional Policy of Medical Tourism by Government vis-à-vis Violation of Right to Health of Indian Citizens

Medical tourism industry is witnessing a growth boom in India. Affordability and world-class treatment are the major contributors to the increase in the reputation of India in medical tourism. Indian Medical Tourism offers a variety of medical specialties such as transplants, orthopedics, cosmetology, cancer, dentistry, pediatrics and neonatal care, etc. Foreign Tourist Arrivals (FTA) during 2018-19 were 10.89 million (provisional) with a growth of 3.2% over the same period of the previous year 2017-18 including medical tourism as well.<sup>48</sup> Drastic changes have been recorded in the FTAs from the year 2012: The year 2012 witnessed 5.4% growth in FTAs over last year as the FTAs rose from 6.31 million to 6.65 million (provisional). During 2012, the Foreign Exchange Earnings (FEEs) from tourism registered a growth of 21.8% from ₹77,591 to ₹94,437 cr (provisional) when compared to FEEs during 2011.<sup>49</sup> Also, in the year 2019 India secured 22<sup>nd</sup> ranking in world for the arrival of foreigners.<sup>50</sup> Statistical data indicates the growth and preference of the foreigners to visit India for medical treatment. FEEs during the period January-December 2019 were ₹2,10,981 cr (provisional estimates) with a growth of 8.3% over the same period of the previous year 2018-19.<sup>51</sup> Till today, 232 hospitals across India have been registered by NABH.<sup>52</sup>

The Government of India and other state governments, particularly State of Maharashtra, Karnataka, Tamil Nadu, Kerala, etc. have been engaged in promoting

<sup>45</sup> National Health Profile-2019, *supra* note 41, at p. 48.  
<sup>46</sup> [http://www.indiahealthcaretourism.com/average\\_cost\\_of\\_treatment.php](http://www.indiahealthcaretourism.com/average_cost_of_treatment.php). Accessed on May 14, 2020, 06:45 PM.  
<sup>47</sup> Ayushman Bharat, Rashtriya Swasthya Bima Yojana (RSBY) and the Senior Citizen Health Insurance Scheme (SCHIS), etc. by Central Government and Mahatma Jyotiba Phule Jan Arogya Yojana, etc. discussed in detail further.  
<sup>48</sup> India Tourism Statistics, 2019, Ministry of Tourism, Government of India, (p. 93).  
<sup>49</sup> Annual Report 2012-13, Ministry of Tourism, Government of India, p. 5.  
<sup>50</sup> India Tourism Statistics, 2019, *supra* note 48, at p. 93.  
<sup>51</sup> India Tourism Statistics, 2019, *supra* note 48, at 93.  
<sup>52</sup> <https://www.nabh.co/frmViewAccreditedHosp.aspx>. Accessed on May 14, 2020, 06:48 PM.  
NABH is the abbreviation for National Accreditation Board for Hospitals and healthcare providers. It is a body which operates accreditation and allied programs on patient safety and healthcare quality. The standards, reevaluation and certifications are based upon national

medical tourism as a tool to generate revenue but at the cost of people's right to health. Due to the low cost as compared to the other countries, foreigners prefer to get medical treatment in India. Private hospitals have welcomed this step, which ultimately prohibits poor people from approaching these hospitals due to high cost of medical treatment. Eventually, medical tourism has negative impact on the escalation of cost of medical treatment for Indians. Because of the large number of patients from outside country, beds of Indian hospitals are occupied which is supposed to be claimed by Indians only against the guaranteed fundamental right to health to Indian citizen.

Interrogation should be made in order to decide the superiority of two approaches, Enhancement of the economic growth against the constitutional right to receive medical treatment is a severe issue. Preservation of human life is of paramount importance and priority must be given to the promotion and protection of the constitutional right to health of people.

## Conclusion

Medical tourism has been an avenue for tourists to get medical services across the world. Medical tourism industry is the fastest growing industry around the world. This industry has brought many revolutionary changes such as infrastructure, hotels, accommodation and medical services such as hospitals, pathologies, different category of employments, etc. Medical tourism is associated with economic growth. India has taken a lead in the medical tourism industry and become a preferred destination to get medical treatment due to the diversity of options available in medical treatment such as Allopathy, Ayurveda, Yoga, Yunani, Siddha, Homeopathy (AYUSH), Naturopathy, Rejuvenation, etc. As compared to medical expenses in foreign countries, medical cost in India is very low. Reputed chain of medical hospitals, quality of medical treatment and care, short waiting period, simplicity of law, easy e-visa system, hotel and accommodation, etc. are the important reasons behind the popularity of medical tourism in India.

Under Article 21 of Indian Constitution, right to life includes right to health too. The apex court in a number of cases has clearly mentioned that life will be meaningless if right to health is not given priority. This right to health is guaranteed as a fundamental right under part III of Indian Constitution. But unfortunately, this right to health is not fully enjoyed by the poor people especially in private hospitals. Due to lack of resources and funding, government hospitals are not able to provide world-class medical facilities to the patients, which results in deprivation of fundamental right to health under Article 21 of Indian Constitution.

The WHO recommended doctor-patient ratio is 1:1000. India has fulfilled the criteria recently. High medical educational fees, huge amount in establishment of hospital,

international norms, through a process of self and external evaluations. NABH is an institutional member of the International Society for Quality in Health Care (ISQUA). ISQUA is an international apex body which grants approval for Accreditation Bodies in the area of healthcare as a mark of equivalence of accreditation program of member countries.

etc. are the reasons which force doctors to join private hospitals. High paid job is the attractive cause behind giving preference to private hospital job. These reasons are causing the violation of the fundamental right to health of the poor. The government is not willing to recruit full-time doctors in the government hospitals. Consequently, specialized and qualified doctors are not available to treat patients. This basic problem can be resolved through investment in strengthening the government hospitals through the recruitment of qualified and experienced staff in rural and urban government hospitals and upgrading all the hospitals with advanced medical equipment.

All these hospitals should be upgraded to compete with the advanced medical hospitals like a private hospitals. These facilities should be affordable and accessible to all.

It should be made mandatory to all medical degree holders to serve in rural areas at least for two years at the beginning of their career. This will enable rural people to get access to primary health services. Simultaneously, the doctors will also gain experience during this period.

The Central and state governments have initiated several schemes such as Ayushman Bharat,<sup>53</sup> Rashtriya Swasthya Bima Yojana (RSBY) and the Senior Citizen Health Insurance Scheme (SCHIS), etc. (by Central Government) and Mahatma Jyotiba Phule Jan Arogya Yojana<sup>54</sup> (recently launched by the Government of Maharashtra). But these schemes have limitation in terms of amount and coverage of diseases too. Also, all hospitals have not registered for the implementation of these schemes in the hospitals. This limits the reach of these schemes. This deprives the poor of getting affordable medical treatment in private hospitals.

Therefore, it is suggested that at least 25% beds of the total capacity of the hospital should be reserved for this category of people in every private hospitals with minimum and affordable prices. This provision should be made mandatory for all categories of hospitals. Definitely, this provision will provide justice to the poor people to get medical treatment in advanced medical hospitals and their right to health will also be maintained. ♦

Reference # 73J-2021-04-01-01

<sup>53</sup> Ayushman Bharat is National Health Protection Scheme, has estimated to provide benefits to 10 crore poor and vulnerable families with a cover up to ₹5 lakh per family per year for secondary and tertiary care hospitalization.

<sup>54</sup> Rajiv Gandhi Jeevandayee Arogya Yojana (RGJAY) has been implemented throughout the state of Maharashtra in a phased manner over a period of 4 years. Government resolution issued on April 13, 2017 regarding the change into the name of Rajiv Gandhi Jeevandayee Arogya Yojana (RGJAY) to Mahatma Jyotiba Phule Jan Arogya Yojana (MJPJAY) and continuation of the same from April 1, 2017.

The Scheme shall provide coverage for meeting all expenses relating to hospitalization of beneficiary up to ₹1,50,000 per family per year in any of the Empanelled Hospital subject to package rates on cashless basis through valid Ration card.