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DIGITAL MEDICAL PRACTICE: CHARTING AN ETHICO-LEGAL COURSE FOR PRIMARY HEALTHCARE IN INDIA

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ABSTRACT

The rapid adoption of telehealth, electronic health records, and AI-driven diagnostic tools present both opportunities and challenges. While these technologies enhance accessibility and efficiency, they also raise certain ethical and legal questions concerning patient privacy, data security, informed consent, and professional liability. This paper analyzes the existing regulatory framework in India, including the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the Information Technology Act, 2000, identifying gaps and ambiguities in their application to digital medical practice.

The paper explores the ethical implications of remote consultations, the legal validity of e-prescriptions, the challenges of ensuring data integrity and confidentiality, the potential for algorithmic bias in AI-driven diagnostics and the medico-legal implications of relying on such tools. The paper recommends an updated ethico-legal framework that addresses the unique challenges of digital medical practice, which can balance the benefits of technological advancements with the fundamental principles of patient care and professional responsibility. It proposes recommendations for medical practitioners, policymakers, and regulatory bodies to ensure ethical and legally sound implementation of digital technologies in healthcare, fostering trust and promoting patient safety.

Keywords: *medical practitioners, ethics, laws, primary healthcare, digital*

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“Starting now and lasting until forever, your health and healthcare will be determined, to a remarkable and somewhat disquieting degree, by how well the technology works.”

Robert Wachter (‘The Digital Doctor: Hope, Hype, and Harm at the Dawn of Medicine’s Computer Age’)

I. INTRODUCTION

Healthcare services encompass a wide range of actions and interventions aimed at improving or maintaining an individual's health. Primary care is healthcare delivered to patients by medical practitioners, secondary care includes services delivered by medical or surgical specialists, and tertiary care is provided by hospitals or surgical centers.³ Healthcare services provided by medical practitioners include physical examination, diagnosis, treatment planning and patient counseling. With the increase in volume of healthcare interactions, technology products are being incorporated to support the administration of healthcare services.

The digital transformation of healthcare includes changes introduced by adoption of the internet, digital technologies, and their relation to new therapies and best practices for health management procedures. This transformation has seen an exponential increase in India since the Covid-19 pandemic, with people using health-related technologies for testing, diagnosis, teleconsultation, delivery of medication, etc. Around 75% of consumers and 97% of primary healthcare providers in India are willing to adopt AI solutions for disease prediction, risk assessment, and diagnosis.⁴ With the release of the National Health Policy 2017, the government has sought to digitize the Indian healthcare system in line with the United Nations Sustainable Development Goals (SDGs). In 2018, the National Institute for Transforming India (NITI Aayog) proposed digitalizing the healthcare system through a National Health Stack (NHS) comprising of key components like: National Health Electronic Registries, a Coverage and Claims platform, a Personal Health Records (PHR) Framework, and others. The three domains under the Registries are the Health Facility Registry (HFR) for healthcare facilities like hospitals, clinics, diagnostic laboratories, pharmacies, health and wellness centers, Healthcare Professionals Registry (HPR) for healthcare professionals

³ Jon O. Ebbert, Rita G. Khan, Bradley C. Leibovich, "Health Care Transformations Merging Traditional and Digital Medical Practices," MAYO CLIN. PROC. DIGITAL HEALTH (June 2023), available at: [https://www.mcpcdigitalhealth.org/article/S2949-7612\(23\)00012-3/fulltext](https://www.mcpcdigitalhealth.org/article/S2949-7612(23)00012-3/fulltext) (last visited 3 Mar 2025).

⁴ "75 pc of consumers, 97 pc of doctors in India trust AI for healthcare: Report," MORUNG EXPRESS, Mar. 6, 2025, available at: <https://www.morungexpress.com/75-pc-of-consumers-97-pc-of-doctors-in-india-trust-ai-for-healthcare-report> (last visited Mar. 8, 2025).

from all domains including doctors, nurses, therapists, laboratory technicians, and a Unified Health Interface (UHI). By November 2024, 5,23,639 healthcare professionals had registered on the HPR.⁵

Digital health technologies use computing platforms, connectivity, software, and sensors for healthcare. The delivery of healthcare services is influenced by the use of such technologies. Such changes in healthcare services affect the relationship between the patient and the treating medical practitioner. The paper seeks to study the nature of these changes in primary health care, and the ethical and legal issues related to components of practice such as telemedicine, remote monitoring, digital therapeutics and diagnostics.

II. DIMENSIONS OF DIGITAL PRACTICE IN PRIMARY HEALTH CARE

Primary health care is provided by general practitioners, for illness, injury, chronic health conditions, health screenings or referrals. In practice, digital tools impact clinical workflows, such as appointment scheduling, patient registration, diagnosis, treatment planning, and follow-up care, and may involve new models of care delivery, such as virtual consultations and remote monitoring.

Telemedicine

The term “Telemedicine” was coined in the 1970s to indicate ‘healing at a distance’. Practicing primary care through telemedicine involves the use of digital platforms such as video calling or texting apps to provide basic healthcare services to patients remotely. In India, telemedicine has been used for various reasons, the top two reasons being live audio or video consultations (60.4 %) and online payments (19.1 %). eSanjeevani, a free telemedicine portal, was adopted by the Ministry of Health and Family Welfare (MoHFW) under India's National Telemedicine Service during the COVID-19 pandemic in 2020. In a 2024 study, medical practitioners reported improved convenience and accessibility of healthcare as benefits of telemedicine, and fragmented insurance coverage, lower quality of the patient-physician relationship, reduced physical examination as limitations of telemedicine.⁶ Through the eSanjeevani portal, general practitioners or health-workers provide an initial consultation, and if necessary, the patient has a free tele-consultation

⁵ Press Information Bureau (PIB) Delhi, "Update on Ayushman Bharat Digital Mission" (Dec. 6, 2024), available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=2081482> (last visited Feb. 8, 2025).

⁶ Vikranth H. Nagaraja, Biswanath Ghosh Dastidar, Shailesh Suri, Anant R. Jani, "Perspectives and use of telemedicine by doctors in India: A cross-sectional study," 13 Health Policy & Tech. 2 (2024). Available at: <https://doi.org/10.1016/j.hlpt.2024.100845> (last visited 13 Feb 2025)

via a video or audio call to a state hospital clinician to facilitate the referral-to-prescription process.⁷

Tele-dentistry provides patients with the ability to consult with licensed dental practitioners using mobile apps, where they upload images of their teeth and explain their concerns to receive personalized advice and follow-up treatment. Tele-radiology facilitates the transmission of ECGs and the interpretation of diagnostic images such as X-rays and scans.

Remote monitoring

Remote monitoring enables practitioners to keep track of their patients who are not physically present in their clinic. The remote patient monitoring market in India is projected to reach \$1.5 billion by 2025.⁸ With technological developments, practitioners can monitor their patients remotely, which ensures personalized care. Remote monitoring devices such as implantable cardiac devices, integrated apps help patients to report their condition through data transfer, which practitioners can review.⁹

During the Covid-19 pandemic, patients were screened for Covid using digital triage systems. Also, practitioners were able to continuously track the condition of expecting mothers using wireless pads and disposable electrode patches.

Digital therapeutics

Digital therapeutics (DTx) are clinically evaluated, high quality softwares to treat, manage, and prevent diseases. This technology provides therapeutic relief/care to patients whereby it collects data into a patient portal for the patient to access and receive guidance for the steps of their treatment plan. In India, a 2023 survey revealed that 72% of Indian doctors advocated the use of DTx in diabetes care, and that 94% of doctors are willing to receive training on integrating DTx tools and processes into their practice.¹⁰ In 2023, Lupin Digital Health had launched its digital

⁷ Biswanath Ghosh Dastidar, Anant R. Janid, Shailesh Surid, Vikranth Harthikote Nagaraja, "Reimagining India's National Telemedicine Service to improve access to care," 30 Lancet Reg. Health 30 (2024), Available at: [https://www.thelancet.com/journals/lansea/article/PIIS2772-3682\(24\)00130-6/fulltext](https://www.thelancet.com/journals/lansea/article/PIIS2772-3682(24)00130-6/fulltext) (last visited 15 Feb 2025)

⁸ "Remote patient monitoring: Addressing India's healthcare accessibility challenge," Healthcare Radius, September 6, 2024, available at: <https://www.healthcareradius.in/features/digital-healthcare/remote-patient-monitoring-addressing-indias-healthcare-accessibility-challenge> (last visited February 1, 2025).

⁹ Ajay Singh Chauhan, "Remote Monitoring - Redefining the doctor-patient relationship," Healthworld, 10 June 2021., Available at: <https://health.economictimes.indiatimes.com/news/diagnostics/remote-monitoring-redefining-the-doctor-patient-relationship/83392863> (last visited 3 Mar 2025)

¹⁰ "72 pc doctors endorse digital therapeutics for diabetes care – Fitterfly study," Healthcare Radius, August 24, 2023, available at: <https://www.healthcareradius.in/market-research/72-pc-doctors-endorse-digital-therapeutics-for-diabetes-care-fitterfly-study> (last visited March 4, 2025).

therapeutics platform, Lyfe, an evidence-based heart care program that can prescribe medication, diet and exercise regimen for cardiac patients.

Digital software helps patients to engage with virtual reality, video games, health coaching, educational modules through mobile apps, web platforms to cope with weight monitoring and control, substance abuse, mental health intervention etc.¹¹ They provide patients with on-demand access to personalized therapies for medical conditions. App notifications can help patients to adhere to medication dose intake timings, virtual reality immersive environments can calm patients and distract from pain, while AI/ML softwares can monitor their symptoms and behaviour to suggest interventions.¹² Companies involve clinicians, design experts, software engineers, data scientists, product managers in the design of the DTx product, after which it is used in clinical trials.

Diagnostics

Diagnostic processes involve the conducting of tests and evaluations. Remote diagnostics can improve accessibility through digital diagnostic tools such as mobile health apps integrated with portable devices for remote screening and diagnostics for rural areas. This helps to consolidate patient data gathered from different wearables in a single platform. AI is being used in radiology and pathology to augment human interpretation of diagnostic (x-ray or magnetic resonance imaging) and pathology slide images.¹³

III. ETHICAL CONSIDERATIONS

Ethical considerations in digital medical practice can help to ensure that technology is used to improve patient care while upholding fundamental principles of respect, fairness, safety and privacy.

Professional Capacity Of Practitioners

¹¹ Philana Phan, Samir Mitragotri, Zongmin Zhao, "Digital therapeutics in the clinic," 8 Bioeng. Transl. Med. 4 (2023). Available at: <https://doi.org/10.1002/btm2.10536> (last visited 4 Mar 2025)

¹² Balakumar Kanagasabapathy, Digital Therapeutics: Enterprise Opportunities in Virtual Healthcare (TATA Consultancy Services, 2020), available at: <https://www.tcs.com/content/dam/global-tcs/en/pdfs/insights/whitepapers/healthcare-digital-therapeutics0.pdf> (last visited 15 Feb 2025).

¹³ Amy Abernethy, Laura Adams, et al., "The Promise of Digital Health: Then, Now, and the Future," NAM Perspectives (2022). Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9499383/#pz10-6> (last visited 11 Feb 2025).

Digital tools such as electronic health records and telemedicine apps minimize errors in documentation, facilitate secure communication, and enable expanded reach and accessibility. However, not all patients across the country have equal access to technology or digital literacy. In eSanjeevani, reports of some administrative authorities creating daily referral targets for health-workers at the primary health centres had emerged, which may result in hurried referrals. If a practitioner is not trained in applying a standard operating protocol (SOP) to perform tele-triage, it can limit effectiveness. There ought to be training or competency certification to be completed before operating the system. A patient may share inadequate case details, where the consultation may require audio-visual display, or the case may not be related to the specialisation of the practitioner, which defeats the purpose of the consultation. This can also affect the issuance of useful and medically safe prescriptions. Emergency cases or in-person visits are required for specialist opinion.¹⁴

Informed consent:

Medical information sharing websites are useful to keep patients pre-informed before the actual clinical consultation. They may ask users multiple choice questions to allow understanding, may document a summary of the medical history of the patient, or may allow texting for patient questions. Informed consent can be enhanced by digitally sharing standardised and evidence-based information with the user in easily understandable ways, such as diagrams, animations, and translations. However, this may not be applicable to those who do not have the legal or mental capacity to understand and give consent, or those who do not have access to devices, or the ability to use devices.¹⁵

e-Consent refers to the use of electronic information systems (i.e. infographics, videos, embedded links) to convey information about disorders or treatments. Each model of seeking consent provides users with a different level of autonomy over the collection, use, and sharing of their information. A broad consent model allows participants to select the types of health provision or research for which their information can be used, whereas a dynamic consent model enables

¹⁴ Biswanath Ghosh Dastidar, Anant R. Janid, Shailesh Surid, Vikranth Harthikote Nagaraja, "Reimagining India's National Telemedicine Service to improve access to care," 30 Lancet Reg. Health 30 (2024), Available at: [https://www.thelancet.com/journals/lansea/article/PIIS2772-3682\(24\)00130-6/fulltext](https://www.thelancet.com/journals/lansea/article/PIIS2772-3682(24)00130-6/fulltext) (last visited 15 Feb 2025)

¹⁵ Simon L. Parsons, Prita Daliya, Phil Evans, Dileep N. Lobo, "Digital Informed Consent: Modernising Information Sharing in Surgery to Empower Patients," 47 World J. Surg. 3 (2022). Available at: <https://doi.org/10.1007/s00268-022-06846-w> (last visited 1 Mar 2025)

consent through a web-based platform, where users can set or change consent preferences. Individuals may not be comfortable in sharing their information with commercial entities, unless there is transparency in the data sharing practices.¹⁶

Patients are vulnerable in their interactions with healthcare professionals due to the knowledge and power imbalance, since they trust the healthcare professional to act in their best interest. For instance, studies have shown that patients may trust AI-enabled digital technologies in health if they perceive that those will involve interaction with human agents.¹⁷ Information about the risks and benefits of remote therapy should be provided by the healthcare professional and they must obtain informed consent of the patient before recording a consultation.¹⁸

Confidentiality and privacy:

Studies have shown that patients' willingness to share personal health information depend on factors such as their perspective on the privacy and security of their information, the relevance of sharing, and how sharing the information can directly affect the quality of care. To improve trust in the use of digital health tools, transparency with regard to the collection, use, and disclosure of the information should be clearly stated.

Third-party providers can use the EHR software to provide value-added services to patients, but their activities may cause issues or failure in the software, hence the performance and services of such vendors could be certified through official certification programmes.¹⁹

There can be concerns of maintaining ease of access to the patients while also ensuring the confidentiality of the information. Data sources for persons can be exploited to find out their financial assets and steal their medical identity in order to gain coverage. There is a risk that in wearables or mobile apps used by patients there may be unauthorized access to patient information

¹⁶ Iman Kassam & Daria Ilkina, et al., "Patient Perspectives and Preferences for Consent in the Digital Health Context: State-of-the-art Literature Review," 25 JMIR (2023). Available at: <https://doi.org/10.2196/42507> (last visited 10 Mar 2025)

¹⁷ Soraia de Camargo Catapan, Hannah Sazon, Sophie Zheng, Victor Gallegos-Rejas, Roshni Mendis, Pedro H. R. Santiago & Jaimon T. Kelly, "A systematic review of consumers' and healthcare professionals' trust in digital healthcare," 8 NPJ Digit. Med. (2025), available at <https://doi.org/10.1038/s41746-025-01510-8> (last visited 1 Feb 2025).

¹⁸ Renata Solimini, Francesco Paolo Busardò, Filippo Gibelli, Ascanio Sirignano, Giovanna Ricci, "Ethical and Legal Challenges of Telemedicine in the Era of the COVID-19 Pandemic," 57 Medicina 12 (2021). Available at: <https://doi.org/10.3390/medicina57121314> (last visited 10 Feb 2025)

¹⁹ Kumar Satyam, "Interview: Kumar Satyam, digital health consultant and chair for the technical committee at HL7 India," HEALTH TECH NEWSPAPER, Jan. 28, 2025. Available at: <https://htn.co.uk/2025/01/28/interview-kumar-satyam-digital-health-consultant-and-chair-for-the-technical-committee-at-hl7-india/> (last visited 1 Feb 2025)

or unauthorised encryption, data loss or destruction. It is difficult to anonymize large datasets as there is always a possibility that data can be re-identified using identifiable markers or correlating clinical data with information available from unregulated sources.²⁰

Challenges in digital health privacy include invisibility (where patients are unaware of how their data is tracked), inaccuracy (data can be inaccurate), immortality (data does not have an expiration date), marketability (data has commercial value and is bought and sold), and identifiability (individuals can be reidentified through location or merging of data streams etc). The 'digital health footprint' of a person is his/her health-related data which is collected through mobile applications, Internet searches, or linked across platforms through connected devices. Any data in the form of age group, search history queries, purchases, patterns of communication of the user, can be converted to health data which can be used to reveal medical grade diagnosis.²¹

Algorithmic bias:

Biases in algorithms mean errors in prediction which may differ from the truth which should be represented. Bias can occur if the training data does not accurately represent the population which the algorithm is intended to serve. It can also arise if there is stereotypical information present in the training data. This can lead to discriminatory outcomes as the algorithm may be disadvantageous and not be of service to certain groups. For example, if a dataset contains images from a particular racial group, the AI model trained to analyse such data may show reduced accuracy or misdiagnose when it is used to analyse the data of persons from other groups. In data processing, it may be so that only certain features of an image may be emphasized and displayed in the output. If practitioners tend to rely only on and trust recommendations of automated systems, they may disregard their judgment or critical thinking skills and overlook missed information. For instance, a feedback loop may occur when practitioners accept AI findings even if they are incorrect, which leads the algorithm to relearn and perpetuate the same mistake. However, if an algorithm gives multiple false alarms, then the practitioner may ignore important alerts.²²

²⁰ Barbara L. Filkins, Ju Young Kim, et al., "Privacy and security in the era of digital health: what should translational researchers know and do about it?" 8 Am. J. Translational Res. 3 (2016), Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC4859641/#sec19> (last visited 5 Feb 2025)

²¹ David Grande, Xochitl Luna Marti, Rachel Feuerstein-Simon, Raina M Merchant, David A Asch, Ashley Lewson, Carolyn C Cannuscio, "Health Policy and Privacy Challenges Associated With Digital Technology," 3 JAMA Network Open 7 (2020), Available at: <https://doi.org/10.1001/jamanetworkopen.2020.8285> (last visited 15 Feb 2025)

²² Daiju Ueda, Taichi Kakinuma, Shohei Fujita, Koji Kamagata, Yasutaka Fushimi, Rintaro Ito & Yusuke Matsui, "Fairness of artificial intelligence in healthcare: review and recommendations," 42 Japanese Journal of Radiology 1 (2023). Available at: <https://doi.org/10.1007/s11604-023-01474-3> (last visited 1 Mar 2025)

The World Health Organization (WHO) poses six key ethical principles for AI in healthcare: to protect autonomy; to promote human well-being, safety, and public interest; to ensure transparency, explainability, and intelligibility; to foster responsibility and accountability; to ensure inclusiveness and equity; and to promote responsive and sustainable AI. The World Medical Association's Geneva Declaration states that “age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor” should not influence practitioners’ obligations to their patients.

Although AI-based systems may not be able to discern face expressions, sweating, or tremors in a patient’s voice like humans can, they can improve clinical performance by transforming unstructured data into clinical information to support healthcare given by the practitioners.²³ In 2025, Microsoft announced the launch of an AI assistant called Dragon Copilot to help practitioners to retrieve information from medical sources, automatically edit information, write notes, post-visit summaries and referral letters. Patients should be given information about how AI is used in their care, such as limitations or biases of the AI system that may affect their treatment, but without affecting their access to care.²⁴

Equity and accessibility:

A digital tool must be accessible to patients with intellectual or communication-related disabilities, or their representatives. Patients who have access to high bandwidth, or those who have digital literacy will have better access to the tool. If telehealth is used as the main strategy for healthcare, the crucial assessments which are generally available in-person, will not be accessible to marginalized communities.²⁵ Social conditions such as awareness of health services, geographical location, cultural appropriateness of services and acceptance are also relevant to find the relation

²³ Amy Abernethy, Laura Adams, et al., "The Promise of Digital Health: Then, Now, and the Future," *NAM Perspectives* (2022), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9499383/#pz10-6> (last visited 11 Feb 2025).

²⁴ Burak Koçak & Andrea Ponsiglione, et al., "Bias in artificial intelligence for medical imaging: fundamentals, detection, avoidance, mitigation, challenges, ethics, and prospects," *31 DIR Radiol.* 2 (2025). Available at: <https://www.dirjournal.org/articles/bias-in-artificial-intelligence-for-medical-imaging-fundamentals-detection-avoidance-mitigation-challenges-ethics-and-prospects/doi/dir.2024.242854> (last visited 2 Feb 2025)

²⁵ Han Koehle, Clair Kronk, Young Ji Lee, "Digital Health Equity: Addressing Power, Usability, and Trust to Strengthen Health Systems," *31 Yearb. Med. Inform.* 1 (2022). Available at: <https://doi.org/10.1055/s-0042-1742512> (last visited 13 Mar 2025)

between access to care and digital healthcare.²⁶ Access to standardized care would be possible because of decentralization of facilities for the patient demographic in rural, remote as well as urban areas.²⁷

IV. LEGAL FRAMEWORK

Telemedicine

The Telemedicine Practice Guidelines 2020 which are a part of the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations 2002, are not legally binding. Registered medical practitioners can provide telemedicine consultations and initiate a remote consultation after taking consent from the patient. Practitioners cannot prescribe drugs listed in Schedule X of the Drugs and Cosmetics Act 1940 or the Narcotic Drugs and Psychotropic Substances Act 1985. Prescriptions in the form of photos, scans, digital copies should include the registration number. Practitioners should safeguard patient privacy and confidentiality by exercising caution with technology, and misuse of data will be considered as misconduct.

The Guidelines do not address the validity or issuance of medical certificates online. They do not address the need for interstate or national registration for practitioners who provide consultations across states. To address complaints of professional misconduct, there is no specification regarding jurisdiction.²⁸ The Guidelines exclude other aspects of telemedicine involving research and evaluation, education of healthcare workers, and tele-interventions like robotic surgeries. While they uphold the autonomy of patients to decide whether they prefer in-person consultations or teleconsultations, third party platforms could have access to the confidential content discussed online. The Guidelines do not specifically state the obligations of practitioners in the collection of data; hence the provisions of the Information Technology Act 2000 will be applicable. The Guidelines do not specify the appointment of a grievance redressal mechanism. Telemedicine

²⁶ James Shaw, Ibukun-Oluwa Omolade Abejirinde, Payal Agarwal, Simone Shahid & Danielle Martin, "Digital health and equitable access to care", 3 PLOS Digit. Health 9 (2024). Available at: <https://doi.org/10.1371/journal.pdig.0000573> (last visited 1 Feb 2025)

²⁷ Kumar Satyam, "Interview: Digital health consultant and chair for the technical committee at HL7 India," HEALTH TECH NEWSPAPER, 28 Jan 2025, available at: <https://htn.co.uk/2025/01/28/interview-kumar-satyam-digital-health-consultant-and-chair-for-the-technical-committee-at-hl7-india/> (last visited 1 Feb 2025).

²⁸ Dipen Dabhi, Yatiraj Singi, Nirmal Nagar, "Unverified medical certifications surge amid telemedicine guideline ambiguities," 9 Indian J. Med. Ethics 4 (2024), Available at: <https://doi.org/10.20529/IJME.2024.054> (last visited 1 Feb 2025)

platforms indirectly advertise or promote the practitioners and their services by providing information related to their timings and fees.²⁹

Data Privacy

Practitioners violate the Digital Personal Data Protection Act 2023 if they do not make reasonable efforts to ensure the accuracy and completeness of data or build reasonable security safeguards to prevent a data breach, or inform the Data Protection Board of India and affected persons in the event of a breach, or erase personal data as soon as the purpose has been met if retention is not necessary for legal purposes. Violations of data privacy include practitioners not specifying the purpose of collecting data, collecting more health data than required, sharing health data for research without de-identification, revealing health information to third parties without consent, lack of security safeguards for health data resulting in breach of data confidentiality, and not informing the data principal in case of data breach. However, the Digital Personal Data Protection Act 2023 does not define what constitutes sensitive personal data, nor does it provide to the data principal with the rights to ownership, to restrict or object to use of data, to data portability, or to seek compensation. It does not mandate the use of health data only in the best interest of the data principal, nor restricts the processing of health data for commercial purposes.

Consumer Protection

The Consumer Protection Act 2019 defines “consumer” to include any person who “buys any goods” and “hires or avails any services”, including offline or online transactions through electronic means, teleshopping, direct selling, multi-level marketing. Since practitioners provide healthcare services, they should provide a receipt for payment received for their online consultation services, otherwise it shall be an unfair trade practice. Failure to maintain confidentiality, falsely endorsing services or misleading advertisements, product service liability and deficiency in services causing negligence or harm to the patients are under the ambit of the Act.

Liability

²⁹ U. Venkatesh, Gandhi P. Aravind, Anbu Ananthan Velmurugan, "Telemedicine practice guidelines in India: Global implications in the wake of the COVID-19 pandemic," 14 WMHP 3 (2022). Available at: <https://doi.org/10.1002%2Fwmh3.497> (last visited 12 Feb 2025)

Under the test of vicarious liability, an employer will not exercise significant control over its employees under a contract of service for highly technical professional jobs. However, digital platforms which facilitate post-consultation actions furthering the negligent actions of a medical practitioner would be vicariously liable for facilitating the services of such a practitioner.³⁰ While digital tools like DTx are considered to have low risk for patients, many depend on the scores reported by the users as indicators of their progress and the efficacy of the platform. Such tools should be regularly updated for patient use otherwise there would be discrepancies in updates across the user base. Owing to the wide reach of telemedicine, jurisdictional issues in redressal arise. The service provider, the intermediary and the end user are located in different jurisdictions. The terms of service of digital tools or platforms are one-sided in the sense that they provide dispute resolution jurisdiction and also determine the terms of sharing of data, to which users have to either agree or disagree.

V. CONCLUSION AND RECOMMENDATIONS

The integration of digital medical practices into India's primary healthcare landscape presents a transformative opportunity. By prioritizing patient autonomy, data privacy, and equitable access, to enhance clear regulatory frameworks and accountability mechanisms, India can navigate the complexities of digital healthcare. To ensure the ethical and legal integration of digital medical practices in India's primary healthcare, several key recommendations are crucial. Firstly, strengthening data protection provisions is paramount to safeguard patient privacy and trust in digital health platforms. Secondly, practitioners must be educated on the biases of AI in healthcare, empowering them to exercise critical judgment and utilize AI as a supportive tool rather than a definitive authority. Thirdly, investing in infrastructure to bridge the digital divide is essential to guarantee equitable access to digital healthcare services across all demographics. Finally, we must emphasize the need for ongoing dialogue and collaboration between all stakeholders, government, healthcare providers, patients, and researchers to foster a dynamic and adaptable framework that evolves alongside technological advancements and societal needs. This collaborative approach will pave the way for a responsible and sustainable digital healthcare ecosystem in India.

³⁰ Debayan Bhattacharya, "Analysing the Liability of Digital Medical Platforms for Medical negligence by Doctors," 15 NUJS L. Rev. 2 (2022)., Available at: <https://nujslawreview.org/wp-content/uploads/2022/11/15.2-Bhattacharya-3.pdf> (last visited 1 Feb 2025)

