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TELEMEDICINE SERVICES IN INDIA DURING THE COVID-19 PANDEMIC: A LOOK AT THE CURRENT FRAMEWORK AND ITS REGULATORY AND SOCIETAL GAPS

Authored By - Rajul Sharma

1. Introduction

No one could have predicted the trajectory of the year 2020. The year saw the emergence of the COVID-19 pandemic. As of 12th January 2023, there have been 669 million cases[1] of the novel COVID-19 virus, and 6,73 million deaths worldwide.[2] To help contain the quick spread of the virus, governments world over adopted various public health measures aimed at ensuring social distancing. Also, governments and multinational pharmaceutical companies made efforts like never in each other's cooperation and collaboration to develop COVID-19 vaccines.[3] As these public health measures led to lockdowns, there was an unprecedented reliance on technology in an already technology-driven world. In such a scenario, where the world is so technology-driven, it becomes essential to properly govern these new developments. Laws need to develop at the same rate as technology does. To catch up with rapid technological advancements, laws need to be regularly monitored, evaluated, and modified. These new technologies shape the way our society functions, and it becomes important to have appropriate regulations in place for them.

A technology that became very prominent during the pandemic was "telemedicine".[4] This is because with traditional medical consultation, routes closed due to lockdowns, and people started seeking out non-physical ways to seek medical care.[5] Therefore, it is necessary that the

[1] *Coronavirus cases:* (no date) *Worldometer*. Available at: https://www.worldometers.info/coronavirus/ (Accessed: January 12, 2023).
[2] *Ibid.*
[3] Openknowledge.worldbank.org. 2022. [online] Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/36758/Digital-Platforms-for-Covid-19-Vaccination-Delivery.pdf?sequence=1> [Accessed 9 July 2022].
[4] Raghuvanshi, A., 2022. *Affordable And Accessible: Why India Needs Telemedicine - Forbes India Blogs*. [online] Forbes India. Available at: <https://www.forbesindia.com/blog/health/affordable-and-accessible-why-india-needs-telemedicine/> [Accessed 9 July 2022].
[5] Pathak, M. and Rai, S. (2021) "Telemedicine during COVID-19: India embracing the change," *Indian Journal of Forensic and Community Medicine*, 8(4), pp. 262–264. Available at: https://doi.org/10.18231/j.ijfcm.2021.053.

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healthcare systems of a country are robust, especially one such as India which is a developing nation and is devastatingly affected by the pandemic.

India is a developing country[6] and the second most populated country in the world with a population of 1.38 billion inhabitants.[7] It was one of the countries which were worst hit by the pandemic. India reeled under the massive devastation that the pandemic caused. To date, there have been 44 million[8] COVID-19-related cases in India. Pre-pandemic in India, doctors preferred in-person meetings with their clients, and hospitals discouraged telemedicine adoption as well.[9] However, as the pandemic took a grip in India, physical consultations became dangerous and online consultations were recommended.[10]

With such a large population and a high number of COVID-19 cases, there was a huge demand for medical services.[11] As the virus spread, more and more people needed to rely on the healthcare system.[12] Traditionally, people visit hospitals in-person for consultations and check-ups with doctors. However, during the pandemic, hospitals became hotspots of the 'super spreading' of the virus.[13] Subsequently, hospitals shut down outpatient departments and non-emergency units.[14] In-person access to medical services was already inadequate in India pre-pandemic. There was already a lack of sufficient healthcare human resources, less affordability, low health awareness.[15] Hence, when these in-person medical services in India closed in wake of the pandemic, it worsened the already existing lacunae in India's healthcare

[6] Thehindu.com. 2022. *Explained: What does 'developed' tag mean for India?*. [online] Available at: <https://www.thehindu.com/business/Economy/what-does-developed-tag-mean-for-india/article30831680.ece> [Accessed 9 July 2022].
[7] Datatopics.worldbank.org. 2022. *WDI - Home*. [online] Available at: <https://datatopics.worldbank.org/world-development-indicators/> [Accessed 9 July 2022].
[8] Reuters. 2022. *India: the latest coronavirus counts, charts and maps*. [online] Available at: <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/india/> [Accessed 9 July 2022].
[9] *Ibid.*
[10] Nangia, P. (2020) "Explained: Are medical consultations via digital means likely to stay post COVID-19 pandemic as well?," *Financial Express*, 23 October. Available at: https://www.financialexpress.com/lifestyle/health/explained-are-medical-consultations-via-digital-means-likely-to-stay-post-covid-19-pandemic-as-well/2112483/ (Accessed: January 12, 2023).
[11] Raman, R. *et al.* (2021) "Impact on health and provision of healthcare services during the COVID-19 lockdown in India: A Multicentre cross-sectional study," *BMJ Open*, 11(1). Available at: https://doi.org/10.1136/bmjopen-2020-043590.
[12] *Ibid.*
[13] Dutt, A. (2020) "Mixing patients may worsen Covid-19 spread, warn private hospitals," 26 May. Available at: https://www.hindustantimes.com/india-news/mixing-patients-may-worsen-covid-spread-warn-private-hospitals/story-OGOK0SpRrWVS352asbDihN.html (Accessed: January 12, 2023).
[14] Dash, S., Aarthy, R. and Mohan, V., 2021. *Telemedicine during COVID-19 in India—a new policy and its challenges*.
[15] *Ibid.*

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system. With such a large population, the doctor-to-patient ratio is highly skewed as the population greatly outnumbers the doctors available to cater to them.[16] Hence, ensuring a sufficient and equitable distribution of healthcare services becomes challenging.[17]

In addition to this, is the phenomenon of healthcare facilities being concentrated in the cities and towns (comprising 75% of the population of doctors), far from rural India, where 68.84% of the population resides.[18] In India, the pandemic has added an unprecedented burden on an already burdened health-care system in a country like ours.[19]

In such a grave scenario, the concept of "telemedicine" becomes relevant. The WHO defined telemedicine as:

"The delivery of health-care services, where distance is a critical factor, by all health-care professionals using information and communications technologies for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and the continuing education of health-care workers, with the aim of advancing the health of individuals and communities."[20]

.

Telemedicine is a vital mechanism that can help combat the problem of lack of in-person medical services, particularly in time of a pandemic.[21] Especially in a developing, extremely populated nation such as India. Telemedicine has the potential to better the supply of health-care services by relying on information and communication technology. Important information for diagnosing, and treatment and prevention of illnesses and injuries, research can be better delivered with the help of telemedicine.[22]

Telemedicine in India was introduced by The Indian Space Research Organization (ISRO) in

[16] Kumar, R. and Pal, R., 2018. India achieves WHO recommended doctor population ratio: A call for paradigm shift in public health discourse!. *Journal of Family Medicine and Primary Care*, 7(5), p.841.
[17] Das, P. and Sharma, A., 2021. Deployment of telemedicine as another mitigation tool during the COVID-19 pandemic in India. *Public Health in Practice*, 2, p.100167.
[18] Ponnam, H. and Akondi, B., 2021. Telemedicine Health Care Delivery in India: A Boon During COVID-19 Pandemic. *Asian Journal of Pharmaceutical Research and Health Care*, 13(3), p.227.
[19] Agarwal, N., Jain, P., Pathak, R. and Gupta, R., 2020. Telemedicine in India: A tool for transforming health care in the era of COVID-19 pandemic. *Journal of Education and Health Promotion*, 9(1), p.190.
[20] *Veterinary Record*, 2020. Telemedicine services thrive during Covid-19. 186(12), pp.365-365.
[21] *Supra Note 5.*
[22] *Ministry of Health and Family Welfare | GOI RSS* (no date). Available at: https://www.mohfw.gov.in/pdf/Telemedicine.pdf (Accessed: January 12, 2023).

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2001, beginning with the Telemedicine Pilot Project. Telemedicine services in India fall under the joint jurisdictions of Ministry of Health & Family Welfare (MoHFW) and the Department of Information Technology. The telemedicine division of the MoHFW also has a National Telemedicine Portal set up. In 2005, the MoHFW created a National Telemedicine Taskforce. Furthermore, other national programs in India are the National Cancer Network (ONCONET), the Integrated Disease Surveillance Project (IDSP), the Digital Medical Library, and the National Medical College Network.[23]

As part of its 'Digital India' initiative, the Indian government introduced its telemedicine service called 'eSanjeevani' on 9th August 2020.[24] As the pandemic affected India's healthcare system, practitioners increasingly relied on video conferencing to see patients and treat them remotely.[25] The eSanjeevani platform presently allows two kinds of telemedicine services: Doctor to Doctor (eSanjeevani) and Patient-to-Doctor (eSanjeevani OPD).[26] These kinds of services are part of the Indian government's overarching plan to link big hospitals to smaller health centres that are in remote rural areas. With the expansion of these services, medical university hospitals and big government hospitals would be 'hubs' to give teleconsultation to 'spokes' or the first health care centres.[27] This model has been heavily relied on in India to give patients non-COVID-related essential healthcare services. Approximately 3 million consultations already took place on this platform by 17 March 2021.[28]

Therefore, the Telemedicine Guidelines of India, 2020 ("Guidelines") were published by the Indian Medical Council in partnership with the NITI Aayog, the top public policy think-tank of the Indian Government.[29] Until the pandemic emerged, India didn't have a clearly and legally defined telemedicine framework. State Programme Officer for Non-Communicable Diseases in Puducherry, India R. Duraiswamy has stated that several Indian provinces and cities upgraded their technologies to assist patients in the time of the pandemic. In fact, it has been estimated

[23] *Supra Note 13.*
[24] *The 'Esanjeevani' digital platform of the Ministry of Health and Family Welfare has completed 2 lakh* (no date) *India Brand Equity Foundation*. Available at: https://www.ibef.org/research/newstrends/a-big-win-for-digital-india-health-ministry-s-esanjeevani-telemedicine-service-records-2-lakh-tele-consultations (Accessed: January 12, 2023).
[25] Mahajan, V., Singh, T. and Azad, C., 2020. Using Telemedicine During the COVID-19 Pandemic. *Indian Pediatrics*, 57(7), pp.658-661.
[26] *Ibid.*
[27] *Ibid.*
[28] Harigunani, P., 2022. *India warms to telehealth amid pandemic*. [online] ComputerWeekly.com. Available at: <https://www.computerweekly.com/news/252513585/India-warms-to-telehealth-amid-pandemic> [Accessed 9 July 2022].

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that the telehealth services market in India was worth 1.3 billion US dollars in 2021.[30]

There was a lacuna in the place where legislation and a clear framework should have been as to what exactly constitutes 'telemedicine' and what the appropriate guidelines are for ethical practice.[31] It also wasn't clear if telemedicine is legal up until the March 2020 guidelines were implemented. Aspersions were also cast on how useful telemedicine is, after a court in Maharashtra, India upheld criminal negligence charges in a case where post telephonic consultation with the doctor, the patient passed away.[32]

2. Research Problem

The task of effectively laying down and implementing a working telemedicine framework in India is a herculean task. India's population is not only large but also very diverse. People come from different walks of life regarding religion, caste, creed, gender, class, etc. Given the diverse population of India, equitable distribution of healthcare services is a goal that needs to be met in the field of public health management field. In this context, it is interesting to analyse the existing telemedicine framework in India. Furthermore, as already written, systematic guidelines on telemedicine only were published in 2020, and there is still a big room for improvement, as it is with any new legislation or policy documents.

So, though it is proliferating across India, there are many challenges surrounding the telemedicine industry in India and its successful and meaningful implementation. Therefore, it is essential to study the telemedicine industry as it stands in India today, to identify its existing loopholes, and discuss how to address them. In this paper, the author traces the development of telemedicine in India and then discusses the legal and regulatory gaps that the Indian telemedicine industry faces. Lastly, the author provides recommendations on what measures can be adopted to make the Indian telemedicine industry framework more robust and useful.

[30] *Ibid.*
[31] 2020. *Telemedicine Practice Guidelines*. [online] Ministry of Health and Family Welfare, Government of India. Available at: <https://www.mohfw.gov.in/pdf/Telemedicine.pdf> [Accessed 9 July 2022].
[32] *Deepa Sanjeev Pawaskar And Anr vs The State Of Maharashtra*[2018] (Bombay High Court).

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3. Methodology & Scope of Analysis

In writing this essay, the author has adopted qualitative and analytical research methodologies. This entails observation and critical investigation of appropriate and significant documents, policies, reports, judgments, and legal and medical scholarly articles associated with the topic of this essay. The empirical research methodology has also been employed by the author in so far as procuring evidence via relevant information and data accessible in the public domain.

The author has also adopted an evidence-based research methodology, through which the author collected information on relevant topics such as the number of internet subscribers in India currently. The author seeks to examine the status of the telemedicine industry in India as it stands today, particularly focusing on its increased importance in wake of the COVID-19 pandemic. The author has chosen India as the jurisdiction, as it makes an interesting case study. India is a developing country, with a very diverse population hailing from varied socio-economic backgrounds.[33] In today's technology-driven world, it would be interesting to see how India has fared so far in the field of telemedicine, which relies solely on technology to function. The author shall examine the regulatory legal framework on telemedicine in India, and what its limitations are. Lastly, the author shall provide recommendations on what can be done to strengthen this framework.

4. Analysis

At this juncture, the Guidelines' key points are important to consider. As per Article 1.2 of the Guidelines, the Guidelines' scope extends to Registered Medical Practitioners (RMP), who are enrolled in the State Medical Register or in the Indian Medical Register under the Indian Medical Council Act, 1956.[34] The guidelines lay down the standards and rules RMP needs to adhere to for online telemedicine consultations. Some loopholes in the guidelines are that provisions regulating consultations outside the Indian jurisdiction don't exist.[35]

[33] Kulkarni, P., Ramesh Masthi, N.R. and Gangaboraiah (2013) "An exploratory study on socio economic status scales in a rural and urban setting," *Journal of Family Medicine and Primary Care*, 2(1), p. 69. Available at: https://doi.org/10.4103/2249-4863.109952.

[34] *Supra Note 31.*
[35] *Supra Note 22.*

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As per the Guidelines' Article 1.4.1., telemedicine can be used by means of several technological tools such as audio, video, telephone, devices linked via the internet, WAN, LAN, mobile or landline telephones, apps such as WhatsApp, SMS, Facebook messenger, Skype, email, etc.[36] However, the Guidelines leave several regulatory questions unanswered, such as ones to do with how safe the entire process is, and about the technology providers which are to be involved in the process.[37]

Some pressing issues which exist in telemedicine's use in India are that firstly, it is beleaguered by the question: what the extent of liability of doctors is if the information the patients receive from their doctors is misinterpreted by them?[38] Secondly, for potential users and healthcare professionals to rely on telemedicine more regularly, strong privacy and confidentiality rules need to be established. Then, the concerned parties would have trust and assurance that their information stays safe. Thirdly, is the issue of having a robust digital infrastructure in place. For remote healthcare services to function properly, it is vital to have in place a high-speed internet connection for the parties concerned, patient access software, IT professionals trained to set up programs, etc.[39]

The Guidelines need to be extended to tackle ethical problems with the way the privacy, data, and storage of the patients are handled. There is also restricted internet access in India and there are loopholes in the telecom infrastructure. These issues challenge the extensive adoption of telemedicine in the country.

One gaping loophole is that the Guidelines aren't clear on privacy and data usage for both patients and doctors. The Guidelines do specify that the burden is completely placed on the RMPs to keep records of all communications exchanged between them and their patients. But they don't provide any norms elaborating on the technology needed to ensure the patient's privacy is respected. Duration for storing data isn't laid down in the Guidelines, and neither are the restrictions on future use of the data. The Guidelines need practitioners to be knowledgeable of the existing privacy and data protection laws and adhere to them. People have raised privacy concerns as personal details like addresses of patients and other

[36] *Supra Note 31.*
[37] Raveen, S. and Singh Gupta, H., 2021. *Telemedicine is the answer, but who will plug its gaps?*. [online] The Indian Express. Available at: <https://indianexpress.com/article/opinion/telemedicine-is-the-answer-but-who-will-plug-its-gaps-7346856/> [Accessed 9 July 2022].
[38] *Supra Note 13.*
[39] *Ibid.*

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'reasonable' ways of identification need to be written down by practitioners. Another significant loophole is that concepts of implicit and explicit consent are laid down in the guidelines, however, it is considered implicit consent just if a person initiates a telemedicine consultation. This is problematic as the threshold of what behaviour is 'consent' is very low and can be detrimental to the users in case of negligence by practitioners. Hence, we already see that telemedicine in India could also improve immensely by bettering rules on data privacy, interoperability amongst telehealth platforms, and transparency.[40]

The Guidelines don't specify the minimum technical requisites needed to have a fruitful telemedicine program. As per the Guidelines' Article 5.7, They also don't discuss the liability that technology providers or institutes can face if data is leaked or RMPs are unauthorized to use telemedicine platforms. There is, however, a provision for blacklisting such technology providers.[41] There is also a lack of a proper grievance redressal apparatus.

Another loophole in having an up-and-running telemedicine industry in India is digital illiteracy and lack of digital infrastructure. People who reside in tier-three cities and far-flung and rural India face issues to do with a lack of awareness and avoidance as lack of familiarity will lead them to continue in-person visits to practitioners. The leading company in health technology in India, called "Practo" gets 85% of its queries from patients in metropolitan areas.[42]

Raghavendra Prasad, the founder of the non-profit initiative "Project Stepone" which supports the Indian Government's COVID-19 management services, has stated that due to the lack of understanding and knowledge with technology and mobile applications, largely patients still choose voice calls as opposed to consultation via applications or via videos.[43] However, it is interesting to note that on the contrary, the chief operating officer of Apollo Hospitals in Ahmedabad, India Neeraj Lal stated that it is his belief that in the coming time, the healthcare providers who do not, or fail to adopt telemedicine will be relegated to the periphery. He stated he believed that the trend of telemedicine will only grow in the approaching time.

[40] *Supra Note 8.*
[41] *Supra Note 31.*
[42] *Supra Note 19.*
[43] *Ibid.*

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5. Recommendations

If telemedicine is to succeed, there needs to be a robust digital infrastructure in place.[44] In the last two decades, India has made great strides in the field of telecommunication, however, as discussed above, these benefits are rarely reaped by the rural population of India. The Telecom Regulatory Authority of India (TRAI), a regulatory body set up by the Indian government, has stated that as of September 2019, 687.62 million internet subscribers are in India, and internet subscriptions rose to 52.09 per 100 population.[45]

It has been reported that as of December 2019, 500 million smartphones were being used in India.[46] However, the amount of the population that had internet access was a small amount of 36%, and the number of female users of the internet in rural regions was only 28%. Hence, we see that the huge gaps in India- social, economic, gender-based, or geographical- all negatively hinder the proliferation of telemedicine in the country.

During a pandemic, telemedicine has several advantages such as patients can continue to seek remote help from practitioners to manage chronic ailments such as asthma, diabetes, hypertension, etc. As people who suffer from these diseases are particularly vulnerable to COVID-19, it is very beneficial for them to be able to get help remotely at a time when social distancing is the norm. Telemedicine is a safe and substitute method of seeking medical help. Amid a pandemic, people are also prone to have mental health issues, as they face uncertainty, loss, and loneliness. Having access to psychological help remotely is a good method to cope for the ones who seek help.[47] Hence, the need of the hour is to strengthen the Guidelines and simultaneously also work to better educate citizens on the use of technology.

6. Conclusion

It is very clear that the telemedicine regulatory framework in India has a long way to go. When looked at, it becomes clear that there is much reason for concern about the users' privacy. This further dampens the enthusiasm for telemedicine services of the already hesitant Indian users

[44] *Supra Note 14.*
[45] *Supra Note 10.*
[46] *Ibid.*
[47] Sageena, G., Sharma, M. and Kapur, A., 2021. Evolution of Smart Healthcare: Telemedicine During COVID-19 Pandemic. *Journal of The Institution of Engineers (India): Series B*, 102(6), pp.1319-1324.

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of medical services. It is clear, that the Guidelines as they stand now, need significant improvement in terms of being able to address the regulatory gaps that exist in the telemedicine services framework in India.

It is also pertinent that the Indian medical curricula should contain telemedicine and training should be provided to future practitioners. In a developing country such as India, investment needs to be made further in the rising field of telemedicine.[48] Reliance on telemedicine services will only proliferate, and hence, in such a scenario, the need of the hour is to have robust regulations and rules on telemedicine. There is also a need for the Guidelines to discuss more on what comprises "implicit" and "explicit" consent when a teleconsultation is taking place. A robust grievance redressal mechanism needs to be formulated and implemented clearly.

The MoHFW should use its past mistakes and learnings to revise the existing guidelines to fill the loopholes in the framework. Further, an evaluation system of the Guidelines and their practical implementation and their effects needs to be set in place by the MoHFW to allow for improvements in the coming time. This will help maximize the benefits of the telemedicine framework in India for all parties involved.[49]

The data privacy and security laws of India need to be bolstered as well, for telemedicine services to be best utilized and to remove apprehensions from the minds of potential users of these services. A Personal Data Protection Bill has already been proposed by the Indian parliament and there are hopes that it would set in place a clear framework surrounding privacy and data protection in India.[50] Once this bill comes into force, there would be heavy fines imposed on those who violate data protection and privacy laws.[51]

The Indian Government is currently undertaking efforts to proliferate the use of telemedicine services in India, especially in the wake of the COVID-19 pandemic which highlighted telemedicine's vitality. The Government's eSanjeevani platform, and private companies'

[48] *Supra Note 8.*
[49] *Ibid.*
[50] *The Digital Personal Data Protection bill, 2022* (no date). Available at: https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022.pdf (Accessed: January 12, 2023).
[51] Mishra, V., 2020. Factors affecting the adoption of telemedicine during COVID-19. *Indian Journal of Public Health*, 64(6), p.234.

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initiatives, are positive signs that the telemedicine industry in India is on a positive rise and that the confines of in-person and traditional healthcare services can be addressed.[52] These efforts and programs established by the Indian government on telemedicine should be further developed to better access to healthcare for citizens of India and to a better quality of healthcare services available. The government needs to set out clear short- and long-term goals and prioritize their subsequent steps accordingly. For instance, for telemedicine to successfully work in the long term, digital infrastructure and literacy need to be improved. Hence, such initiatives must be heralded accordingly.[53]

Another important player in the telemedicine field is the private sector in India. It has been shown to play a key role in the field of telemedicine. Key private sector companies such as Apollo Telemedicine Enterprises, Narayana Hrudalaya, Escorts Heart Institute, Aravind Eyecare, etc.[54] are some examples who have interest in the field. The central and state governments and the ISRO provide these private companies with support in form of right and upgraded technology.[55] Therefore, in bettering the existing Guidelines, and the general regulatory framework of telemedicine in India, the knowledge and expertise of the private companies can be of great help.

The COVID-19 pandemic has made medical practitioners switch swiftly from traditional in-person consultations to remote telephonic or video consultations. Hence, the right training and core Good Medical Practice standards need to be abided with by the practitioners.[56] Better documentation, communication, and learning from mistakes will be radical in ensuring that the chance of failures and regulatory gaps in telemedicine frameworks are lessened. Telemedicine technology is a chief aspect in ensuring the best delivery of health care services in the coming days, and therefore, ensuring that the regulatory framework is strong is crucial.

[52] Malhotra, N., Sakthivel, P., Gupta, N., Nischal, N. and Ish, P., 2022. Telemedicine: a new normal in COVID era; perspective from a developing nation. *Postgraduate Medical Journal*, 98(e2), pp.e79-e80.
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[54] *Ibid.*
[55] *Ibid.*
[56] *Ibid.*