Bill Blowup

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CUTS International

National Medical Commission Bill, 2017

The Medical Council of India (MCI) was entangled in controversy for several years before the Supreme Court of India intervened in 2016 and established a court-appointed oversight Committee to oversee the MCI's affairs. This provisional arrangement was for a period of one year within which the government was mandated to come up with an alternate mechanism. Thus, the court appointed Committee was soon replaced by a high level Committee headed by the NITI Aayog Vice-Chairman. Simultaneously the government proposed the introduction of the National Medical Commission Bill, 2017.

The Bill is an effort to remove the regulatory cobwebs that cling to the medical education thereby strengthening the health system and motivating productive research. The Bill once passed will replace the Indian Medical Council Act.

The Bill at a Glance

Highlights

- Sets up new institutional frameworks for medical regulation through proposed National Medical Commission (NMC), Medical Advisory Council (MAC) and four autonomous boards.
- Empowers NMC to fix norms for regulating fees for a proportion of seats, not exceeding 40 percent of total seats, in private medical institutions and deemed universities.
- Constitution of a Search Committee to recommend names to the Central Government for the post of NMC Chairperson, and the Secretary and part time members.
- MAC guides NMC and act as a platform through which the States and Union Territories may put forth their views and concerns before the Commission.
- Provides a statutory basis for the existing National Eligibility-cum-Entrance Test (NEET), and also introduce National Licentiate Examination (NLE) that provides permit to practice and determine selection to post-graduate courses.

Lowlights

- NMC largely dominated by the medical practitioners; of the proposed 25 members, almost 20 members are doctors; only three part-time members are experts from other fields.
- Preamble highlights medical research as one of the main objectives of the Bill, but subsequent provisions in the Bill is silent regarding research.
- NMC and autonomous boards are closely controlled by the Central Government.
- Central Government is the appellate body for those aggrieved by the NMC's decisions. Those aggrieved by the decision of the autonomous boards, first appeal to the Commission and then to the Central Government.
- A composition of just three members in each autonomous board is inadequate. Lesser number entrusted with making various decisions could be arbitrary and biased.
- Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) practitioners mandated to take a bridge course to prescribe certain kinds of modern medicines.
- Silent on looking after the welfare of those who are registered under it. This is in contrast with similar legislations (Bar and Press Council), where functions and objects of the Council does talks about welfare of its members.
- Silent on how to deal with common malpractices like persons pretending to be registered practitioners, professional misconduct and subsequent criminal offences, etc.

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Introduction

With its fusty image, medical professional regulation in India needs drastic changes. Not just ensuring sufficient number of medical professionals but delivering good quality of service both in urban and rural areas, and thereby enhancing patient safety and regulation have become a must.

More importantly, the medical regulating authority that is currently dominated by its own professionals needs to be transformed into balanced institute, giving due importance to doctors' rights and patients' welfare.

Strong public representation and more transparent processes need to be ensured to achieve high standards of medical education and research. For the same collaboration between diverse branches of the healthcare regulatory system is also vital.

Rather than coming up with some cosmetic changes a thorough makeover of the existing regime, is fundamental to fulfill its mission and generally keep up with the needs and demands of the entire stakeholders, including the government, the public and the healthcare professionals.

The government after examining the issues with various stakeholders and with a view of resolving the matters within the sector, decided to come up with this new legislation, and the present Bill is said to meet the demand. However, it fall short and certain areas still need to be reconsidered, which are addressed in this Bill Blowup.

Discussion

Unfair Representation

The proposed Medical Commission comprises of 25 members including a Chairperson; 12 *ex officio* Members; 11 part-time Members; and an *ex officio* Member Secretary. Almost all of these members except a handful are from medical profession. This discrepancy exist in spite of the fact that many of the previous Committees strongly underlined the need for a medical regulator with more diverse set of stakeholders such as public health experts, health economists and social scientists. A diverse representation reduces the undue influence of medical practitioners in regulating medical education and practice.

Partial representation of the medical professionals in the regulatory bodies will boost the general perception that it acts for its own interests, an image which IMC currently holds. The Bill, therefore, needs to redraft this provision and ensure a fair representation of interest groups thereby ensuring that NMC decisions are in the interests of both the medical professionals and the consumer. Through this means, consumers will also have a say in promoting regulatory effectiveness.

Custom of incorporating members of the same profession as professional regulators has been done away with in most other countries as it raised apprehension about the objectivity of such agencies and the fairness of judgments in the cases brought before such Committees. Almost equal number of members of professionals and public are inducted in medical boards in UK and in most of the medical boards in American States including California, Texas and Michigan. Such successful models across the globe need to be considered while drafting such an important legislation.

The Bill should, therefore, reconsider the composition of the regulatory body so that they represent all relevant stakeholders.

Medical Education and Research

The Bill seeking to place quality in medical education at the centre of the regulatory process is a welcome step. The existing MCI regulation with respect to establishment of medical institutions is focussed solely on enforcing strict infrastructure and personnel norms, which has resulted in widespread allegations of corruption and steady deterioration of education quality.

Further, only government or trust hospitals can set up such education facilities. It does not allow corporate hospitals or even district hospitals to set up training facilities, even though it has permitted a number of substandard private medical colleges that have political patronage, which make money through huge capitation fees.

Furthermore, the existing guidelines seems inappropriate as far as the amount of land required, number of classrooms, and size with respect to setting up medical colleges and training schools. For instance, there is a restriction of 500-bed hospitals for getting permission to set up training colleges.

Such educational facilities need to have minimum of 10-acre campus. Such infrastructure and quantitative rather than qualitative approach seems unjustified, viewing similar regulations in developed countries.

Many experts also believe that the mandated infrastructure requirements, such as land, examination hall, size of examination hall, library, etc., are very irrational and rigid and there is an urgent need for flexibility in infrastructure requirements. Similarly, strict control on seats and fees in medical education has discouraged establishment of new medical colleges, which in turn has created huge shortages of doctors. It is hoped that through the passage of this Bill, the infrastructure and faculty requirements are rationalised, keeping in view the modern-day requirements.

The Bill tending to adopt accreditation and exit test approach to maintain quality is right step in right direction. All these are likely to help remove barriers in setting up medical colleges and also quality control. This, in turn, will enhance doctor population ratio to international (World Health Organisation) level, hence, more likely that the doctors would target rural population.

Likewise, preamble of the Bill states that the Bill intends to encourage medical professionals, to adopt latest medical research in their work and to contribute to research, but later the provisions of the Bill is silent on this aspect. Nowhere the Bill mentions of research except under the 'Function' section of the Undergraduate Medical Education Board (UGMEB) and the Postgraduate Medical Education Board (PGMEB). Medical and health research is important because it provides information about disease trends, new treatments and patterns of health services and costs.

According to a study by Ganga Ram Institute for Postgraduate Medical Education and Research, Indian medical colleges have a poor record of publishing research. Almost 57 percent of India's then 579 medical colleges did not publish any research in peer reviewed medical journals from 2005-14. Nearly 40 percent of medical research came from 25 (4 percent) medical schools. As per that study, the primary reason that schools were not publishing is because they have no incentive to do so. Promotions do not hinge on research output, so faculty members do not put time or energy into it.

Therefore, the current Bill has to address this shortcoming effectively. The Bill could have a provision that one of the minimum criteria to get accreditation for postgraduate schools is based on the schools research output both by their faculty and students.

Bridge Course

It is a most common practise, especially in rural areas, wherein AYUSH practitioners also prescribe allopathic medicines at times. This has severe repercussions. Judiciary has also taken serious note of this in several of its rulings and largely opined that if a person practices allopathic medicine without possessing the requisite qualifications or registration then he becomes liable to be punished with imprisonment and fine. Time and again, the courts have stressed that when law requires the person to practice in a particular system of medicine, he is under a statutory duty for not entering the field of other systems.

According to the Supreme Court, a person who does not have knowledge of a particular System of Medicine but practices in that System is a 'Quack' and a mere pretender to medical knowledge or skill, or to put it differently, a *Charlatan*.

Hence, the provision on introducing bridge course for AYUSH practitioners to prescribe certain kinds of modern medicines needs to be done away with. This undermines the quality of the allopathic education and practitioners, creating unnecessary confusions and danger.

Fortunately, on the recommendation of the Parliamentary Standing Committee, the Cabinet has approved the deletion of this provision of bridge course from the Bill. Further, it has allowed state governments to take necessary measures for addressing and promoting primary healthcare in rural areas.

Punishment

The practice of alternative medicines is increasingly out of control in the absence of any coherent government policy. The consequences have often been dreadful for the public, and bad for alternative medicine practitioners. The Bill should address this growing menace, define explicit stringent provisions to prevent and punish if any such malpractices occur. The Parliamentary Committee too has suggested punishment for any unauthorised practice of medicine. Based on its recommendation, the Cabinet has included severe punishment for any unauthorised

practice of medicine, with imprisonment of up to one year along with a fine extending up to ₹5lakh.

Alongside, NMC once established should give importance to publicise all significant medical judgements, so that all states across the country are aware and follow stringent procedures for preventing the entry of 'Quacks' and in protecting life and health of individuals.

Government Control

As per various provisions in the Bill, NMC and the four autonomous boards are largely controlled by the Central Government. Most members of the NMC and of autonomous boards are nominated by the Central Government, with no representation, consultation or any other power to the states. This largely undermines the democratic functioning of the body. Though a search Committee has been constituted, its members too are nominated by the Central Government. Complete control of Central Government in regulating, setting up and administering the medical institutions might lead to heavy-handed government bureaucracy.

Also the Commission lacks representations from states, their Medical Councils, Universities and other stakeholders. It should be remembered that state representatives are often closest to the actual provision of healthcare and most sensitive to regional needs. Therefore, regional representations are indispensable for the smooth functioning of the Commission, as otherwise they would be averse to know and understand the geographical difficulties and diverse issues faced by the medical professionals, medical colleges and students across the country.

The Parliamentary Committee too has underlined the need to strengthen the NMC and ensure adequate representation from states. The Committee has, therefore, recommended that the total strength of the NMC be increased from 25 members to 29 members including the Chairperson, six *ex-officio* members, nine elected registered medical practitioners (part-time), 10 members who are nominees of states or Union Territories (part time), and three other part-time members. With regard to the composition of the four Autonomous Boards, the Committee recommends an increase in strength to five members instead of three.

Total autonomy of regulatory bodies is neither possible nor desirable. Undeniably, some form of monitoring and balance is vital to ensure effective functioning of a regulatory body. What needs to be ensured is that the regulator is not curtailed to perform its day-to-day functions, and their decision making powers are not tampered with undue political pressure. NMC and the autonomous boards need insulation from political intervention, so that the regulatory process is not politicised, its decisions are not discredited and the policy of the government is implemented.

Appellate Tribunal

As per the Bill, any complaints regarding professional and ethical misconduct of a practitioner would first be reported to the State Medical Council. If not resolved or in case of any grievance the aggrieved person can file an appeal to the Ethics and Medical Registration Board and then further to the NMC. The Council, Board and the Commission have the power to take disciplinary action against the medical professional including imposing a monetary penalty.

Surprisingly, the Bill further states that the appeal of the decision of the NMC lies with the Central Government. This provision is ambiguous for two reasons, first – how can the Central Government be an appellate authority for matters related to professional or ethical misconduct of medical practitioners; second – the Bill does not specify the time span within which such an appeal should be decided.

There is a need for the constitution of an independent Appellate Authority as in Chartered Accountants Act comprising a legally qualified Chairperson, a medically qualified member and a third member who ideally has practical experience dealing with issues arising in medical profession, patients' safety and security. Of the two members, one of them should be a female.

Validity of Licence (periodic renewal)

The Bill introduces National Licentiate Examination (NLE) for the graduates from medical colleges. Essentially, the NLE would introduce common assessment for doctors seeking entry onto the register irrespective of whether they are trained in the India or outside.

Upon the recommendation of the Parliamentary Standing Committee, the Cabinet has decided to amend this clause and proposed final MBBS examination to be held as a

common exam throughout the country. This would serve as an exit test to be called the National Exit Test (NEXT).

Thus, the students would not have to appear in a separate examination after MBBS, to get licence to practice. NEXT would also serve as the screening test for doctors with foreign medical qualifications in order to practice in India.

However, the Bill does not specify the validity period of this licence to practice. There is a need to introduce a system of revalidation in order to ensure registrants remain up-to-date in their profession. Such a practice is widely practiced across the globe.

Regular appraisal of a registrant's performance, and their fitness to practice need to assessed periodically, usually every three-five years like in most other countries. Various factors should be taken into consideration including factors like professional development, quality improvement activity, significant events, feedback from colleagues and patients, complaints and compliments. This is vital to ensure that doctors are up to date, fit to practice, and able to provide quality healthcare.

Welfare Issues

As in other legislations (Bar and Press Council), wherein functions and objects of the Council does talk about welfare of its members, the Bill needs to incorporate provisions under the Section 'Powers and functions of Board for Medical Registration (BMR)' to safeguard rights, privileges and interests of medical practitioners.

Conclusion

The need and importance of changing the present MCI-led regulatory system is understandable following the judicial intervention and observation regarding how MCI is suffering from total system failure because of corruption and decay. The Parliamentary Standing Committee Report of 2016 also points out that the MCI has not only been unable to create a suitable curriculum for suitable medical education in the country, but also failed to ensure uniform standards of medical education.

But to be effective and purposeful, the Bill certainly needs to address the above highlighted grey areas in their entirety. Simultaneously, the government should also look at the prospect of reorganising and revamping the Dental Council, the Nursing Council and other such Councils related to medical and paramedical sector similar to the reform process as envisaged by National Medical Commission Bill, 2017. Such a drastic overhaul of the medical sector would not only improve the standard of education and training, but also ensure safety of consumers.

Action Points

- NMC should be a fair, independent and impartial regulator, with equal representation of all stakeholders including public health experts, health economists and social scientists.
- Need provisions to promote medical education and research within the country. Infrastructure and faculty requirements, while accrediting a medical college should be rationalised, keeping in view the modern-day requirements.
- Curtail excessive control of the Central Government in day-to-day functions of the NMC and the autonomous boards, undermining the autonomous nature of the boards.
- Need to set up a separate Medical Appellate Tribunal instead of entrusting the appellate jurisdiction to the Central Government.
- Need to ensure periodic renewal of licence to practice, like in most countries, to ensure licencees competence in the practicing field.
- Increase the compositions of members in the four autonomous boards.
- Do away with the provision on bridge course as it undermines the quality of allopathic practitioners and creates unnecessary confusion.
- Need to incorporate welfare provisions under the Section 'Powers and functions of BMR' to safeguard the rights, privileges and interests of medical practitioners.
- Need for explicit penal provisions to deal with common malpractices within the profession.

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