Legislative Brief

The National Medical Commission Bill, 2017

The Bill was introduced in Lok Sabha on December 29, 2017 by the Minister of Health and Family Welfare, Mr. J. P. Nadda.

It was referred to the Standing Committee on Health and Family Welfare on January 4, 2018. The Committee submitted its Report on March 20, 2018.

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Highlights of the Bill

- The Bill sets up the National Medical Commission (NMC). The NMC will regulate medical education and practice. It will determine fees for up to 40% seats in private medical institutions and deemed universities.
- The NMC will consist of 25 members. A Search Committee will recommend names to the central government for the post of Chairperson, and the part time members.
- Four autonomous Boards have been set up under the supervision of the NMC. These Boards will focus on undergraduate and postgraduate medical education, assessment and rating, and ethical conduct.
- There will be a National Licentiate Examination for doctors to obtain a licence to practice after graduation. This examination will also be the basis for admission to post-graduate medical courses.
- State Medical Councils will receive complaints relating to professional or ethical misconduct against a doctor. If the doctor is aggrieved of a decision of the State Medical Council, he may appeal to successively higher levels of authority.

Key Issues and Analysis

- Two-thirds of the members in the NMC are medical practitioners. Expert committees have recommended that the regulator should consist of more diverse stakeholders in order to reduce the influence of medical practitioners in regulating medical education and practice.
- The NMC will determine fees for up to 40% of the seats in private medical colleges and deemed universities. There have been various arguments on fee capping by experts. It has been recommended by some experts that fees should be capped to enable access to medical education for all. On the other hand, it has also been suggested that fee capping would discourage entry of private colleges.
- In cases of professional or ethical misconduct by medical practitioners, the practitioners can appeal a decision of the NMC to the central government. It is unclear why the central government, and not a judicial body, is the appellate authority.
- There is no requirement for periodic renewal of the licence to practice. Some countries require periodic testing to ensure that practitioners remain up to date, fit to practice, and give good care to patients.
- The Bill proposes a bridge course for practitioners of AYUSH to enable them to prescribe modern medicines. There are differing views on this provision. While some emphasise the need for greater integration between traditional and modern schools of medicine, others consider this step harmful for the independent development of AYUSH.

PART A: HIGHLIGHTS OF THE BILL

Context

The Medical Council of India (MCI) is established under the Indian Medical Council Act, 1956 in order to maintain standards of medical education, give approval to establish medical colleges, medical courses, and recognise medical qualifications. The MCI is also responsible for the regulation of medical practice, including registering doctors in an All India Medical Register.[1] States have their own laws that establish a state medical council to regulate matters related to ethical and professional misconduct of medical practitioners.[2]

Over the years, there have been several issues with the functioning of the MCI with respect to its regulatory role, composition, allegations of corruption, and lack of accountability.[3,4] In 2009, the Yashpal Committee and the National Knowledge Commission recommended separating the regulation of medical education and medical practice.[5,6] The recommendation stated that the MCI should not be responsible for regulating medical education and should be a professional body that conducts qualifying examinations for entering the medical profession.

In 2011, the Higher Education and Research (HER) Bill, 2011 and the National Commission for Human Resources for Health (NCHRH) Bill, 2011 were introduced in Parliament. The HER Bill, 2011 sought to consolidate the regulators of all higher education (including medical education) under a single regulator. At the same time, the NCHRH Bill, 2011 set up the NCHRH as a single regulator with three Boards under it to regulate medical education, medical practice, and establishment and accreditation of medical colleges. The Standing Committee Report on the HER Bill, 2011 stated that medical education and research should not be separate and recommended that these be regulated by the NCHRH.[7] The Standing Committee on the NCHRH Bill, 2011 asked the government to bring a revised Bill before the Parliament.[8] While the HER Bill, 2011 has been withdrawn, the NCHRH Bill, 2011 is pending in Parliament.

The Parliamentary Standing Committee (2016), and Expert Committees under the Chairmanship of Prof. Ranjit Roy Choudhary and the NITI Aayog (2016) have suggested legislative changes in order to overhaul the functioning of the MCI.[4,9] The NITI Aayog recommended changes in the composition of the MCI and creation of several autonomous Boards in order to address different functions such as medical education and qualifying examinations, medical ethics and practice, and accreditation of medical colleges.[10] The National Medical Commission Bill, 2017 was introduced in Lok Sabha on December 29, 2017. The Bill repeals the Indian Medical Council Act, 1956.

Key Features

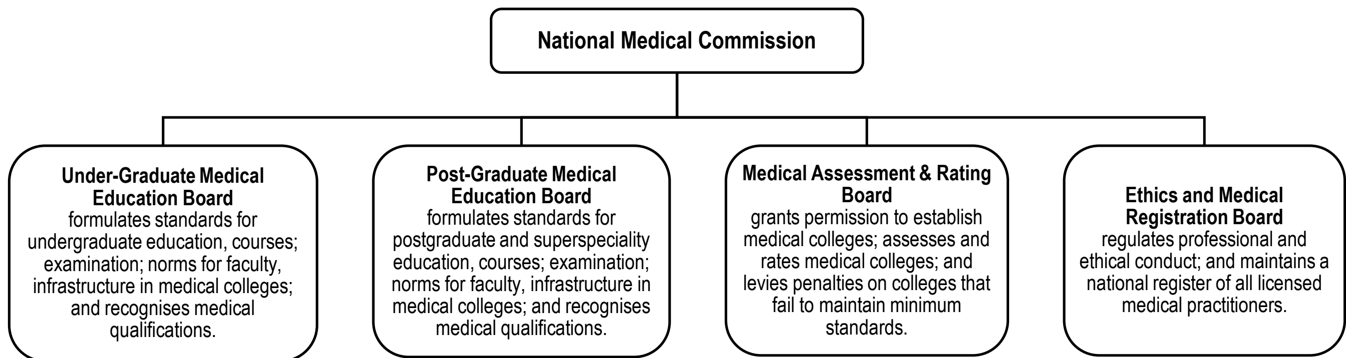
Composition and Functions of the National Medical Commission

- The Bill sets up the National Medical Commission (NMC). The NMC will consist of 25 members. A Search Committee will recommend names for the post of Chairperson, and part-time members. The term of the members of the NMC will be a maximum of four years, with no reappointment.
- The Search Committee will consist of seven members including the Cabinet Secretary, Union Health Secretary, CEO of NITI Aayog, and four experts nominated by the central government (of which, two have experience in the medical field).
- Members of the NMC include: (i) the Chairperson, (ii) four Presidents of the Boards set up under the NMC, (iii) Director Generals of the Directorate General of Health Services and the Indian Council of Medical Research, (iv) five Directors of medical institutions including the AIIMS, Delhi and JIPMER, Puducherry, (v) five members (part-time) to be elected by the registered medical practitioners, and (vi) three members appointed on rotational basis from amongst the nominees of the states in the Medical Advisory Council.
- Functions of the NMC include: (i) framing policies for regulating medical institutions and medical professionals, (ii) assessing the requirements of healthcare related human resources and infrastructure, and (iii) framing guidelines for determination of fees for up to 40% of the seats in the private medical institutions and deemed universities which are regulated as per the Bill.
- Medical qualifications granted by any statutory or other body in India which are covered by the categories listed in the Bill's Schedule will be recognised medical qualifications. Institutes of National Importance (such as AIIMS and JIPMER) have their own Act of Parliament and do not fall under the NMC.

Autonomous Boards

- Four autonomous Boards have been set up under the supervision of the NMC. Each autonomous Board will consist of a President and two members, appointed by the central government.

Figure 1: The four autonomous Boards under the NMC



Medical Advisory Council

- The central government will constitute a Medical Advisory Council. The Council will be the primary platform through which the states/union territories can put forth their views and concerns before the NMC. Further, the Council will advise the NMC on measures to enable equitable access to medical education.

Qualifying examinations

- There will be a uniform National Eligibility-cum-Entrance Test for admission to under-graduate medical education in all medical institutions regulated by the Bill. There will be a National Licentiate Examination for the students graduating from medical institutions to obtain the licence for practice. This examination will also serve as the basis for admission into post-graduate courses at medical institutions.
- The NMC may permit exceptions from National Licentiate Examination in certain cases. Foreign medical practitioners will be permitted temporary registration in India in such manner as may be prescribed.
- The NMC and the Central Councils of Homoeopathy and Indian Medicine may approve bridge courses for the practitioners of AYUSH to enable them to prescribe modern medicines at such level as notified by the central government.

Appeal on matters related to professional and ethical misconduct

- State Medical Councils will receive complaints relating to professional or ethical misconduct against a registered medical practitioner. If the medical practitioner is aggrieved of a decision of the State Medical Council, he may appeal to the Ethics and Medical Registration Board.
- The State Medical Councils and the Ethics and Medical Registration Board have the power to take disciplinary action against the medical practitioner including imposing a monetary penalty. If the medical practitioner is aggrieved of the decision of the Board, he can approach the NMC to appeal against the decision. Appeal of the decision of the NMC lies with the central government.

Offences and penalties

- No person is allowed to practice medicine as a qualified medical practitioner other than those enrolled in a State Register or the National Register. Any person who contravenes this provision will be punished with a fine between one and five lakh rupees.

PART B: KEY ISSUES AND ANALYSIS

Composition of the National Medical Commission

Clause 4

The Bill sets up the National Medical Commission (NMC) as the regulator for medical education and practice. The NMC will consist of 25 members, of which at least 17 (68%) are medical practitioners.

The current regulator is the Medical Council of India (MCI) which is an elected body where the President and members of the MCI are elected by medical practitioners themselves. The Bill replaces the MCI with the NMC which is not an elected body. The Parliamentary Standing Committee (2016) when examining the composition

of the MCI noted that it is not diverse and consists mostly of doctors who look out for their own interest over public interest.[4] The Committee recommended that to reduce the monopoly of doctors, the MCI should include diverse stakeholders such as public health experts, social scientists, health economists, and health related non-government organisations.

Note that in the United Kingdom, the General Medical Council which is responsible for regulating medical education and practice consists of 12 medical practitioners and 12 lay members (such as community health members, and administrators from local government).[11]

The Parliamentary Standing Committee on Health and Family Welfare (2018) examining the NMC Bill, 2017 recommended increasing the total strength of the NMC from 25 members to 29 members.[12] Further, it stated that nine members should be elected by registered medical practitioners from amongst themselves for proper representation of elected members in the NMC which mostly consists of nominated members.[12] This proposal would increase the representation of doctors to 72% of the NMC.

Power to set the fees

Clause 10 (1) (i)

The Bill gives the NMC the power to frame guidelines for determination of fees for up to 40% of seats in private medical colleges and deemed universities. The question is whether the NMC as a regulator should regulate fees charged by private medical colleges.

Typically, the private sector is driven by a profit motive but in India the Supreme Court has held that private providers of education have to operate as charitable and not-for-profit institutions.[13] In 2002, the Supreme Court ruled that the fees charged by private unaided educational institutes could be regulated. Also, while banning capitation fee, it allowed institutes to charge a reasonable surplus, which has to be used for its expansion and development.[14,15] However, several Expert Committees have noted that many private education institutions charge exorbitant fees which makes medical education unaffordable and inaccessible to meritorious students.[4,5,10] Therefore, currently, for private unaided medical colleges, the fee structure is decided by a Committee set up by the state governments under the chairmanship of a retired High Court judge.[16] This Committee decides whether the fee proposed by a college is justified and its decision is binding.

On the other hand, private colleges claim that fees need to be revised periodically to cover for (i) increasing costs of maintenance, and administrative expenses, (ii) revision in pay to faculty and staff, (iii) maintenance of lab equipment, additional resources required for value added courses, and other unforeseen circumstances.[17] The NITI Aayog Committee (2016) was of the opinion that a fee cap would discourage the entry of private colleges, therefore, limiting the expansion of medical education in the country.[10] It also observed that it is difficult to enforce a fee cap and could lead medical colleges to continue charging 'under the table' capitation fees and other periodic fees on various pretexts.[10]

Note that the Parliamentary Standing Committee (2018) has recommended continuing the current system of fee structures being decided by the Committee under the chairmanship of a retired High Court judge.[12] However, for those private medical colleges and deemed universities currently unregulated under an existing mechanism, fee must be regulated for at least 50% of the seats. The Union Cabinet has approved an Amendment to increase the regulation of fees to 50% of seats.[18]

Appeal on decisions related to professional and ethical misconduct

Competence of central government in hearing appeals related to misconduct by doctors

Clause 30

Under the Bill, the State Medical Council established under respective state laws will receive complaints relating to professional or ethical misconduct against a registered medical practitioner. If the medical practitioner is aggrieved of a decision of the State Medical Council, he may appeal to the Ethics and Medical Registration Board. The State Medical Councils and the Ethics and Medical Registration Board have the power to take disciplinary action against the medical professional including imposing a monetary penalty. If the medical practitioner is aggrieved of the decision of the Board, he can approach the NMC to appeal against the decision. Clause 30(5) of the Bill states that the appeal of the decision of the NMC lies with the central government. It is unclear why the central government is an appellate authority with regard to matters related to professional or ethical misconduct of medical practitioners.

It may be argued that disputes related to ethics and misconduct in medical practice may require judicial expertise. For example, in the UK, the regulator for medical education and practice – the General Medical Council (GMC) receives complaints with regard to ethical misconduct and is required to do an initial documentary investigation in the matter and then forwards the complaint to a Tribunal. This Tribunal is a judicial body independent of the GMC.[11] The adjudication decision and final disciplinary action is decided by the Tribunal.

Further, the Bill does not specify a time period for the central government to decide on such an appeal. Note that the Parliamentary Standing Committee (2018) stated that giving the appellate jurisdiction to the central government does not fit into the constitutional provision for separation of powers.[12] It recommended constitution of a Medical Appellate Tribunal instead.[12]

Composition of State Medical Councils

Clause 30

The Bill states that where a state law confers power on the State Medical Councils to take disciplinary action against professional and ethical misconduct by a medical practitioner, the State Medical Council will redress complaints related to misconduct by medical practitioners.

Currently, 29 states have established state medical councils which are required to prescribe a code of ethics for regulating the professional conduct of medical practitioners and take disciplinary action against them for violating the code of ethics.[2] In various states including Gujarat, Maharashtra, and Delhi, the State Medical Council is an elected body composed primarily of medical practitioners (governed by their own respective state Acts).[19,20,21] In this context, NITI Aayog on the Draft NMC Bill (2016) has noted that there may be a conflict of interest if members of the 'regulator' (State Medical Councils primarily consist of medical practitioners) are elected by those that are 'regulated' by it (medical practitioners).[10]

The Parliamentary Standing Committee (2016) noted that the Ethics Committee of the current MCI consists entirely of medical doctors and is thus a self-regulatory body which will have a tendency to "protect its own flock".[4] It further observed that the State Medical Councils delay ethics related adjudications beyond six months (the stipulated time limit to give a decision) and no action gets taken against errant doctors.[4] The Committee recommended inclusion of lay persons in the State Medical Councils to ensure more accountability on issues of medical ethics.

Issues with the National Licentiate Examination

Exemptions with regard to the National Licentiate Examination

Clause 15, 33(1)

The NMC may permit a medical practitioner to perform surgery or practice medicine without qualifying the National Licentiate Examination, in such circumstances and for such period as may be specified by regulations. The Ministry of Health and Family Welfare has clarified that this exemption is not meant to allow doctors failing the National Licentiate Examination to practice but is intended to allow medical professionals like nurse practitioners and dentists to practice.[22] The implication that the term 'medical practitioner' includes medical professionals other than MBBS doctors is unclear from the Bill.

Renewal of licence to practice

Clause 15

The Bill introduces a National Licentiate Examination for students graduating from medical institutions to obtain the licence to practice as a medical professional. The Bill does not specify the validity period of this licence to practice. In other countries such as the United Kingdom (UK) and Australia, such a licence to practice needs to be periodically renewed. For example, in the UK the licence has to be renewed every five years, and in Australia it has to be renewed annually.[23,24] This is to ensure that doctors are up to date, fit to practice, and able to provide a good level of care. For this purpose, they must show continuing professional development, an unobjectionable criminal record, and adherence to professional standards.[23,24]

Bridge course for AYUSH practitioners

Differing views on introduction of a bridge course for AYUSH practitioners

Clause 49

The Bill allows a bridge course for the practitioners of AYUSH to enable them to prescribe modern medicines at such level as notified by the central government. Further, a separate National Register for licensed AYUSH practitioners who qualify the bridge course will be maintained. The Parliamentary Standing Committee (2018) stated that the provision on the bridge course need not be mandated in the Bill and the state governments can make such choices at their own level keeping in mind their respective health challenges.[12] Further, there are differing views on whether AYUSH practitioners should prescribe modern medicines.

Over the years, various committees have recommended functional integration among various systems of medicine i.e. Ayurveda, modern medicine and others, and a monitoring of such integrative medicine practices.[25,26] The National Health Policy 2017 also recommended the mainstreaming of AYUSH with the general health system but with the addition of a mandatory bridge course that gives competencies with respect to allopathic remedies.[27]

On the other hand, experts have highlighted certain issues with this provision of AYUSH practitioners being able to prescribe modern medicine under the Bill.[28,29,30] They state that the bridge course may promote the

positioning of AYUSH practitioners as stand-ins for allopathic doctors owing to the shortage of doctors across the country. This may affect the development of AYUSH systems of medicine as independent systems of medicine. Further, they note that under the Bill, AYUSH doctors do not have to go through any licentiate examination to be registered by the NMC, unlike the other doctors. The Union Cabinet has approved an Amendment to remove the provision of the Bridge course.[18]

Ability of other medical personnel to prescribe modern medicine

In January 2018, the Ministry of Health and Family Welfare stated that the doctor population ratio in India is 1:1655 compared to the World Health Organisation standard of 1:1000.[22] The introduction of the bridge course for AYUSH practitioners under the Bill will help fill in the gaps of availability of medical professionals.[22] If the purpose of the bridge course is to address shortage of medical professionals, it is unclear why the option to take the bridge course does not apply to other cadres of allopathic medical professionals such as nurses, and dentists. Note that whether the term 'medical practitioner' includes medical professionals other than MBBS doctors is unclear from the Bill. There are other countries where medical professionals other than doctors are allowed to prescribe allopathic medicine. For example, Nurse Practitioners in the USA provide a full range of primary, acute, and specialty health care services, including ordering and performing diagnostic tests, and prescribing medications.[31] For this purpose, Nurse Practitioners must complete a master's or doctoral degree program, advanced clinical training, and obtain a national certification.

Note that the Draft Medical Termination of Pregnancy (Amendment) Bill, 2014 sought to amend the law to expand the ambit of who can perform an abortion (up to 24 weeks of pregnancy) to include a nurse or an auxiliary nurse midwife, and AYUSH practitioners.[32] This Bill has not been introduced in Parliament.

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