



# INDIAN MEDICAL ASSOCIATION (HQS.)

(Registered under the Societies Act XXI of 1860)

Mutually Affiliated with the British & Nepal Medical Associations

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IMA/HSG

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To,

The Honourable Member of Parliament.

Respected Sir/ Madam,

Indian Medical Association represents the modern medicine doctors of India. More than 3 lakhs members over 1700 local branches in 29 states and 3 Union Territories.

- The Government of India had introduced the **National Medical Commission Bill 2017** in the Lok Sabha which was referred to Parliamentary Standing Committee on Health. The Parliamentary Standing Committee after examining large number of witnesses, experts various stakeholders etc. had recommended 24 amendments unanimously in the said bill. Government of India has accepted only one recommendation in toto and three others in partial manner. It is pointed out that this NMC Bill still remains Anti-democratic, Anti-federal, Anti-poor, Pro-rich and intends to centralize the total authority with the Government of India. IMA is determined to resist NMC at all costs. IMA's concerns have been appended.
- IMA has very strong reservations in the way that an elected MCI was superseded for no credible reason. Moreover undue haste was shown to proclaim an ordinance creating a nominated Board of Governors while the election process was under way. MCI represents the plurality of opinion from multitude of institutions in our federal nation. It is preposterous to install a Group of nominated Board of Governors who will never be able to fulfil the legitimate aspirations of diverse people of our country. We unequivocally oppose this coloured exercise of power. We have enclosed our status paper for your study and support. **The IMC (amendments) Bill 2018** was passed by Lok Sabha on 31/12/2018.
- The original Consumer Protection Act, 1986 passed by the Parliament did not envisage to include the medical profession. Medical profession was brought under the purview of Consumer Protection Act in 1994 following a Supreme Court verdict in V.P. Shanta Vs Indian Medical Association case. Indian Medical Association had placed certain suggestions for the draft Bill 2015 which were put in public domain but have not been considered in the 2018 Bill. **Consumer Protection Bill 2018** has been passed by Lok Sabha on 20. 12.18. There are serious concerns regarding this Bill which can affect common people.

Hence we put forward the following points for your consideration and request on behalf of the medical fraternity for your indulgence.

With regards,

Yours sincerely,

**Dr. Santanu Sen**  
National President, IMA  
Member of Parliament  
(Rajya Sabha)

**Dr A. Marthanda Pillai**  
Chairman,  
IMA Standing Committee for Action

**Dr. R.V. Asokan**  
Hony. Secretary General, IMA

**National Medical Commission Bill 2017**  
**An Anti Poor, Anti People, Anti Federal legislation**

The Government of India, has proposed National Medical Commission Bill 2017, which when adopted would result in repeal of Indian Medical Council Act, 1956. The proposed Bill by virtue of its inclusions which are draconian in character and are totally aimed at centralizing the entire authority in the hands of Government of India, is not in public interest as well as is prejudicial to the medical education and profession as a whole.

- Upon even the advent of the **National Medical Commission Bill 2017**, private medical colleges in states like Uttarakhand and Maharashtra raised their fee to 25 to 30 Lakhs per year for MBBS. **Reservation of 50% of the seats to the rich**, who can pay, is denial of equitable opportunities and hence is certainly anti people. The attitude and aptitude of the future doctors are bound to be commensurate to this infamous intervention.
- At present most of the states have in place a **fee fixing committee** due to a **Supreme Court order**. This has resulted in the state Government having a quota of 50% in private medical colleges in most of the states. These Government selected meritorious students pay fee as in Government medical colleges. Even in the next 50% the colleges are allowed to have a higher fee for only up to 15 % of the seats (NRI seats). In the rest of 35% of the states an intermediate level affordable fee of around 5 lakhs is levied. NMC will change all these. As a matter of fact there is no comparable legislation which has reservation for the rich .
- **State Medical Councils** have come into existence due to legislations of the state legislatures. They are fully under the control of State Governments and they have independence of functioning especially in regulation of medical practice. They do not interfere in medical education. This independence including disciplinary control of medical practice is vital as per the field conditions. NMC brings in regimentation and lack of choice. In all issues the state medical councils have to abide by the National Medical Commission.
- **Representation to the states by rotation** is an anti federal idea. The views of the states are valuable in real time and not in once in 4-5 years . Every state is unique in its needs and infrastructure and this is bound to result in widespread dissatisfaction. There is also the real danger of this anti federal idea spilling over to other institutions affecting the whole gamut of Centre –State relationship.
- **State Health Universities** had a robust role in modulating the syllabi and the curriculum of medical education. In NMC they have been relegated to a secondary role in the National Advisory council.
- NMC as such remains an **anti poor, anti people and anti federal** law which if allowed to be passed will have unforeseen consequences on not only Health sector but also on the federal structure of the country.

**NON-INCLUSIONS IN THE PROPOSED BILL:**

1. **Concept of renewal of registration**
2. **Medical education under the ambit of development grants**
3. **Prescription of service condition of medical teachers**
4. **Prescription of pay scales accruable to medical teachers**
5. **Prescription of National Perspective Plan for geographic location of medical schools in the context of equity and equitability.**

## **Note on dissolution of Medical Council of India**

The Government of India unilaterally and without any provocation superseded elected Medical Council of India reconstituted by itself on 5th November, 2013 by an ordinance dated 26th September, 2018 availing authority vested with it under section 3(A) of the IMC Act, 1956. However, the said supersession invoked by Government of India, is without assigning any reason for the same and also without furnishing any opportunity of say to the elected reconstituted members of the Medical Council of India including its President, Vice President and Chairman of the Postgraduate Medical Education Committee in conformity with the principles of natural justice. The said elected Body upon supersession has been replaced by a handpicked group of people who are all Govt. servants on whom Govt. has total disciplinary jurisdiction and control as well with effect from 26th September, 2018.

The ordinance was required to be dealing with an emergency situation specially in the context of an urgent need of public interest. The preamble to the said ordinance does not give any indication of any need for which the ordinance has been issued and also no justification of the urgency is depicted. The preamble is very generic in character. On what basis the said generic conclusion has been drawn by the Government of India, has not been depicted in any manner whatsoever. Moreover, the urgency and the reason for which the elected Council was superseded and as to how the same has been dealt by the present Board of Governors in the impending three months' time is also not known to anybody and is not in the public domain.

The proposed ordinance creates a post of Secretary General and appointment to that has also been made. The said post is created in addition to the post of Secretary of the Medical Council of India, which is already covered in the present Act. Moreover, the recruitment rules for the appointment to the post of Secretary General have not been brought out in any manner. Who would have a disciplinary jurisdiction on the said Secretary General is a matter of mystery, and the entire exercise as such is arbitrary, uncalled for and without any application of mind.

It is pertinent to note that the experimentation of Government of India, of replacing the elected Medical Council of India by handpicked Board of Governors is not new. It was done by promulgation of an Ordinance by the President of India on the advice of Council of Ministers, Government of India, on 15th May, 2010. The said supersession vide the ordinance was with assigned reasons specifically mentioned thereto.

Upon supersession of the Medical Council of India in May, 2010, it was replaced by a 7 Members Board of Governors, which was changed three times in a period of three years, by the Government of India, itself which speaks volumes about the inefficient handling of affairs of the Medical Council of India by the said handpicked set of Board of Governors. The first Board of Governors was headed by Dr. S. K. Sarin in 2010, which was replaced by another set of Board of Governors in 2011-12 headed by Dr. K. K. Talwar and in 2013 the third set of Board of Governors was nominated headed by Dr. S. K. Shrivastava.

Finally having realized its folly the very Government of India, was constrained to reconstitute the Medical Council of India in terms of section 3 of the Indian Medical Council Act, 1956 on 5th November, 2013.

The five year term of the said elected Medical Council of India was to expire on 5th November, 2018. In terms of the statutory rules the Government of India, was duty bound to reconstitute the Medical Council of India vide the process being initiated at least 90 days before the expiry of the term of the existing body. Accordingly, the Ministry of Health and Family Welfare, Government of India, through their Notification informed the Health Sciences Universities, the various State Govts. and Union Territories, the traditional universities having medicine faculty to conduct the elections and nominations towards constituting the Medical Council of India afresh, so that the same is put into place in view of the term of existing council getting completed on 5th November, 2018.

In the wake and the teeth of the said Notification the sudden decision of the Government of India, to supersede the Medical Council of India by issuance of an Ordinance by the President of India is an exercise which is solely aimed at thwarting a democratically elected body being put into place. The action so taken was sudden, unilateral, without any provocation and assigning any reasons thereto and also without affording an opportunity of hearing given to the Office bearers of the superseded council in conformity with the principles of natural justice and therefore, cannot be said to be well intended and in public interest, legally tenable, morally viable and ethically responsible.

## CONSUMER PROTECTION BILL 2018

Consumer Protection Bill 2018 has been passed by Lok Sabha on 20. 12.18. The original Consumer Protect Act,1986 passed by the Parliament did not envisage to include the medical profession. Medical profession was brought under the purview of Consumer Protection Act in 1994 following a Supreme Court verdict in V.P.Shanta Vs Indian Medical Association case.

The Salient points regarding Consumer Protection Bill 2018 passed by Lok Sabha on 20.12.18 which will have impact on the health sector are

- **District consumer redressal forum's** jurisdiction increased from **Rs 10 Lakhs to Rs 1 crore**. Jurisdiction of **State Consumer Commission** increased from **1 crore to 10 crores**
- **No provision for a Judicial member** in the current Act.
- Not only patients, but Associations and other bodies can complain to Consumer Fora.
- Provision for Consumer mediation cells which will be misused to harass and blackmail doctors. No expert medical opinion is required.

### Composition of the Commissions:

The Bill specifies that the Commissions will be headed by a 'President' and will comprise other members. However, the Bill delegates the power of deciding the qualifications of the President and members to the Central Government. It also does not specify that the President or members should have minimum judicial qualifications. This is in contrast with the existing Consumer Protection Act, 1986, which states that the Commissions at various levels will be headed by a person qualified to be a judge. The 1986 Act also specifies the minimum qualification of members. Under the current Bill, if the Commissions were to have only non-judicial members, it may violate the principle of separation of powers between the executive and the judiciary. Since these Commissions are adjudicating bodies and will look at consumer dispute cases, it is unclear how a Commission that may comprise only non-judicial members will undertake this function.

### Method of appointment :-

The Bill permits the central government to notify the method of appointment of members of the Commissions. It does not require that the selection involve members from the higher judiciary. It may be argued that allowing the executive to determine the appointment of the members of Commissions could affect the independent functioning of the Commissions. This provision is also at variance with the 1986 Act. Under the Act, appointment of members to these Commissions is done through a selection committee. These section committees comprise a judicial member. As mentioned previously, the Commissions are intended to be quasi-judicial bodies, while the government is part of the executive. There may be instances where the government is a party to a dispute relating to deficiency in service provided by a government enterprise, for e.g., the Railways. In such a case, there would be a conflict of interest as the government would be a party to the dispute before the Commissions and will also have the power to appoint members to the Commission

CPA was a turning point in the Health care industry. CPA was the prime reason for manifold escalation of the Healthcare cost. Mindless litigations and defensive practices flow from CPA. Slowly and steadily small and medium hospitals have been eliminated. For profit Hospitals have taken over the secondary care as well.

**Indian Medical Association**, the umbrella organisation of all modern medical practitioners in the country representing 8.5lakhs modern medical practitioners is very much concerned about many of the provisions of Consumer Protection Bill 2018. We feel that this move will cause further increase in treatment cost, make health care unaffordable and inaccessible to weaker sections of the society, promote corporatization of health care make small and medium hospitals unviable and will make implementation of public funded health programs difficult. On one hand Government is concerned about the catastrophic Health care cost and on the other hand the same Government indirectly changes the rules of the game. What has to be realised is that such moves hit people directly. More

and more people will go below the poverty line every year. Apart from the adverse impact on the small and medium hospitals, all small entrepreneurs across the spectrum will also be hit.

In this background, Indian Medical Association had placed certain suggestions for the draft bill 2015 which were put in public domain but have not been considered in the 2018 Bill.

**Hence we put forward the following points for your consideration**

1. Very high compensation awards give rise to more frivolous litigations and indirectly promote defensive medicine. The compensation awards for medical negligence cases have to be capped to levels prescribed for drug trials.
2. A court without a Judge will be a **Kangaroo court**. A court cannot be entirely constituted with lay persons.
3. Litigations by organisations or associations are of vindictive in nature. These organisations have no locus standi in law. It will be a bad precedence to allow such a practice.
4. Peer expert opinion need to be made mandatory before taking up a case of medical negligence by the consumer fora. This has been emphasized in the judgement by Martin D'Souza Vs Mohammed Ishaq read in 2009(3) SCC-1.
5. Representatives of Indian Medical Association have to be included in the consumer mediation cells and district, state and national consumer councils.
6. Provisions for imposing sufficient penalty for frivolous complaints have to be retained.