

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

#	Chapter	Clause	Section	Point for Discussion
	General			<p>(1) There is nothing new in the proposed bill. All the functions enumerated therein are already being carried out by Medical Council of India presently under the aegis and provisions of present IMC Act which the proposed bill seeks to repeal. This is nothing else but “old wine in new bottle.”</p> <p>(2) The representative character of Medical Council of India and the fine balance between elected and nominated members has been completely given go bye in the process. In fact in the proposed bill there is total exclusion of elected members thereby making a mockery of democratic process.</p> <p>(3) There are other professional Councils under Health & FW department like Dental Council of India, Nursing Council of India, Pharmacy Council of India or under other departments like Bar Council of India. However proposed bill is brought for abolishing Medical Council of India only. There is no proposal in respect of other Councils or even a whisper about such a move. There is no legitimate reason for giving such motherly treatment to Medical Council of India.</p> <p>(4) <u>IMA totally opposed this Bill – In Toto</u></p> <p>(5) <u>If implemented, non MBBS doctors can be the decision makers , and non MBBS doctors can get registered in NMR & start practising modern medicine.</u></p>
1	Short Title		1 (2)	Will it extend to J & K ? Present IMC Act specifically says “including Jammu & Kashmir.”
2	Definition	Definition	K	<p>The draft NMC Bill 2016, Sec 2, DEFINITONS,(k) states that “Medicine” means, unless the context demands otherwise, all branches of allopathic medicine such as surgery, paediatrics and obstetrics and gynaecology but does not extend to Indian systems of medicine such as homeopathy or to veterinary medicine, veterinary surgery and dentistry.</p> <p>IMA object to this definition itself, as it is totally wrong. The system of medicine that we are trained in and practicing is NOT called allopathic medicine at all. It is termed either as modern scientific medicine or as Evidence Based Medicine. The</p>

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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				prevailing Indian medical Council Act, 1956, Sec 2, DEFINITIONS,(g) defines "medicine" as modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine.
3	Medical Advisory Council <u>(MAC)</u>	Constitution	3 (2)	<p>(1) All members (i.e. 100 %) are nominated members. There is no representative character.</p> <p>(2) Universities which are a major stakeholder have no representation.</p> <p>(3) State Medical Councils which regulate medical practitioners within their respective States have no representation.</p> <p>(4) Chairperson of NMC is ex-officio Chairperson of MAC. This strikes at the root of autonomy of Advisory Council.</p>
		Functions	4(1)	Role of National Advisory Council is entirely advisory. Thus it will have no powers to enforce its decisions or any policy matter which it deems fit. It will turn into a toothless tiger.
			4 (3)	One of the function of MAC is to advise <u>NMC</u> on measures to determine, maintain, co-ordinate minimum standards in medical education, training & research; however surprisingly not a single member is from Medical Education or from Universities.
4	National Medical Commission	Constitution	6 (4)	<p>Chairperson & Member Secretary are appointed / nominated by Central Govt. Out of remaining 8 are Ex-officio members & 10 are part time members. Out of 8 Ex-officio members, 4 are Presidents of respective Boards & 4 are nominated members. Out of 10 part time members, 5 will be appointed by Central Govt. form diverse background which are non-medical. Remaining 5 part time members shall be nominated from amongst members of NAC who have been nominated by States in rotation for a 2 year term. This will lead to the following:</p> <p>(1) There are 30 States in India. As members of only 5 States can be nominated simultaneously, chance of any one State to have nominee will come once in 12 years only and that too for a 2 year term against one nominee for full 5 year term in present</p>

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				<p>MCI. Even in this actually States will have no say as these members will be nominated by Central Govt. from members of MAC. <u>The Ruling Party may ignore non ruling status.</u></p> <p>(2) This will be 100 % nominated Commission having no representative character which is contrary to democratic tenets.</p> <p>(3) Out of 4 nominated members, 3 are representatives from Ministries who are non-medical. 5 part time members are from diverse non-medical background. Thus out of 18 members, as many as 8 –i.e. 44 % - will be from non-medical background who will decide highest level policy matters related with medical education !</p> <p>(4) General superintendence & control is with Chairperson. This is certainly undemocratic.</p> <p>(5) Although Universities are major stakeholders, they will have no representation in NMC.</p> <p>(6) Similarly, State Medical Councils will have no representation in NMC.</p>
		Secretariat	7 (2)	<p>Member Secretary shall be appointed by Central Govt. and <u>not</u> by NMC. His term of appointment is only for 4 years and he is not eligible for reappointment. This condition of not being eligible for re-appointment may not attract best talents.</p>

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		Appointment of Chairperson & President (1)	8(1) & 8 (2)	Selection criterion at least 10 years in leadership role in area of health care, delivery, growth and development of modern medicine & medical education is vague. What constitutes “leadership role” needs to be precisely defined. It should be restricted to senior faculty position.
		Qualification (2)		<p>The draft NMC Bill 2016, Sec 8, Qualification for appointment as Chairperson of the Commission - President of the Boards stipulates that (1) The Chairperson shall be a person of outstanding ability, proven administrative capacity and integrity with a post graduate degree in any discipline of medical sciences from a university and (2) the Presidents of the Boards shall be persons of outstanding ability, proven administrative capacity and integrity with post-graduate degree in the disciplines of medical science, medical education, public health, community medicine or health research from a University.</p> <p>This would mean that only the Chairperson of NMC shall be a person with a post graduate degree in any discipline of medical sciences and the other Presidents of the Boards can be persons with post-graduate degree in any of the vaguely termed disciplines of medical education, public health, community medicine or health research, not necessarily being a post graduate in medical sciences.</p> <p>This is totally unacceptable and we strongly object to any clause that allows a non-medical professional to become a President or even a member of any organisation that is empowered to regulate medical profession.</p> <p>Hence the presidents of the boards shall also be a person of outstanding ability, proven administrative capacity and integrity with a post graduate degree in any discipline of modern medical sciences from a university.</p> <p>Selection criterion at least 7 years in leadership role is vague. What constitutes “leadership role” needs to be precisely defined. Position of President of Boards dealing with Medical Education should be restricted to senior faculty position.</p>

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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		Search & Selection Committee	10 (3)	<p>Search & Selection Committee is fully comprising of Government officials & nominees. It is not made clear how the Search & Selection Committee would select personnel whose names would be included in the panel of names. It is merely said that Search cum Selection Committee may regulate its own procedure.</p> <p>The draft NMC Bill 2016, Sec 10, Search and Section Committee, proposes to include. Cabinet Secretary ii. CEO, NITI Aayog iii. Secretary to the Government of India, in charge of the Ministry of Health and Family Welfare, as the Convenor and iv, v, a medical professional and a management, or law, or economics or science and technology professional to be nominated by Ministry of Health and Family Welfare, Government of India.</p> <p>This is totally unacceptable and should be abandoned.</p> <p>According to the proposals of the NMC Bill, one medical professional and 4 others not necessarily medical professionals will be in charge of NMC and 4 Boards, deciding and regulating each and every aspect of medical profession in India, from admission to qualification, to registration, to regulation of professional conduct. And these 5 individuals are to be nominated by 5 individuals, of whom 3 are bureaucrats and two others are nominated by the same bureaucrats and political leadership.</p> <p>This is not only undemocratic, but also dangerous to the very existence of modern medical practice in India.</p> <p>Therefore, we strongly object to any such proposals that will take away the self-regulatory structure of the Medical Council, as enshrined in our prevalent laws and we are of the opinion that all of the committee should be persons having modern medical qualification; otherwise it will not be a representative body of medical profession.</p>

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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		Terms	11 (3)	<p>(1) Maximum 2 terms for Chairperson/President are prescribed which is against democratic tenets.</p> <p>(2) Maximum age prescribed for Chairperson is 70 years & for President / Member of Board as 65 years which also are against democratic tenets.</p>
		Service Conditions	12 (3) & (5)	Section 12 (3) prohibits Chairperson/President/Member from accepting employment in private medical college for a period of 1 year. Section 12 (5) allows Central Govt. to permit Chairperson/President/Member for accepting such appointment. Section 12 (5) stipulates discretionary authority and would lead to nepotism & favouritism in the matter of Central Govt. permitting such employment.
		Resignation, Removal	13 (2) c	It permits Central Govt. to remove Chairperson/President/Member on the ground being physically or mentally incapable of performing his or her duties. This is too vague.
			13 (2) g	It permits Central Govt. to remove Chairperson/President/Member on the ground that “ has so abused his position as to render his continuance in office prejudicial to public interest.” This is too vague.
			13 (2) j	It permits Central Govt. to remove Chairperson/President/Member on the ground that “ has not been able to perform or has made persistent defaults ---.” This is too vague.
			13 (2) j ii	It permits Central Govt. to remove Chairperson/President/Member on the ground that “either wilfully or without sufficient cause neglects to comply with directions issued by the Central Govt. u/s 40 & 41. ” This strikes at the root of autonomy of NMC. It will make NMC entirely a department of Central Govt.
		Powers	14 (5)	It envisages that NMC can take action against State Medical Councils as it deems fit to ensure compliance. This is totally contrary to federal structure as State Medical Councils are independent Councils constituted under their respective State Legislatures and will act as per provision of their respective acts. NMC cannot have such overarching jurisdiction.

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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			14 (6)	Power of Appellate Authority over UGMEB, PGMEB & MARB which are its own constituent units is antithesis to normal functioning and such a provision does not exist anywhere. Appellate Authority has to be outside the purview & has to be independent organization (E.g. Income Tax Appellate Tribunal, etc.)
			14 (7)	Prescription of fees in Private Medical Institutions is contrary to Hon'ble Supreme Court order in Inamdar case wherein Fee Fixation Committee under the Chairmanship of Retd. High Court Judge are constituted for determining fees. Further this provision prescribes determination of fees for seats not exceeding 40 % and is silent on the fees for remaining seats. Thus it is incomplete proposition.
5	National Examination	NEET	16	<p>The draft NMC Bill 2016, Sec 16 proposes to bring the National Eligibility-cum-Entrance Test (NEET) for admission to under-graduate medical education under the purview of National Medical Commission and Sec 17 proposes to bring a National Licentiate Examination for the professionals graduating from the Medical Institutions under the purview of NMC. Sec 22 (4) empowers PGMEB under NMC to determine and prescribe the minimum requirements and standards for conduct of all post graduate and super specialty courses and their examinations in Medical Institutions and Sec 42(3) proposes the merger of the National Board of Examinations (NBE) with the PGMEB and allows the PGMEB to add into its fold the courses conducted by and qualifications awarded by NBE.</p> <p>These provisions would mean that 2-3 individuals, as NMC Chairman/Board Presidents, will control all the admissions to medical graduate courses, exit examinations at the end of graduation that would also be the entrance test for PG courses, and also PG courses and their examinations thereafter. And two of these Board Presidents need not be medical professionals at all.</p> <p>We strongly object to this proposal too and it must be totally abandoned.</p> <p>(1) Other languages for conducting NEET are not prescribed. Languages shown in the</p>

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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				<p>Schedules of Constitution of India must be included in the Act. Otherwise it would be a great disservice to a large mass of students who are studying in regional languages and who are coming from rural background.</p> <p>(2) Excluding institutions governed by their own Acts defeats the very purpose of NEET as it means multiple examinations. There is no justifiable reason for excluding them as such.</p>
		Licentiate Examination	17	<p>(1) This is not required at all and is unnecessary avoidable duplication. It also casts aspersion on Universities who are conducting M.B;B.S. Examinations. It would also reduce available manpower required providing needs because a student who has passed M.B;B.S. examination but fails in Licentiate examination would not be available for meeting health manpower needs. It is mindless copying of American system without application of mind & should not be accepted.</p> <p>(2) Excluding institutions governed by their own Acts cannot be permitted as there is no justifiable reason for excluding them as such. Such a provision does not exist anywhere. This also means that many other institutions owned by the Central Govt. but which are affiliated to Central / State Universities would not be exempted. This amounts to discrimination and demeaning of other institutions.</p>
6	UGMEB	Composition	18 (4)	Composition of Advisory Committee is not defined.
	<u>Under Graduate Medical Education Board</u>	Powers & Functions	19 (4)	<p>The phrase “... <i>leaving room for creativity at local levels including design of some courses by individual institutions</i>” is vague. It is not clear whether there would be any check over such locally designed courses. Traditionally MBBS has always been a single course; there may be variations in details of course curriculum & syllabus but there are no other courses under its ambit. Is it the wish to permit backdoor entry of local courses ?</p> <p>What would be the fate of such students who are coming out with such degrees ? Will they be permitted to register in IMR ?</p>
			19 (9)	This strikes at root of autonomy. If UGMEB has to seek directions from Government through

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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				Commission, where is the autonomy ?
		Decisions	20 (1)	President is empowered to take all decisions on behalf of UGMEB. This is too much concentration of power in a single individual. In such an eventuality, what is purpose of having such a board ?
			20 (2)	<p>(1) Appeal against the decision of UGMEB which is a constituent unit of NMC is to NMC itself which is not only not desirable but also against basic principle that “No man can judge his own cause.”</p> <p>(2) The decision of appeal by NMC is final and binding on all concerned. This means that there is no provision for external appeal at all. This is not only unjust but dictatorial as well. – <u>What about appeal in the High Court</u></p>
7	PGMEB <u>Post Graduate Medical Education Board</u>	Composition	21 (4)	Composition of Advisory Committee is not defined.
		Powers & Functions	22 (9)	This strikes at root of autonomy. If PGMEB has to seek directions from Government through Commission, where is the autonomy ?
		Decisions	23 (1)	President is empowered to take all decisions on behalf of PGMEB. This is too much concentration of power in a single individual. In such an eventuality, what is purpose of having such a board ?
			23 (2)	<p>(1) Appeal against the decision of PGMEB which is a constituent unit of NMC is to NMC itself which is not only not desirable but also against basic principle that “No man can judge his own cause.”</p> <p>(2) The decision of appeal by NMC is final and binding on all concerned. This means that there is no provision for external appeal at all. This is not only unjust but dictatorial as well.</p>
8	MARB <u>Medical Assessment &</u>	Composition	24 (4)	Composition of Advisory Committee is not defined.
		Powers &	25 (2)	Criteria for hiring a third party agency are not provided. It is not clear how it would be checked whether such third party agency has verified as per Rules & Regulations. Legal

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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	<u>Rating Board</u>	Functions		responsibility also needs to be fixed. Considering all aspects, verification has to be done through assessment cell in the Commission itself through assessors who would be appointed directly by the Board.
			25 (3)	Empanelling a rating agency is not a good idea. It is not clear how it would be checked whether such rating agency has verified & given rating as per Rules & Regulations. It is experience that presently there are many rating agencies who give rating as per their own methodology which is not in consonance with Regulations.
			25 (5)	This strikes at root of autonomy. If MARB has to seek directions from Government through Commission, where is the autonomy ?
		Decisions	26 (1)	President is empowered to take all decisions on behalf of MARB. This is too much concentration of power in a single individual.
			26 (2)	(1) Appeal against the decision of UGMEB which is a constituent unit of NMC to NMC itself which is not only not desirable but also against basic principle that “No man can judge his own cause.” (2) The decision of appeal by NMC is final and binding on all concerned. This means that there is no provision for external appeal at all. This is not only unjust but dictatorial as well.
		Permission to start new medical colleges	27 (4)	(1) It is envisaged that permission to start a new medical college would be given on basis of mere statement that adequate faculty and hospital facilities “ would be provided ”. This implies that permission to start would be given even if adequate faculty & hospital facilities are not available which is not only not conducive for growth of medical education but would lead to mushrooming of medical colleges with inadequate facilities. (2) It is not specified whether the facilities claimed to have been provided by institutes are to be verified or not. Granting permission to start new medical college without verification is fatal to organic growth of medical education and would lead to

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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				<p>mushrooming of medical colleges with inadequate facilities.</p> <p>(3) There is no mechanism to verify whether facilities as claimed “would be provided” have actually been provided or not within the prescribed time frame. Such sweeping provision without provision for verification is not conducive for healthy growth of medical education at all. What would be the fate of students admitted in such institutions in case the institute does not provide facilities as required ?</p>
9	BMR <u>Board for Medical Registration</u>	Composition	28 (4)	Composition of Advisory Committee is not defined.
		Powers & Functions	29 (1)	It is not clearly defined who will be the primary registering authority. This needs to be clarified.
			29 (2) ii	It is envisaged to include Organizations / Associations of Doctors within ambit of Regulation of Professional Misconduct. This is contrary to law as Organizations / Associations of Doctors are not registered. Code of Ethics can be made applicable only to a person who is registered. Hence provision to include Organization / Association of Doctors is wholly illegal. (Quote Hon’ble Delhi High Court order)
			29 (2) vii	This strikes at root of autonomy. If BMR has to seek directions from Government through Commission, where is the autonomy ?
		Persons included in National Register	31 (1)	Requirement of Licentiate Examination is not necessary at all and is wholly avoidable duplication. It also casts aspersion on Universities who are conducting M.B;B.S. Examinations. It would also reduce available manpower required providing needs because a student who has passed M.B;B.S. examination but fails in Licentiate examination would not be available for meeting health manpower needs. It is mindless copying of American system without application of mind & should not be accepted. Present system has worked well for more than 2 centuries and there is no ostensible reason to change.
			31 (3) (d) Proviso	It is envisaged that Commission may permit a medical professional to perform surgery or practice medicine without qualifying National Licentiate examination. This is antithesis of 31 (1) and would lead to treating unequal with equal. Such discretionary powers which strike at

NATIONAL MEDICAL COMMISSION ACT, 2016

COMMENTS & OBSERVATIONS

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				the root of a law or rule cannot be permitted and will encourage manipulation and corruption.
10	Recognition of Medical Qualifications	Qualifications in India	32	<p>(1) No provision is made for periodical renewal of recognition as is prevalent to-day.</p> <p>(2) See 33 (3). There is provision for appeal to Central Government in respect of institutions outside India. No such provision is made u/s 32 for institutions in India. There is no justifiable reason for doing so.</p>
		Foreign Qualifications	33	This is antithesis of 31 (2).
			34	No procedure is prescribed for including qualifications in Third Schedule.
		Other Medical Qualifications	35	<p>(1) Provision is recognizing “Other” medical qualifications granted by any other body is too vague and discretionary. It may provide back door entry for so many other “pathies” which are to-day excluded as per prevalent provisions of IMC Act.</p> <p>(2) Schedule IV is not defined.</p> <p>(3) Permitting such graduates on NMR will entitle him to all benefits & privileges, including admission in PG courses in allopathic medicine which cannot be permitted.</p>
		Special Provisions	37 (1)	This provides for granting recognition of qualifications after specified date. This is in antithesis to Section 31 (2). The purpose for this is not clear and is totally irrelevant on account of Section 33.
11	Miscellaneous	Power to give directions	45	It is envisaged that Central Government may give directions regarding policy matters or amending Regulations or to NMC / Boards. This strikes at the root of Autonomy of NMC and cannot be permitted at all in a democratic setup.