

Legislative Brief

The Indian Medical Council (Amendment) Bill, 2005

M R Madhavan
madhavan@prsindia.org

Ruchita Manghnani
ruchita@prsindia.org

Recent Briefs:

The Food Safety and Standards Bill, 2005
February 13, 2006

The Pension Fund Regulatory and Development Authority Bill, 2005
December 9, 2005

February 17, 2006

Highlights of the Bill

- ◆ The Indian Medical Council (Amendment) Bill, 2005 seeks to change the composition of the Medical Council of India (MCI) and increase its accountability to the central government.
- ◆ The MCI shall now have one member for every 10 medical colleges in a state instead of one member from each university. The heads of four national level bodies will be ex-officio members. The central government may nominate members for any seat falling vacant due to elections not being held.
- ◆ The composition of the executive committee of MCI has also been modified. The four ex-officio members of MCI shall be part of this committee.
- ◆ The central government has been granted the power to give directions to MCI in public interest. It can also direct MCI to make specific regulations.
- ◆ The central government can dissolve the executive committee or dismiss its office bearers under some specified conditions.

Key Issues and Analysis

- ◆ There are two major issues. First, the proportion of elected members in the MCI and its executive committee has been lowered. Second, the Bill gives the central government powers to override the decisions of the council, and even to dissolve the executive committee.
- ◆ The percentage of elected members of MCI will decline from 69% to 54%. If elections were not held on time for even 5 of the 49 elected seats, elected members would be in a minority.
- ◆ Elected members will be in a minority in the executive committee (excluding President and Vice President).
- ◆ The powers granted to the central government could lower the autonomy and independence of the MCI to function as a regulatory body.
- ◆ New provisions to improve accountability have been proposed without utilising provisions within the existing Act, such as the power of the central government to constitute a Commission of Enquiry.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Medical Council of India (MCI) is constituted to (1) maintain standards of medical education (2) give permission to start colleges, courses or increase the number of seats, (3) recommend the recognition of medical qualifications, (4) register doctors and maintain the All India Medical Register and (5) regulate the profession of medical practitioners. The Indian Medical Council Act, 1956 has been amended thrice in 1964, 1993 and 2001.

The MCI has seen two major controversies during the past five years. In November 2001, the Delhi High Court set aside the election of Dr. Ketan Desai as President of the MCI, stating that he had been elected under a 'flawed constitution'. The central government had failed to ensure that elections to the MCI were conducted as a result of which a number of seats were lying vacant. The Court ordered that the MCI be reconstituted at the earliest and appointed an administrator to oversee the functioning of the MCI until this was done.²

The MCI was constituted as a recommendatory body to the central government and the government has usually accepted the recommendations of the MCI. However, in 2003, the central government went against its recommendations, and gave permission to four colleges in Andhra Pradesh to increase the number of seats. The Supreme Court censured the central government for bypassing the MCI and restrained it from granting further permission to any other college without the recommendation of the MCI.³

Key Features

The Indian Medical Council (Amendment) Bill, 2005 seeks to modify the composition of the MCI, introduce provisions for the removal of its President, Vice President and executive committee and empower the central government to give directions to the MCI.

Table 1: Comparison between Indian Medical Council Act, 1956 and the Amendment Bill

The Indian Medical Council Act, 1956 (existing Act)	Indian Medical Council (Amendment) Bill, 2005
Composition of MCI	
a) 1 member from each state other than a UT nominated by the central government in consultation with the State b) 1 member from each university elected from medical faculty of that university c) 1 member from each state in which a State Medical Register is maintained elected amongst themselves from registered medical graduates (excluding licentiate group) d) 7 members elected amongst themselves from the licentiate group ⁴ e) 8 members nominated by central government	a) 1 member from each state other than a UT nominated by the central government in consultation with the State b) 1 member from every 10 medical colleges in a state. c) 1 member from each state where a State Medical Register is maintained elected amongst themselves from members of the State Medical Council. d) 8 members nominated by central government e) The Director General of Health Services (<i>ex officio</i>) f) The Director General (Armed Forces Medical Services) (<i>ex officio</i>) g) The Director, All India Institute of Medical Sciences (<i>ex officio</i>) h) The President, National Board of Examinations (<i>ex officio</i>)
Election of President and Vice President of MCI and limit on number of term in office	
Elected by members of the MCI from amongst themselves. No limit on number of terms.	Elected by members of the MCI from amongst themselves. No person can hold office in any capacity for more than two terms.
Election of members	
Elections to the MCI conducted by central government	Elections conducted by authority appointed by central government
Term of office of members	
5 years or until successor is nominated or elected, whichever is longer	For members other than <i>ex officio</i> members, 5 years. No member can continue in office for more than 3 months after expiry of 5 year term unless re-nominated or re-elected.
Executive committee	
Total of 12 members: President, Vice President of MCI and remaining 10 elected in the proportion – 4 from among university representatives, 3 from nominated members, 2 from state medical registers and 1 from the licentiate group.	Total of 15 members: President, Vice President of MCI, the 4 <i>ex officio</i> members of MCI and 9 members elected by members of MCI from amongst themselves.
Making of regulations	
MCI may with the previous sanction of the central government make regulations to carry out the purposes of the Act	Every regulation made shall be subject to Parliamentary oversight. The central government may direct the MCI to make/ amend/ revoke regulations and if it fails to comply, the government may do so itself.

Removal of the President/ Vice President/ Member of the MCI under the Amendment Bill

- The central government may remove any member it nominates to the MCI if it feels it is in public interest to do so or if the concerned state government recommends such action.
- The MCI, after considering the views of its disciplinary committee, may recommend to the central government (by resolution passed by majority of total membership excluding vacancies and by two thirds

majority of those present and voting) the removal of president, vice president or member of the MCI on grounds of misconduct or incapacity.

- The central government can dissolve the executive committee or dismiss the president, vice president or executive committee member if it is of the view that the persons concerned have failed in performing their duties or have not complied with the directions given by the central government in public interest.

Other Provisions of the Amendment Bill

- In the discharge of its functions, the MCI shall be guided by directions given to it in public interest by the central government. The central government decides whether an issue relates to public interest or not.
- If the authority constituted by the central government to conduct elections to MCI is unable to do so and the central government is satisfied with the reasons given to it by the authority, the central government may nominate (in consultation with the state) the vice chancellor of the University of Health Sciences or an eminent medical faculty member to fill the vacancy of membership from medical colleges. To fill a vacancy of membership from State Medical Council, the central government can nominate (without consulting the state) a person enrolled in a state medical register in the concerned state.

PART B: KEY ISSUES AND ANALYSIS

The Bill has two objectives: (a) improve the representative character of the MCI and (b) increase accountability of the MCI to the central government. This Amendment Bill will result in greater government control over the MCI. The key issue is whether the amendments would ensure improvement in the functioning of the MCI in its role as the regulator of medical education and medical profession.

Composition of the MCI and the Executive Committee

The proposed amendments will lead to a decline in the proportion of elected members both in the MCI and in the executive committee of the MCI.

The number of members in the MCI will reduce from 119⁵ under the existing Act to 93 under the proposed Bill. States with a large number of medical colleges will have more number of seats.

Elected members as a percentage of total members will decline from 69% under the existing Act to 54% under the Amendment Bill.

The MCI's membership is currently just 67 as against its total membership strength of 119, due to vacancies arising from elections not being held.

In 2001, the High Court observed that the control of the MCI was being 'manoeuvred by such tactics' and that a 'body to be controlled by elected members was being controlled by nomination'. Under the Amendment Bill, if elections are not held, the government can nominate members to fill vacancies. Even if elections for 5 of the 49 elected seats are not held, the majority in the MCI could be composed of nominated members.

Under the existing Act, seven out of the ten members (excluding the president and vice president) of the executive committee are from the elected categories. Under the Amendment Bill, only six of the thirteen members (excluding president and vice president) will be from the elected category.

Table 2: Composition of the MCI

	Existing Act	Amendment Bill
Representatives from university/ colleges	60	28 ^a
Representatives of state medical registers	15	21 ^b
Representatives from licentiate group	7	-
Total elected members	82	49
Representatives from states	29	29
Central government nominees	8	8
Ex officio members	-	4
Total nominated members	37	41
Total number of members	119	90

Source: www.mciindia.org, PRS estimates

Note: (a) Calculation based on MCI data on medical colleges.

(b) Only 15 of the 21 State Medical Councils are currently represented

Table 3: Composition of bodies regulating other professions

	Elected members (%)	Nominated members (%)
ICAI Council	80	20
ICS Council	75	25
ICWA Council	75	25
AICTE	4	96

Sources: Chartered Accountants Act 1956, Company Secretaries Act 1980, Cost and Work Accountants Act 1959, All India Council for Technical Education Act 1987, PRS estimates

Table 4. Composition of the Executive Committee

Existing Act	Amendment Bill
President	President
Vice President	Vice President
Elected Members (7)	Elected Members (6)
Government Nominees (3)	Government Nominees (3)
-	Ex Officio Members (4)

Sources: MCI Regulations 2000 & the Amendment Bill

Inclusion of non-medical persons

The MCI at present comprises only persons with medical qualifications. The proposed amendments do not suggest any change in this and do not mirror recent reforms by some similar bodies. The General Medical Council (GMC) in the United Kingdom (analogous to the MCI) has undergone reforms in recent years after the Shipman Enquiry report observed that the public in UK regards the GMC with suspicion and distrust as they feel that the GMC acts in the interest of doctors and not in the interest of patients.⁶ It now has 14 of its 35 members (40 percent) as lay persons (not from the field of medicine). The Delhi Medical Council in its disciplinary committee has as its members, non medical experts such as a lawyer nominated by the Council, an eminent person nominated by the government and an MLA nominated by the Speaker.

Autonomy vs. Accountability

Given the recent controversies related to the MCI, there have been calls for reform in the functioning of the MCI.⁷ The Estimates Committee, in its report to the Lok Sabha stated that anything that comes in the way of a healthy balance between the autonomy and accountability would need to be rectified.⁸

The proposed amendments give the central government the power to override the decisions of the MCI, and to dissolve its executive council (or dismiss office bearers). The Standing Committee for Health and Family Welfare, while discussing a similar amendment to the Indian Medicine Central Council Act 1970, has stated that “an elected body cannot be dissolved by an Executive order”, and that the “provision of Commission of Inquiry... is sufficient to check the misuse of power/ successive default by any committee of the Council and there is no further need to give the Government powers which are susceptible to be misused.”⁹

Existing Provisions for Accountability

Even under the existing Act, there are provisions to ensure accountability. Under Section 30, a three-member Commission of Enquiry can be constituted by the central government which will have all powers exercised by a Civil Court. The MCI will be required to adopt such remedies as suggested by the Commission and if it fails to comply, the central government can amend the regulations, make provisions or take any steps as may be necessary to give effect to the recommendations of the Commission. The central government did not utilise these provisions to address the recent controversies.

Acknowledgements: PRS has drawn upon, and gratefully acknowledges, a number of experts and stakeholders who generously shared their opinions on this Bill. Written comments on the Bill from PS Jain (former Secretary, MCI) and K Sreedhar Rao (Advisor, Manipal Education and Medical Group) are available with PRS.

Notes

1. This Brief has been developed on the basis of the Indian Medical Council (Amendment) Bill, 2005 introduced in Rajya Sabha on August 23, 2005. The Bill has been referred to the Standing Committee on Health and Family Welfare (Chairperson: Shri Amar Singh) which is scheduled to submit its report to Parliament by February 23, 2006.
2. Delhi High Court Case – LPA Nos. 299 and 301/ 2001 decided on 23.11.2001.
3. Supreme Court Case – (2003) 8SCC490.
4. Those holding LSMF and LMP diplomas, who were licensed to practise medicine. These diplomas have been discontinued and seats under this category have been vacant for some time.
5. Members strength of the Medical Council of India as on October 21, 2005, available at MCI website www.mciindia.org.
6. Shipman Enquiry chaired by Dame Janet Smith, Report Number 5, “Safeguarding Patients: Lessons from the past – Proposals for the Future,” available at <http://www.the-shipman-inquiry.org.uk>.
7. See Sunil K Pandya and Samiran Nundy, “Dr. Ketan Desai and the Medical Council of India: lessons yet to be learnt”, Indian Journal of Medical Ethics, January to March 2002.
8. EC No. 1420, Estimates Committee (2004-05), “Medical Council of India,” Presented to Lok Sabha on 29th April 2005.
9. Eleventh report of Standing Committee (Chairperson: Shri Amar Singh) presented on July 29, 2005.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of Parliamentary Research Service (“PRS”). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.