

Issues for Consideration: The National Medical Commission Bill, 2019

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.

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.^{4,7} 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.⁸

The National Medical Commission Bill, 2017 was introduced in Lok Sabha on December 29, 2017. It was examined by the Standing Committee on Health and Family Welfare which submitted its report on March 20, 2018. The Committee gave several recommendations with regard to: (i) composition of the National Medical Commission, (ii) fee regulation for at least 50% of seats in private medical colleges, and (iii) licentiate examination being integrated with the final year MBBS examination. However, the 2017 Bill lapsed with the dissolution of the 16th Lok Sabha. The National Medical Commission Bill, 2019 was introduced in Lok Sabha on July 22, 2019. The Bill repeals the Indian Medical Council Act, 1956.

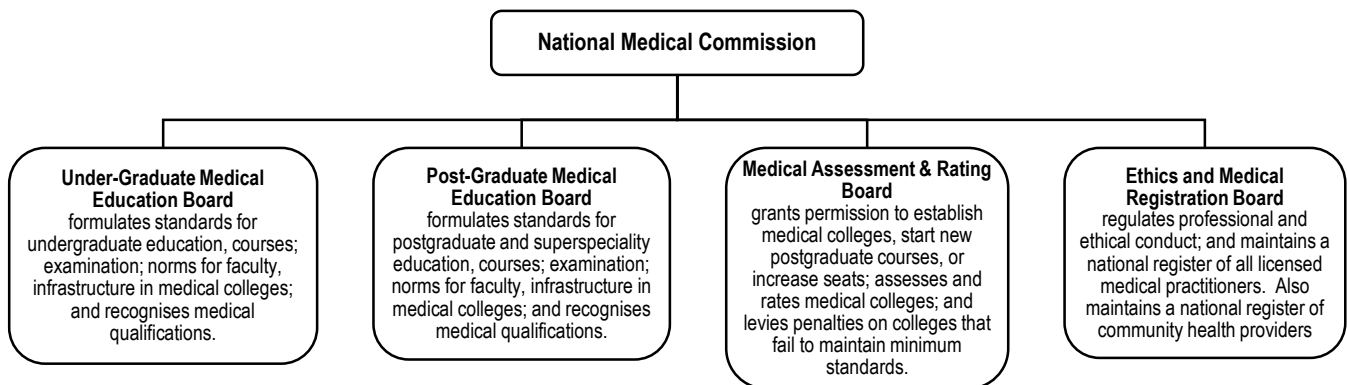
Key Features of the Bill

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, and five experts nominated by the central government (of which, three 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 General of the Directorate General of Health Services and the Indian Council of Medical Research, (iv) Director of any of the AIIMS, (v) two persons from amongst the Directors of medical institutions such as JIPMER, Puducherry, and Tata Memorial Hospital, Mumbai, (vi) five members (part-time) to be elected by the registered medical practitioners, and (vii) six 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 50% of the seats in 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 four members (of which two will be part-time 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 and post-graduate medical education in all medical institutions regulated by the Bill. The NMC will specify the manner of conducting common counselling for admission in all such medical institutions.
- The Bill proposes a common final year undergraduate examination called the National Exit Test for the students graduating from medical institutions to obtain the license for practice. The National Exit Test will also serve as the basis for admission into post-graduate courses at medical institutions.
- Foreign medical practitioners may be permitted temporary registration in India in such manner as may be prescribed.
- **Community health providers:** The Bill states that the NMC may grant limited license to certain mid-level practitioners connected with the modern medical profession to practice medicine. These mid-level medical practitioners may prescribe specified medicines in primary and preventive healthcare. However, in any other cases, these practitioners may only prescribe medicine under the supervision of a registered medical practitioner.
- **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.
- **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 punishable with imprisonment of up to one year, or a fine extending to five lakh rupees, or both.

Issues to consider

Composition of the National Medical Commission

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 15 (60%) are medical practitioners.

Clause 4

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).⁹

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 50% 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.¹⁰ 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.^{11,12} However, several Expert Committees have noted that many private education institutions charge exorbitant fees which makes medical education unaffordable and inaccessible to meritorious students.^{4,5,8} 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.¹³ 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.¹⁴ 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.⁸ 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.⁸

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.¹⁵ 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.

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. It is unclear why the NMC 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.⁹ The adjudication decision and final disciplinary action is decided by the Tribunal.

Further, the Bill does not specify a time period for the NMC to decide on such an appeal. Note that the Parliamentary Standing Committee (2018) stated that giving the appellate jurisdiction to the central government (as per the 2017 Bill) does not fit into the constitutional provision for separation of powers.¹⁵ It recommended constitution of a Medical Appellate Tribunal instead.

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).^{16,17,18} 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).⁸

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.

Renewal of licence to practice

Clause 15 The Bill introduces a National Exit Test 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.^{19,20} 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.^{19,20}

¹ The Indian Medical Council Act, 1956.

² [List of State Medical Councils, Medical Council of India.](#)

³ Union of India vs Harish Bhalla And Ors., LPA Nos. 299 and 301/ 2001 decided on 23.11.2001.

⁴ ‘Functioning of the Medical Council of India’, [Standing Committee on Health and Family Welfare, March 8, 2016, Rajya Sabha.](#)

⁵ [Report to the Nation, 2006-09, National Knowledge Commission.](#)

⁶ [Report of ‘The Committee to Advise on Renovation and Rejuvenation of Higher Education’, Ministry of Human Resource Development, 2009.](#)

⁷ “Medical Education”, Ministry of Health and Family Welfare, Press Information Bureau, August 4, 2017.

⁸ [A Preliminary Report of the Committee on the Reform of the Indian Medical Council Act, 1956, August 7, 2016, NITI Aayog.](#)

⁹ [The Medical Act, 1983, United Kingdom.](#)

¹⁰ [Unstarred question no 1186, Lok Sabha, Ministry of Health and Family Welfare, February 9, 2018.](#)

¹¹ Islamic Academy of Education vs. State of Karnataka & Ors., Writ Petition (Civil) 350 of 1993.

¹² TMA Pai Foundation vs. State of Karnataka & Ors., Writ Petition (Civil) 317 of 1993.

¹³ [Unstarred question no. 59, Lok Sabha, Ministry of Health and Family Welfare, December 15, 2017.](#)

¹⁴ [Report no.236: “Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010”, Standing Committee on Human Resource Development, May 30, 2011, Rajya Sabha.](#)

¹⁵ [Report no. 109: “The National Medical Commission Bill, 2017”, Standing Committee on Health and Family Welfare, March 20, 2018, Rajya Sabha.](#)

¹⁶ [The Delhi Medical Council Act, 1997.](#)

¹⁷ [The Gujarat Medical Council Act, 1967.](#)

¹⁸ [The Maharashtra Medical Council Act, 1965.](#)

¹⁹ [An introduction to revalidation, General Medical Council, United Kingdom.](#)

²⁰ [Codes, Guidelines, and Policies, Medical Board of Australia.](#)

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