



**SUGGESTIONS ON
DRAFT NATIONAL
MEDICAL COMMISSION
BILL, 2016
SUBMISSION TO NITI
AAYOG (GOVERNMENT
OF INDIA)**

Centre for Civil Society



I. INTRODUCTION AND BACKGROUND

NITI Aayog's effort towards reforming Indian Medical Education is a step long overdue. There is a broad consensus across the Parliament, Executive, Judiciary and State Governments to replace the thoroughly corrupt, utterly inefficient and a decrepit Medical Council of India (MCI) with a new commission that meets the aspirations of 21st century India. MCI has neither fulfilled the objective of improving access to medical education nor set the high professional and ethical standards that the complex healthcare sector demands from the doctors. It has become a textbook example of 'regulatory capture'. The age old socialist mindset towards regulatory institutions continues to plague many sectors in India, of which MCI is only one example.

NITI Aayog's radical shift in regulatory philosophy towards liberal and market oriented approach can be considered as one of the big bang reforms of the current government. A shift in approach from inputs based norms and standards to the one based on outcomes is definitely going to create a lasting impact in quality of medical education and is expected to set the precedent for other streams of education too.

The national level entrance and exit exams will ensure that merit prevails over discretion and admissions are handled in a transparent manner. Removing entry barriers for private investors by doing away with the infamous 'non-profit' tag will address the challenge of access and help meet the huge demand for medical education in India. Currently, around 11 lakh students chase an odd 55,000 seats and this has given some unscrupulous colleges a free hand in exploiting the artificially induced scarcity.

Largely in consonance with the proposed bill, we would like to bring few specific issues to the Aayog's notice to help realize the true spirit of the bill.



II. REVIEW OF AND RECOMMENDATIONS REGARDING KEY ISSUES OF THE NATIONAL MEDICAL COMMISSION BILL, 2016

ISSUE 1: SEARCH AND SELECTION COMMITTEE

Section 10 of the bill stipulates provisions for the composition of search and selection committee and further details its functioning. The committee is supposed to recommend a panel of names for the appointments of National Medical Commission (NMC) chairperson, President of the boards and other part time members of the NMC. However, the bill does not provide any clarity regarding the nature of recommendations of the committee. By giving due regard to transparent and merit based appointment of the committee members, we believe that the committee's recommendations should be made binding upon the Union Government. This avoids any scope for political interference, nepotism and favoritism in crucial appointments.

A new sub-section (6) should be incorporated after sub-section (5) as follows-

“(6) The Union Government shall have a right to reject the recommendations of the committee either partly or wholly

Provided the reasons for refusal shall be send to the commission in writing

Provided further the recommendations of the committee shall be binding upon the Union Government if the committee resends the recommendations unanimously”.

ISSUE 2: COMPOSITION OF SEARCH-CUM-SELECTION COMMITTEE

The proposed search-cum-selection committee is largely a bureaucratic body. It goes against the current practice of including external eminent persons in the selection body to avoid an



element of government partisanship. Also, the role of CEO, NITI Aayog in the proposed body is little understood. Therefore, we propose a seven member body which has a participation from political establishment and includes external eminent people .

Sub-section (1) of section (2) may be amended as follows-

“(1) The Central Government shall constitute a Search-cum-Selection Committee consisting of:

- 1. Union Minister, Health and Family Welfare***
- 2. Union Minister, Ministry of Human Resource Development***
- 3. Secretary, Union Ministry of Health and Family Welfare***
- 4. Secretary, Union Ministry of Human Resource Development***
- 5. One eminent person having outstanding qualifications and experience of having worked for not less than twenty-five years in the field of Medicinal Sciences/ Public Health to be invited in the manner as may be prescribed***
- 6. One eminent person having outstanding qualifications and experience of not less than twenty five years in the management, or law, or economics or science and technology to be invited in the manner as may be prescribed***
- 7. One eminent person of impeccable integrity and proven credible experience in advocating for consumer protection rights to be invited in the manner as may be prescribed”.***

ISSUE 3: TRANSPARENCY IN APPOINTMENTS

Section 9 of the bill merely mentions that the appointments of the chairperson of the NMC, presidents of the boards, and part-time members of the NMC would be made in an ‘open and transparent process’. However, no strong provisions were made in this regard. Considering the past experiences with opaque appointment mechanisms, we suggest the appointment



mechanism be clearly specified and brought in tune with the current practices as is the case with bankruptcy code, National Company Law Tribunal, etc.

ISSUE 3: ABUSE OF OFFICE

Sub-section (3) of section (12) allows chairperson/members of the NMC and presidents of the boards to accept employment in any private medical institution whose matter has been dealt with by such person during their service within a period of one year after demitting the office. Sub-section (5) overrides sub-section (3) and allows chairperson/members of the NMC and presidents of the boards to accept employment in any private medical institution whose matter has been dealt with by such person during their tenure after demitting the office. We believe that there is a clear case of conflict of interest arising out of this provision. This section has to be streamlined with current practices prevailing in other statutory and constitutional bodies.

ISSUE 4: APPELLATE JURISDICTION OF NMC

While providing appellate jurisdiction to NMC over Medical Assessment and Rating Board (MARB), Post-Graduate Medical Education Board (PGMEB), and Under-Graduate Medical Education Board (UGMEB), sub-section (6) of section (14) excludes Board of Medical Register (BMR) from appellate jurisdiction of NMC. BMR maintains the National Medical Register (NMR) and regulates professional conduct of medical practitioners. The bill also vests appellate powers with BMR against the decisions of State Medical Councils. Considering the vast powers vested with BMR and controversial aspects surrounding medical register in India, we suggest that BMR be brought under the appellate jurisdiction of NMC.

Sub-section (6) of section (14) may be modified as follows:

“(6) To exercise Appellate Authority with respect to decisions of the UGMEB, PGMEB, MARB and BMR”.



ISSUE 5: TWO-TIER EXAM FOR LICENSE AND ENTRANCE TO PG

Section 17 of the bill proposes a National Licentiate Examination for medical graduates in order to register themselves in National Medical Register and get license to practice in India. It was also proposed that this examination will act as a National-Eligibility-cum-Entrance Test for admission into post-graduate courses. Here we are using the examination both to certify minimum qualifications and also to signal the capability of students. It is similar to using the results of a single driving exam to decide both the eligibility for license and also to identify Fernando Alonsos and Michael Schumachers amongst the licence seekers. Both functions cannot be done with one exam.

We suggest the exam be split into two parts: one advanced and the other basic. Students can have the option to write one or both. Advanced exams will have questions of high standard, which can be attempted by students who want to use these results to signal their higher ability and thereby enter into PG courses. All students who want to use this exam to prove their minimum competencies will only attempt the basic version and gain license to practice. The proposed National Licentiate Examination can be renamed as National Licentiate-cum-Eligibility-cum-Entrance Test and be split into two parts.

Section 17 can be amended as follows:

“There shall be a National Licentiate-cum-Eligibility-cum-Entrance Test for the professionals graduating from the Medical Institutions under the purview of National Medical Commission through such designated authority in such manner as may be prescribed for granting the license to practice and enrolment into the Medical Register(s), as referred to in Section 28(1). The National Licentiate-cum-Eligibility-cum-Entrance Test shall be of two parts offering flexibility for students to choose between medical practice and PG admission. Students qualifying advanced version of the exam shall be eligible for PG admission, while students qualifying basic version shall be eligible for license to



practice. The designated authority shall ensure the conduct of uniform licentiate examination in the aforesaid manner.”

ISSUE 6: PERMISSION FOR ESTABLISHMENT OF NEW COLLEGE

The bill vests the power of approving establishment of a new medical college with MARB. The criteria for approving a new medical college were mentioned in sub-section (4) of section (27). However, sub-section (2) of section (27) gives free hand to MARB to prescribe whichever manner they wish to, in order for granting approval. This gives scope for unnecessary rent seeking by MARB. In our considered opinion, the criteria mentioned in sub-section (4) should suffice.

Therefore, sub-section (2) of section (27) may be modified as follows-

“(2) Every person shall, for the purpose of obtaining permission under sub-section (1), submit to the MARB a *scheme in the manner satisfying the factors mentioned in sub-section (4) of this section*”.

ISSUE 7: JURISDICTION OF SECOND APPEAL TO UNION GOVERNMENT

Sub-section (3) of section (27) gives Union Government the jurisdiction of second appeal for the person/college aggrieved by the decision of MARB and NMC. Considering the fact that NMC is largely a government appointed body, it makes little sense to give second appeal to the government. Moreover, it gives scope to unnecessary political interference in the matter of college establishments and we will be at square one again. Therefore, we suggest that NMC's decision should be deemed final and the above said provision be repealed. As part of the natural justice, any grieved party is always free to seek remedy in an appropriate court of India.



ISSUE 8: STRUCTURAL CHANGE IN UNDER GRADUATE MEDICAL EXAMINATIONS

While, Common Licentiate Exam (in the lines of USMLE of USA) serves the purpose of ensuring minimum qualifications for a medical graduate and standards of a medical college, it should go hand-in-hand with structural changes in under graduate medical examination system.

Medical expertise is mostly skills based and the current assessment is aimed at testing factual knowledge rather than skills, incentivizing students for rote learning. Also, the current 'patient based clinical exam' conducted by the individual medical colleges led to rampant corruption and compromise of medical standards. 'Patient based clinical exam' should be entirely replaced with Objective Structured Clinical Examinations (OSCE) in addition to the MCQ based tests. These are very important tools in improving the clinical and communication skills of the doctors.

A large pool of examiners can be drafted at state or regional level to implement the examination. Standard 'pass or fail' format has to be adopted in order to ensure these scores won't add up for the PG entrance process which will be solely based on an MCQ (or other alternatives such as Extended Matching Questions – EMQ) based test. Moreover, OSCEs have less scope for subjectivity considering that a candidate faces multiple examiners (10-15) in one test. The UGMEB can contemplate organizing these tests and these can be administered at different stages of the medical undergraduate course.

ISSUE 9: DEVELOPMENT OF SPECIALIZATIONS AT PG LEVEL

Indian medical specialty organizations and associations have significantly evolved and providing quality medical education to the medical specialists. Therefore, to bring cutting edge quality in development of curriculum and assessment systems, these organizations should be vested with the authority of developing curriculum and assessment system for each respective specialty and sub specialty. This arrangement will help realizing the potential of these organizations and also equip the students in fulfilling the expectations of rapidly evolving



medical specialties. PGMEB can set out only minimum standards that medical specialty associations must apply while developing the curriculum and assessment systems.

Therefore, we suggest section 22(2) be amended as follows-

“22 (2). To develop a competency based dynamic curriculum (including assessment) at post-graduate level in consultation with stakeholders and expert bodies/medical specialty associations such that post-graduates have appropriate knowledge, skills, attitude, values and ethics for providing health care, imparting medical education and conducting medical research.”

Insertion of sub-section (6) after sub-section (5)

“(6) To set out standards and requirements that medical specialty associations must apply when developing curricula and assessment systems. These shall be revised and updated periodically”.

ISSUE 10: APPOINTMENT MECHANISM FOR STATE MEDICAL COUNCILS

The current MCI Act 1956 empowers the states to constitute State Medical Councils. Most of the State Councils having major representation of elected members who tend to behave as a trade union protecting the doctors instead of acting as a regulatory body to improve the standards of medical care and protect society from professional malpractices. While the proposed bill provides appellate jurisdiction to the Board of Medical Registration whose decision shall be binding on the State Medical Council, the draft Bill is silent on the composition of the State Medical Council (SMC). As per the proposed arrangement, NMC along with BMR will be the overarching regulatory body for medical profession, but, the actual functions of execution of NMC guidelines, disciplinary action against erring doctors, and imposition of penalties including removal from State Register are performed by the SMCs. The



role of NMC and BMR is largely limited to guidance and advice, prescribing standards of professional conduct and hearing appeals.

We suggest that the framework for appointments of the State Medical Councils be outlined clearly in the bill. Parliament can do this by exercising their right under the Articles 13, 19 (6) & Items 65 & 66 of List I of the Seventh Schedule of the Constitution.

ISSUE 11: ENSURING OVERALL ACCOUNTABILITY TO THE PARLIAMENT

Given the enormous importance of NMC's role in regulating standards of medical education, professional ethics and medical care in India, we believe a regular framework for reporting and accountability should be institutionalized in the law itself. Therefore, we suggest that the NMC bill should have provisions for mandatory tabling of annual reports to the Parliament, so that there can be effective accountability through Parliamentary debate and Committee hearings.
