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NATIONAL MEDICAL COMMISSION: NEW TRENDS IN MEDICAL FIELD

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KEYWORDS

Medical Council of India, MCI Act, 1956, National Medical Commission (NMC), NEET(PG), NEET(UG), NBE, NEET(PG), NTA

ABSTRACT

Due to the shortcomings of the Indian Medical Association Act, 1956, need was being felt for a long time to replace it by a rational act which could embody in itself all the activities and the foul plays which were deliberately not taken into account or went unnoticed. The Omissions and the Commissions in treatment of patients was of utmost importance as they were directly related to the well-being of the patients under treatment and in some cases would have put the precious life to an unfortunate end. Such replacement was essential keeping in view the aspirations of Indian masses at large and the patients in general who were victims to the medical negligence and medical malpractice which is so common now-a-days that it does not escape bold headings in almost all the newspapers and the electronic channels.

The Apex body i.e. Medical Council of India (MCI) was found short of fulfilling its mandated responsibilities, time and again. The prevalent model of medical education was unable to produce that type of medical professionals which were required to meet the country's primary health needs apart from giving positive results in complex situations related to the patients undergoing treatment in various hospitals. The reason behind all this was that Medical Education and Curricula were not integrated with the health system needs. The medical graduates lacked competence in performing normal deliveries. Moreover unethical practice grew by leaps and bounds so much so that it damaged the respect for medical profession. The State and the Central ministry lacked the power and the will to remove any member of the Medical Council even in those cases in which charges of Corruption against that member were proved.

Introduction

After the repealing of the Indian Medical Council Act, 1956, The NMC came into force with effect from 25th. September 2020. The Apex body in the medical field now is NMC With the purpose of regulating community health services and its providers. Granting limited licences to those community health providers who are practicing medicine and who are associated with the modern medical profession is one main aim of NMC. Such community health providers will be allowed to prescribe certain specified medicine related to primary and preventive health care. In cases other than those mentioned above, they will be allowed to prescribe medicine only under supervision of a Registered Medical Practitioner. It is significant to mention that such type of practice is in vogue in U.S.A. and other developed countries where Nurse practitioners who completed Master's Doctrinal degree program, advanced clinical training and thereby obtained a certificate for practicing.

One of the main reasons behind repealing of Indian Medical Council Act, 1956 was the then prevailing concept of Donation based seats. Private medical colleges, who got affiliation and recognition according to the official policy prevalent before the repeal of 1956 Act, used to sell the medical seats. The Donation concept meant as accepting in principle that the ability to pay was superior to the merit concept. Such illegal capitation clothed under the garb of donation was instrumental in grabbing MBBS seats by spending money in the range of Rs. 50 lacs. to

Rs. 1 Crore, that time.

As an effective measure to weed out this rampant corruption in the field of medical education, the Central Government appointed Board of Governors after the dissolution of MCI, NEET is now the only examination which have to be cleared before an entry in Medical Colleges can be made. The Apex Court In May 2016 cancelled all the medical examinations related to medical faculty. NEET (UG) and NEET (PG) remained the only qualifier agencies for getting admissions in all the medical colleges. (National Testing Agency) NTA from the year 2019 has been conducting National Eligibility cum Entrance Test. The Eligibility cum Entrance related examination for MS/MD as well as PG diploma courses will now be through National Board of Examination (NBE) NEET (PG).

Foreign nationals who wish to get admission through NRI quota will now be admitted only on merit basis in concerned quota amongst the eligible candidates. The structural fee will differ from that of the Indian counterparts.

Significance and the need:

- (1) To regulate medical education and practice.
- (2) To tackle the two fold problem of Corruption in medical education and shortage of medical professionals.
- (3) To overhaul the corrupt and inefficient Medical Council of India.

Accessing Medical Education:

Equity in medical education is of utmost importance. For the purpose of

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achieving this, the NMC will determine the fee structure for the seats in deemed universities as well as in private medical colleges. This plan will enable students from all sections of the society to undertake medical education; it was very much essential in view of the exceptionally high rise in fees, books and equipment. This plan was a special one for those students who although deserving yet facing monetary problem. NMC was of the firm view that financial drawback should not come in the way of deserving candidates' desire of becoming medical professional.

Regulatory Bodies:

Central Government will appoint four autonomous bodies each of which shall have one President and four members. Of these four members two will be part timers. The bodies will assume the shape of the boards as per below and will serve as the limbs of NMC.

1. Under Graduate Medical Education Board (UGMEB)
2. Post Graduate Medical Education Board (PGMEB)
3. Medical Assessment and Rating Board (MARB)
4. Ethics and Medical Registration Board (EMRB)
5. These Boards shall serve as the limbs of NMC.

Eligibility guidelines for practicing in medicine:

National Exit Test (NAT) shall be conducted as a final examination for all those who will be graduating from medical institutions and desirous to get practicing licence in medicine. This test shall also aim at providing admission in medical institutions for pursuing post graduate courses. Registration to foreign medical practitioners may also be permitted to practice in India without specifying validity period.

The National Medical Commission (NMC) overhauled, the provisions and the clauses of MCI Act, 1956, almost fully. A number of new sections were framed keeping in view of non-applicability of the earlier Act. Of these new sections 30, 60 and 61 are worth mentionable in this paper.

Provision in matters of Professional or Ethical Misconduct:

Section 30(2): This section empowers the State Medical Council (SMC) to take disciplinary action against a registered medical practitioner related to any professional or ethical misconduct. In such cases, the SMC shall act as per the guidelines and regulations framed under this Act.

Section 30(3): Medical Professional aggrieved by the decision of SMC under Section 30(2) will have right to appeal before the Ethics and Medical Registration Board. However duration period of Appeal is not mentioned.

Section 30(4): If further aggrieved a Second Appeal can be filed to the NMC within 60 days.

Some earlier decisions and pending actions in accordance with the old MCI Act of 1956 were allowed to continue as per Sections 60 and 61 of NMC Act.

Section 60: Notwithstanding the repeal of MCI Act, 1956, no effect shall be on:

- a) The earlier operation of the Act so repealed or anything which was done in accordance with, or any suffering caused due to any provision repealed Act.
- b) Any Right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed.
- c) Any penalty incurred related to any contravention under the repealed Act.
- d) Any proceeding or remedy related to right, privilege, obligation, liability or penalty as aforesaid and any such proceeding or remedy may be instituted, continued or enforced and any such penalty may be imposed as if the Act was not been repealed.

Section 61:

- (1) The successor in Interest to the MCI inclusive of its Interest to the MCI as well as its subsidiaries or trusts owned by it so also all the assets and liabilities of the MCI shall be deemed to have been transferred to the NMC.
- (2) Although the MCI Act, 1956 was repealed yet educational standards, requirements and other provisions which were operative

in the repealed MCI Act of 1956 so also the rules and regulations made there under shall continue to be operative till new standards or requirements are made and specified along with the rules and regulations enacted under the new Act and shall be in force accordingly unless and until superseded. Some of the provisions of NMC Act 2019 which did not come in force earlier also came into effect from 25th. September 2020. One such Section was 60(1) which says that from the date from which the Central Government may appoint new authority, the prevalent MCI Act shall stand repealed and the MCI operative as per the old Act will stand dissolved.

It was further made clear that any officer or other employee, who has been employed on regular or contractual basis immediately before the dissolution of the MCI shall cease to be the officer or employee of the said Council forthwith and with immediate effect his services would stand terminated. However he shall be entitled to compensation for his premature termination, which shall not be less than three months' pay and allowance, as may be granted.

An employee Man Singh along with some other employees, who were working before the enactment of the NMC Act, filed Writ Petition (C) 11705 of 2019¹ in High Court of Delhi. The Hon'ble High Court issued directions to maintain status quo till next date of hearing. In appeal, on behalf of NMC, to the Supreme Court, it was submitted that in terms of Section 60(1) of the Act, there would be cessation of employment; however in compliance of the order passed by the High Court, all the concerned writ petitioners were being paid salary and emoluments without fail. As against this the stand on behalf of the petitioners was that it would be humiliating for an employee to receive salary without putting any work on his part. The Supreme Court held that so long as the employees are getting their salary and emoluments, there would not be any prejudice and it should be left to the employer to consider whether the services from such employees be taken or not.

Lastly it was requested that the High Court take up Writ Petitions for hearing as early as possible. To this parties were given liberty to move application for early hearing before the High Court.

Case of FMGE in Delhi High Court²: The Delhi High Court on 12th.July 2021 asked the National Board of Examination (NBE) to respond to a stand taken by the doctors challenging the imposition of Cost and certain adverse observations made by it on 11th. June 2021 while dismissing the petition seeking postponement of the Foreign Medical Graduate Examination (FMGE), on account of Covid-19, which was scheduled for June-18.

The Bench of the High Court while issuing notice, made it clear that the MD Physicians' Association has to deposit the cost of Rs. 25,000 with Registrar General first and the matter will be heard thereafter.

It was pertinent that in this case the Relief sought before the Supreme Court and the High Court were different. The Association had asked for postponement of the examination before the High Court, while its plea, before the Supreme Court was for issuance a direction to the States to induct foreign medical graduates to participate in the workforce during the Covid-19 pandemic.

The High Court dismissed the petition holding that there was no doubt that before taking the decision to hold the FMGE on the scheduled date, the NBE and NMC have considered all aspects of the matter.

Conclusion:

Economic Survey 2019-20 on 31st January 2020, released information regarding medical infrastructure according to which the ratio of doctor and population in India is 1:1.456 as against the World Health Organization (WHO) recommendation of 1:1,000. This survey mentioned the measures undertaken by the Government to deal with the shortage of doctors. During the last five years, as many as 141 new medical colleges were sanctioned by the Government with the intake capacity of students at the MBBS level increased from 150 to 250. On account of the fund sharing between Centre and the States, the number of MBBS and PG seats increased by 27235 and 15000 respectively. The

Govt. also supported states to add nearly 2.5 lakh additional health human resources including 10767 General Duty Medical Officers, 3062 Specialists, 61660 Staff Nurses, 84077 Auxiliary Nurse Midwives (ANMS), 42031 Paramedics, 414 Public Health Managers and 17265 Program Management staff on a contractual basis.

Each social infrastructure is now an important segment related to healthcare. Urban population in India decisively depended upon the health care centres for problems related to their health which in turn accounts for their well-being. The fast changing scenario in medical field has resulted in opening of medical providing centres in the form of hospitals, clinics, Nursing homes etc. The payment seat provision envisaged by the Indian Medical Council Act, 1956 resulted in a number of non-deserving persons' entry in medical field and the concept of money making came into play owing to the fact that such persons were devoid of the Medical Basics as well as the Ethics of medical education. The main reason is that the MCI Act, 1956 and the Regulations of 2002 made therein were lacking in providing justice to those who were sufferers at the hands of the medical practitioners.

In my opinion, the provisions of the MCI Act, 1956 safeguarded the interests of medical professionals. To make it clear, it may well be said that the State Medical Councils consisted of members of medical fraternity and therefore their decisions seldom deviated from the expected lines that is to favor the medical practitioners in the cases filed against them. It may also be worthwhile to highlight here that an Act known as Madhya Pradesh Ayush Vigyan Adhiniyam, 1987 provides that if anyone is not satisfied with the decision of State Medical Council (SMC), he may file an appeal against the decision either to the Medical

Endnotes:

¹ National Medical Council Vs ManSingh. Civil Appeal 3648/2020 decided on 6 Nov.2020.

² The Hindu New Delhi July 12, 2021 19:51 IST

References:

1. Indian Medical Degree Act,2016.
2. Indian Medical Council Act,1956.
3. Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 Amended up to December 2010.
4. National Medical Commission Act, 2019.
5. Madhya Pradesh Ayush Vigyan Adhiniyam, 1987.

Council of India or to the State.

In a medical negligence case, I myself, on not being satisfied by a decision of SMC of Madhya Pradesh, filed an appeal to the State wherein it was held that the relevant section 12 of the said Act, speaks nothing about the provision of Appeal to the State in cases of medical negligence. Earlier on account of the hobnobbing of the SMC and the MCI in procrastinating the matter related to the untimely death of my young nephew due to gross medical negligence of the doctor, I had filed a Writ Petition in High Court of M.P. Bench at Gwalior in which I was directed to file the appeal to the State. I may suggest here that in cases of death, on account of the medical negligence of a medical professional, the cases should invariably be heard by High Courts otherwise the Concept of Speedy Justice will be defeated.

One of the biggest drawbacks in India was the non-availability of properly trained doctors and that too in desired numbers. Mudaliar Committee, in 1959, had pointed out that doctors of that time did not possess the desired knowledge and necessary skill needed to handle primary care and infectious diseases.

Recently, excessive dependence on a number of diagnostic tests reflects weak knowledge accompanied with financial consideration which was one of the root cause of medical malpractice.

To achieve the dream of an Emergent India, there is an urgent need for overhauling of the prevalent medical system and finally Medical Education has to cope with the rapid developments in medical field and therefore the enactment of NMC Act was a must in National Interest and its impact will eagerly be awaited. It is hoped that NMC Act shall fulfill the hopes and aspirations of the Indian people at large.