**Observations on the National Medical Commission Bill 2017**

1. **Composition of the National Medical Commission**:

It is a three tier composition:

1. Section 4 provides for the composition of the National Medical Commission, which will have a) a chairperson b) 12 Ex-officio Members c) 11 part time members d) an Ex-officio Member Secretary. Thus it would have an effective membership of 25 along with the Chairman of which only 5 members will be elected (Part Time Members).

As such it is evident that the proposed commission will have 20% elected members and 80% appointed / nominated members. It is for this reason it will not have a desired ‘representative character’ with reference to ‘elected and nominated / appointed members’

1. Under section 11(1) of the proposed Bill the Central Govt. is required to constitute an Advisory Body to be known as the Medical Advisory Council.

The composition of the said Council stipulated at section 11(2) at its sub section (c) provides for that one member to represent to each State who is the Vice Chancellor of a health University in that State to be nominated by that State Govt. However, at a proviso it brings out that ‘if there is no health university in any state or Union Territory the Vice Chancellor of a university within that state or Union Territory having the largest number of medical colleges affiliated to it shall be nominated by the State Govt. or the ministry of home affairs in the Govt. of India.

A health sciences university apart from including medical colleges has under its ambit colleges of other streams of health sciences as well. The Vice Chancellor of a health sciences university of a State therefore necessarily would not be a person possessing qualifications in modern medicine.

Further, in case of non-health sciences universities, whereunder apart from medicine faculty there are several other faculties, the Vice Chancellor of such a university to which maximum number of medical colleges would be affiliated in the State could be person who may not be even from the stream of health sciences. As such, said proviso opens doors for representation of people as Vice Chancellor not only from non-medical faculty amongst health sciences but from the non-health sciences faculty as well. Totally Medical advisory council shall consists of about 60 members.

1. Under section 16(1) of the proposed Bill the Central Govt. is required to constitute 4 autonomous boards to be known as the UGME Board, PGME Board, MAR Board and EMR Board. Each board consists of 3 members and all these members will be nominated by Central Government. Totally these four boards shall consists of 12 members.
2. **Un-wielding numbers in the name of spurning**

One of the concerns raised was that the existing Indian Medical Council Act, 1956, provided for the composition of Medical Council of India, which has an exceptional large membership un-wielding in character. However, the present proposed Bill contemplates a National Commission of 25 Members, a Medical Advisory Council of well over 60 members and 12 members of four autonomous boards thus taking the number to a tally of 97. Further there is a provision at section 20(1) whereby each autonomous Board shall be assisted by such Advisory committees of experts as may be constituted by the commission for the efficient discharge of the functions of such boards under this Act.

Further at its sub-section 2 it is stipulated that the EMR board shall be assisted by such ethics committees of experts as may be constituted by the Commission for the efficient discharge of its functions. Thus, the number could be open ended.

Further at Section 8(7) it is provided that the Commission may engage, in accordance with the procedures specified by a regulation, such number of experts and professionals who have special knowledge of and experience in such fields including medical education, public health management, health economics, quality assurance, patient advocacy, health research, science and technology, administration, finance, accounts and law as it deems necessary to assist the commission in discharge of its function under this Act.

At Section 10(4) it is further prescribed that the commission may constitute sub-committees and delicate such of its power to such committees as may be necessary to enable them to accomplish specific task.

Thus in the name of spurning the membership the provisions bring out inclusions in an open ended manner turning out to be an antithesis to the very aim and objective that came to be postulated.

1. **Term of Membership** :

The term of membership stipulated in the proposed Bill is 4 years in terms of Provisions included at section 6(1) of the proposed Bill. However, at Section 2(b) it is stated that “there shall be three members to be appointed on rotational basis from amongst the nominees of the States and Union Territories in the Medical Advisory Council for the term of two years in such manner as may be prescribed. This is discriminatory in as much as, as against a stipulated term of four years to all other members, a set of State Govt. nominees as members would have a term of two years only.

Further, as against the present provision in the IMC Act, every State is represented by its member on the council for the full term of five years without any discrimination of any type. But in the present stipulation, each State apart from getting a restricted term of two years on a rotational basis, its next turn would come only after a gap of 10 years on rotation basis construing the total rotational strength to be 30. This definitely has resulted in grossest possible marginalization of the representation to a State.

1. **Superfluous embargo**:

Under Section 6(6) in the proposed Bill it is stipulated that the Chairperson or a member ceasing to hold office as such shall not accept for a period of one year from the date of demitting such office, any employment in any capacity including as a consultant or an expert, in any private medical institution, whose matter has been dealt with by such Chairperson or member directly or indirectly.

It is indeed a good embargo bringing out a conduct in the teeth of conflict of interest. However the same embargo has been done away with by providing a proviso to the effect that ‘provided further that nothing herein shall prevent the Central Govt. from permitting the chairperson or a member to accept any employment in any capacity, including as a consultant or expert in any private medical institution whose matter has been dealt with by such Chairperson or member’. This is a grossest possible discretionary power, with the Central Govt. which is open for total misuse. More so it has taken away the very vitals of the embargo rightly provided by providing an open ended discretionary jurisdiction.

1. **Secretary an appointee of the Govt. and not the commission** :

The proposed Bill at its section 8(1) provides for that there shall be a secretariat for the commission to be headed by a Secretary to be appointed by the Central Govt. As such, the Secretary would be appointed by the Govt. of India and not by the Commission, which speaks as to how the Central Govt. has caught hold of the autonomy of the commission which is just a namesake with real authority vested in the Central Govt. in an exclusive manner.

Further, at section 8(2) it is stipulated that the Secretary of the commission shall be a person of outstanding ability and integrity possessing a postgraduate qualification in such areas as may be prescribed, paving a way that the Secretary of the National Medical Commission could be a person without possessing modern medicine qualification as the provision contemplates the incumbent to possess PG qualifications in such areas as may be prescribed.

1. **Functions of the Commission:**

The functions vested with the Commission under the Act are generic and cosmetic in character. There under it is to exercise appellate jurisdiction with respect to decisions of the autonomous boards except that of the EMR Board as brought out at Section 10 (g). However, at Section 30(4) it is stated that a medical practitioner or professional who is aggrieved by the decision of the EMR board may prefer an appeal to the Commission within 60 days of the communication of such decision, which is contradictory.

Further, Section 30 (4) of the proposed act provides an appellate jurisdiction exclusively to a medical practitioner or professional to prefer an appeal with the commission if aggrieved with the decision of the EMR Board. However, the said clause is absolutely silent in regard to providing appellate jurisdiction to the complainant, which is a substantial omission with reference to equity and providence for justice.

Functionally commission would be framing guidelines for determination of Fee in respect of such proportion of seats not exceeding 40% in the private medical institutions which are governed under the provisions of this Act.

This operationally means that the fee regulation would be limited to a maximum of 40% seats in the private medical institutions, which is difficult to understand as to why such a ceiling and further more it could be anything from nil up to 40% which is paradoxical in nature.

Further, the private State Universities and minority institutions for want of their explicit incorporation stand excluded from the ambit of the commission with reference to prescribing the chargeable fee.

It also brings into fore as to what would be the chargeable fee for those percentage of seats for which no guidelines would be framed by the commission. This operationally will mean that the present 15% which is available to private institutions including deemed universities for charging higher fee, would stand augmented to the entire remainder which could be anything between 60% or more which is a real travesty of its type.

1. **Composition of Autonomous Board :**

The Section 17(1) of the proposed Act stipulates that each autonomous board shall consist of President and two members. The composition does not provide for inclusion of any elected member therein which goes to indicate that the membership of the said Boards would be totally appointed / nominated without any representation of an elected member and thus they would not have any representative character as is desired and warranted.

It is evident that the total number of members along with Chairman in each of the autonomous board is three and is grossly insufficient to handle the task that are expected to be dispensed at the said board for want of required manpower.

At section 16(2) of the proposed Bill it is provided that the President of the each autonomous board, both members of the UGME board and UGME Board and one member each of MAR bard and the EMR board shall be persons of outstanding ability, proven administrative capacity and integrity, possessing a postgraduate degree in any discipline of medical sciences from any university and having experience of not less than 15 years in such field out of which at least 7 years shall be as a leader in the area of medical education, public health, community medicine or health research.

The stipulation here in this sub-clause to the effect that the person could be possessing a postgraduate degree in any discipline of medical sciences from any university is ambiguous to the extent that in the said context the person could be such, who may be having requisite experience and a qualification from the university outside the country and therefore may not be registered with the registering medical council in India, which ought not be a situation for a member representation in such autonomous board including the EMR Board.

1. **Functioning of MAR Board:**

In the proposed Bill the powers and functions of the MAR Board are brought out at Section 26(1) and its sub-sections thereat.

At sub section (d) it is stipulated that the MAR board shall conduct or where it deems necessary empanel independent rating agencies to conduct assess and rate all medical institutions within such period of their opening and every thereafter in such time and in such manner as may be specified by regulations. This entails empanelment of rating agencies who shall conduct and assess the institutions through people who would be devoid of the requisite expertise to decipher the requirement with reference to hospital requirements, clinical teaching, clinical material in regard to its extent and variety mandated for desired standards of medical teaching and training. The entire exercise may turn out to be hollow and superfluous.

1. **Separate National Register :**

Under section 31(8) the EMR Board shall maintain a separate National Register including the names of licensed AYUSH Practitioners who qualifies the bridge course referred in Section 49(4) in such manner as may be specified by Regulations. By an explanation, AYUSH Practitioner has been defined as a person who is a practitioner of Homeopathy or a practitioner of Indian Medicine as defined in Clause (e) of Sub-section 1 of section 2 of the Indian Medicine Central Council Act, 1970.

Section 49(4) contemplates bridge courses even for the practitioners of homeopathy to enable them to prescribe such modern medicines at such level as may be prescribed. This is materially inconsistent with the definition of the word ‘medicine’ as depicted at section 2(j) wherein it is defined as ‘medicine means modern scientific medicine in all its branches and include surgery and obstetrics but does not include veterinary medicine and surgery’.

It is worthwhile to note that the names of the BAMS and BHMS graduates are already registered with their respective councils. On availing the bridge course they would be incorporated in a separate register, which would mean that they would be having duel registrations with two registering councils, which is neither open nor permissible. Further, the disciplinary jurisdiction with reference to breach of ethics is not indicated as they have duel registrations to their credit. In a way a classical privileged group would stand created by virtue of the proposed Bill.

As such these are the flood gates that have been opened up in terms of the statutory provisions for backdoor entry into medical profession entitling practicing modern medicine.

1. **Dismantling the Screening Test :**

Section 32(2) clearly stipulates that ‘no person who has obtained medical qualification from a medical institution established in any country outside India and is recognized as a medical practitioner in that country shall, after the commencement of this Act and the National Licenciate Examinations becomes operational under sub-section 3 of section 15, be enrolled in the National register unless he qualifies the National Licenciate Examinations.

It is strange that a filter in the name of screening test was placed was to ensure that the degree holders from medical institutions outside country are tested in regard to their required level of knowledge and upon clearance of the screening test were required to do one year internship for the hands on training under supervision in a recognized medical college to ensure that he is capable of rendering healthcare services to the people at large in the Indian context.

Upon the promulgation of the National Medical Commission Bill 2017, the Indian Medical Council Act, 1956 would stand repealed and therefore the clause 13 thereat prescribing screening test would be rendered to nullity.

Section 15 (3) of the proposed bill stipulates that “The National Licenciate examination shall become operational on such date, within three years from the date of commencement of this act, as may be appointed by the Central Govt., by Notification. This operationally means that till such time the National Licenciate examination is notified, the Indian possessing foreign Medical qualification would be entitled to seek permanent registration and practice medicine without any screening rider or filter. As such, during the interregnum a vacuum would be created, and the same would be filled in what manner is not provided for anywhere in the proposed Bill.

It is imperative to note that there are several students who have sought admission to medical institutions outside India after procuring eligibility certificate by the Medical Council of India and therefore, are legitimately entitled to appear for the screening test after acquiring foreign graduate medical qualification.

By removal of the said filter and in the teeth of the liberal provision incorporated at section 32(2) of the Bill, it will open floodgates for the compromised degree holders to practice without they being tested for the desired levels and country will be flooded with half-baked and ill-equipped medical practitioners playing havoc with the health of Indian population at large.

Further the standard and level of licenciate examination would be such that the students belonging to backward communities would find it great difficulty to clear the same easily and handily. This would cause a great harm to them because they would neither be able to practice nor would be able to take admission to PG courses. In addition even the students learning in medical colleges situated in remote areas as well as backward areas/states they will also suffer in a similar manner. This handicap would be equally applicable to the students passing out from north-east region as well. The net result would be that thousands of students passing their MBBS examination belonging to backward communities learning from backward areas including north-east region would not be able to practice timely and also seek admission to PG courses for want of clearance of the licenciate examination because of its higher standards.

1. **Intrinsic inconsistency:**

It is worthwhile to note that at Section 19(3) it is brought out that ‘the provisions contained in sub-section 3,5,6, 7 and 8 of Section 6 relating to other terms and conditions of service of and in section 7 relating to removal from the office of the Chairperson and member of the commission shall also be applicable to the president and members of the autonomous board. However in reality section 6 does not have any sub section 7 and 8 provided thereunder.

1. **Directions to State Medical Councils:**

The proposed Bill at section 10(1)(f) authorises the commission to take such measures as may be necessary to ensure compliance by the State Medical Councils of the guidelines framed and regulations made under this Act for their effective functioning under this Act.

Further the proposed Bill at section 27(b) with a proviso added thereto brings out that ‘provided that the EMR board shall ensure compliance of the Code of Professional and Ethical Conduct through the State Medical Council in a case were such medical council has been conferred power to take disciplinary actions in respect of professional or ethical misconduct by medical practitioners under respective State Acts.

The proposed Bill under section 30(2) entitles the Central Govt. to give direction to the State Medical Council for dispensation of task under their jurisdiction. All these provisions shall take away the autonomy vested with the State Medical Council and make them subservient to the Central Govt. This would be a great prejudice caused to the State Medical Councils.

1. **Imposition of Penalty.:**

Under section 26(1)(f) it is provided that MAR Board take such measure,  including  imposition  of  monetary penalty, against a medical institution for failure to maintain the minimum essential standards specified by the UGME Board or the PGME Board, as the case may be, in accordance with the regulations made under this Act.

It is further provided that the “medical institution which has been imposed a first-time monetary penalty fails to take any corrective action, the MAR Board may impose a second-time monetary penalty for continued failure which shall be higher than the first-time penalty and on continued failure, impose a third-time monetary penalty which shall be higher than the second-time penalty:

Provided further that all the three monetary penalties imposed under the first proviso shall not be less than one-half, and not more than ten times, the total amount charged, by whatever name called, by such institution for one full batch of students of undergraduate course or postgraduate course, as the case may be:

Provided also that even after the imposition of third-time penalty, if the failure continues, the MAR Board shall forward its report to the Commission recommending to withdraw the recognition granted to the  medical qualification awarded by that medical institution.

The material point for consideration is that all the three monetary penalties are not to be less than one half and not more than ten times the total amount charged by a such institution for one full batch of students of undergraduate course or postgraduate course as the case may be. Apart from the heavy computation the contemplation of batch of students of undergraduate course or postgraduate course fall short of indicating required specifics. Moreover it yields such wide period and discretionary power to the Board and in the name of charging fine in the name of invocation of penalty the permissibility of the period turns out to be substantial before the closure is invoked meaning that during the impending period the learner would be taught and trained in compromised ambience resulting in impoverished teaching and ending up in generation of half-baked health manpower, which would be ill conducive to the healthcare delivery system.

1. **Discretionary Powers for relaxing prescribed regulatory conditions** :

Under Section 29 (b) of the proposed Bill the MAR board is to look into ‘whether adequate faculty and other necessary facilities have been provided to ensure proper functioning of the medical college or would be provided within the time limit specified in the scheme’. This vests the board with a wide discretionary power to accord approval on a hypothetical assumptive presumption that the stipulated minimum requirements would be completed in due course of time. This by itself entitles the MAR Board to permit learners to be taught and trained in compromised conditions impacting and prejudicing the desired quality of medical education.

Added to this is the authority vested in the proviso incorporated to Section 29(d) of the proposed Bill whereby the MAR Board can relax the criteria for opening of the medical colleges at its discretion with the previous approval from the Central Government which yields not only a wide authority but also provides adequate scope for availing the discretion for extraneous considerations. More so the regulatory stipulations which are mandatory in nature and binding in character cannot be open for any concession or condonation vide discretionary authority.

The said discretionary authority is not only vested with the autonomous board but also is with the Central Govt. as well. Such duel / double discretions to waive the applicability of statutory stipulations governing prescribed requirements per se bad in the eyes of the law and end up in providing ample scope for a free flowing corruption to dwell and get deep rooted.

1. **Permission to practice without qualifying the National Licenciate Examination:**

Proviso to Section 33(1)(d) stipulates that ‘the commission may permit a medical professional to perform surgery or practice medicine without qualifying the National Licenciate Examination, in such circumstances and for such period as may be specified by regulations’.

This operationally means that without ascertaining of the required levels and certification thereto the commission would be permitting people to practice surgery and medicine in an open ended manner is nothing less than legalizing quackery in an operational sense and playing with lives of the people at large.

1. **Removal of embargo on Foreign Citizens practicing in India:**

A proviso to section 33(1)(d) clearly stipulates that ‘a foreign citizen who is enrolled in his country as a medical practitioner in accordance with the law regulating the registration of medical practitioners in that country may be permitted temporary registration in India for such period and in such manner as may be specified by a Regulation’.

An uninhibited permission to practice medicine by a foreign citizen without any reasonable restrictions is harbouring intrinsic dangers in itself. What would be the imposable disciplinary jurisdiction on them in regard to ethical breach is not brought out. They would be immune from licenciate examination.

As a matter of fact the general rule in every country is that anybody who intends to practice and who has a recognized medical qualification from the native country is required to undergo and clear a licenciate examination. In the given circumstance the proposed Bill is generating an exception, which is unheard of and is virtually making Indian Citizens to be availed as a guinea pig which is not only immoral but also unethical as well.

The imposable punishment in case of any breach is stipulated at sub section 33(2), which is in the nature of an imposable fine ranging from Rs. 1 lac to Rs. 5 lac only. This operationally means that the said Foreign National Practitioner has not only be granted immunity from ethical breach but also from civil and criminal liability under the Indian Governing Laws.

1. **Recognition of medical qualifications granted by medical institutions outside India :**

Under section 35(1) of the proposed bill it is provided for that “where an authority in any country outside India, which by the law of that country is entrusted with the recognition of medical qualifications in that country, makes an application to the commission for granting recognition to such medical qualification in India, the commission may subject to such verification as it may deem necessary, either grant or refuse to grant recognition to that medical qualification.

This operationally brings out a grave situation, in as much as that every Indian who possessed a foreign medical qualification recognized in that country was entitled to appear for the screen test and on clearance of the same was eligible for having permanent registration to practice in India. But by virtue of the present stipulation and doing away with the screening test the said open choice would be substantially restricted to seek admissions in those institutions in the concerned countries whose qualifications are recognized and are included in the appropriate schedule. Such a restriction is not conducive to the legitimate interest and claims of the Indian Students seeking admission to medical schools outside India for wide and varied reasons.

As if, the said suffocation was not enough, by a further provision at section 39 of the proposed Bill it is stipulated that ‘where the commission deems it necessary it may by an order published in the official gazette, direct that any medical qualification granted by a medical institution in a country outside India after such date as may be specified in that notification shall be a recognized medical qualification for the purposes of this Act.

Realistically speaking it is an absolute discretionary power which is open for any abuse / misuse in the teeth of the material fact that there is no procedure prescribed for availing the same. It is absolutely a blind power likely to serve any good purpose.

1. **Central Govt. empowered to issue directions :**

Although, autonomy is expected to be a hallmark of the National Medical Commission Bill, 2017 and the Boards there under are called as, “Autonomous Boards” in reality the same is a misnomer as under section 44(1) in the said proposed Bill the Central Govt. would be entitled to give directions to the Commission and autonomous boards on all the questions of policy which would be binding for the commission and autonomous Boards to comply. Further it is clearly stipulated that the decision of the Central Govt. whether question is one of the policy **or not** would be final and is not open for any require of any type.

Section 45 of the proposed bill further stipulates that the Central Govt. would be within its rights to give such direction it may deem necessary to the State Govt. for carrying out all or any of the provisions of this Act and State Govt. shall comply with such directions is also undermining the authority of the State Govt. and is inconsistent with the cardinal principles governing the federal polity as stipulated in the Constitution of India.

1. **Central Govt. empowered to supersede commission:**

Section 53 provides for the power of the central Govt. to supersede the commission in case it is unable to discharge the function and duties imposed on it by or under the provisions of the Act.

This has to be viewed in the context of the material fact that although the National Commission is expected to be created with all autonomy at its disposal the same is negated by virtue of its composition, operational restrictions, authority vested with the Govt. to issue directions binding for the commission to abide and obey. Added to it is the authority vested with the Central Govt. to supersede the commission which brings that it will have to function under constant thread of a Sword of Damocles hanging over its heads in the name of its dissolution and supersession. As such, it is evident that by virtue of the absolute authority vested with the Central Govt. the National Commission Bill contemplates creating a subordinate, subservient, limping commission at the mercy of the Central Govt. for anything and everything to sneeze when called to do so and bend when directed.

1. **Impact on employees of the Medical Council of India**

Section 58 in the proposed bill under the caption repeal and saving at its sub-section 3 clearly brings out that ‘on the dissolution of the medical council of India the person appointed as Chairman of the Medical Council of India and every other person appointed as the member and any officer and other employees of the that council and holding office as such immediately before such dissolution shall vacate their respective offices and such chairman and other members shall be entitled to claim compensation not exceeding three months pay and allowances for the premature termination of term of their office or of any contract of service.

In terms of the composition stipulated under section 3 of the IMC Act 1956, the Chairman and members of the council are not full time appointees in the council. To that extent the dissolution of the council only results in termination of their respective membership to the council which is honorary in nature. However, the clause impacts the employees of the council in a very substantial manner in regard to their full time salaried status and permanence of employment in character. It impacts their future in a big manner by rendering their permanent employment to a nullity in a sudden manner and renders them to a struggle for their lives and living as a whole. As such, it has human angle specially in the context of Article 21 read with article 12 of the Constitution of India, in as much as article 21 vests entitlement to decent life and living as a fundamental right to every citizen and article 12 mandates a state (in the instant case Medical Council of India) to be an ideal employer.