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National Medical Commission Act, 2019: The Need for Parity

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National Medical Commission Act, 2019 – the need for parity

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Abstract

The National Medical Commission (NMC) has replaced the erstwhile Medical Council of India with the intention of bringing about positive reforms in medical education and enforcing ethical standards in the practice of medicine in India. The NMC Act of 2019, under clauses 3 and 4 of Section 30, details the procedure of grievance redressal. However, these clauses in their current form empower doctors and patients unequally. While the Act empowers an aggrieved medical professional to approach the relevant appellate fora under the NMC, it is silent on a similar opportunity for an aggrieved patient or caregiver to appeal against the decision of a State Medical Council. There is a need to amend these clauses to ensure equitable opportunity for aggrieved patients to appeal against decisions of the State Medical Councils to ensure justice.

Keywords: National Medical Commission, ethics, rights; representation, medico-legal.

The National Medical Commission (NMC) is a regulatory body under the Government of India, which replaced the Medical Council of India on September 25, 2020, raising hopes of a

complete overhaul of the medical profession and medical education in the country. The governance of the Commission will be carried out under the provisions of the National Medical Commission Act, 2019 (NMC Act). The ambitious NMC Act, 2019, inter alia, elaborates on policy-making for medical education; healthcare infrastructure, and human resource management; promoting the practice of evidence-based medicine and scientific research; universal healthcare with the involvement of the community of medical professionals; maintenance of a medical register; supervision of medical institutions, and setting up of an effective grievance redressal mechanism to enforce high ethical standards in the healthcare services [1]. The Act has several positive features, including the introduction of standardised exit examinations for medical studies and a policy to eliminate corruption and address the educational and healthcare demands of the country. Among the four autonomous Boards constituted by the Central Government, the Ethics and Medical Registration Board is assigned the function, among others, of developing grievance redressal mechanisms in the context of setting higher ethical standards for the medical profession. Harmonising the functions of the Ethics and Medical Registration Board with State Medical Councils, the law states that the Board shall exercise appellate jurisdiction with respect to disciplinary action taken by the concerned State Council. In this regard, we would like to highlight the clauses under section 30 of the Act [2] as shown below:

(3) A medical practitioner or professional who is aggrieved by any action taken by a State Medical Council under sub-section (2) may prefer an appeal to the Ethics and Medical Registration Board against such action, and the decision, if any, of the Ethics and Medical Registration Board thereupon shall be binding on the State Medical Council, unless a second appeal is preferred under sub-section (4).

(4) A medical practitioner or professional who is aggrieved by the decision of the Ethics and Medical Registration Board may prefer an appeal to the Commission within sixty days of communication of such decision.

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Whereas Section 8.8 of the erstwhile Indian Medical Council Act, 1956, Regulations 2002 [3] stated that any person aggrieved by the decision of the State Medical Council had the right to file an appeal before the Medical Council of India; the right to appeal against the findings of the State Council is restricted, in the NMC Act, to medical professionals alone, and excludes patients. Sections 30(3) and 30(4) detail the disciplinary actions to be taken by the respective Medical Councils regarding professional or ethical misconduct by a registered medical practitioner or professional.

In case of an unfavourable judgment, this clause provides opportunities for an aggrieved medical professional to appeal against the verdict. There is no provision for the patient to appeal against the decision of the State Medical Council under the NMC Act, 2019. In its current form, this approach can provide a means of subverting justice by denying patients an opportunity to contest a decision taken by the Council. The argument seems to be that the Civil Court or Consumer Commissions are empowered to adjudicate the grievances of patients. We consider this argument invalid because the patient must be given an equal opportunity to contest the decisions of the Council, irrespective of the availability of other fora. When patients want to appeal against a decision of the State Council, they have not been provided with the option of appealing before the central body of the National Commission. Although the Act does not explicitly state that a patient cannot appeal against the decision of the State Council, the fact that it remains silent on such provisions and goes on to explain the opportunities for an aggrieved doctor to appeal against the verdict, indirectly implies denial of an opportunity for further appeal to an aggrieved patient.

Article 14 of the Indian Constitution [4] explicitly highlights equality before the law and equal protection of the laws to all persons within the territory of India. Furthermore, the principles of natural justice, equality, and opportunity lie at the heart of the Indian Constitution. Therefore, these clauses violate the fundamental rights of patients to seek an

appropriate remedy within the ethical framework of justice. We agree that, at the time of framing these clauses, there may have been a perception that patients have multiple avenues to seek a remedy. However, in the absence of the right to appeal, these provisions violate the principles of natural justice. In addition, one needs to consider what is the most appropriate means of providing doctors with the opportunity for a fair and speedy trial with non-adversarial procedures, in case of a complaint to the NMC.

It would augur well for justice if this section of the NMC Act of 2019 is amended to reflect a more equitable opportunity for the patient's voice to be heard. Our recommendation aligns with the Constitution of India [4], with the mission of the Integrated Grievance Redressal Mechanism as outlined by the Department of Consumer Affairs [5], and, more importantly, with the spirit of equity and justice that is integral to medical ethics.

Conflicts of interest: *SBM and YM are members of the Ethics and Medical Registration Board Expert Committee. All other authors occupy academic posts in reputed institutions. The views expressed by the authors may not necessarily represent those of their seats or institutions.*

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