PARLIAMENT OF INDIA
RAJYA SABHA
DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON HEALTH AND FAMILY WELFARE

SEVENTY-THIRD REPORT
On
THE INDIAN MEDICAL COUNCIL (AMENDMENT)
BILL, 2013
(Ministry of Health and Family Welfare)

(PRESENTED TO THE CHAIRMAN, RAJYA SABHA ON THE 20th, NOVEMBER, 2013)
(FORWARDED TO THE SPEAKER, LOK SABHA ON THE 20th, NOVEMBER, 2013)

Rajya Sabha Secretariat, New Delhi
November, 2013/ KARTIKA, 1935(SAKA)
Parliament of India
Rajya Sabha

Department-Related Parliamentary Standing Committee

Seventy-Third Report
On
The Indian Medical Council (Amendment) Bill, 2013
(Ministry of Health and Family Welfare)

(Presented to the Chairman, Rajya Sabha on the 20th, November, 2013)
(Forwarded to the Speaker, Lok Sabha on the 20th, November, 2013)

On Health and Family Welfare

Rajya Sabha Secretariat, New Delhi
November, 2013/ KARTIKA, 1935(SAKA)
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* to be appended at printing stage
COMPOSITION OF THE COMMITTEE (2013-14)

**RAJYA SABHA**

1. Shri Brajesh Pathak - Chairman
2. Shri Rajkumar Dhoot
3. Shrimati B. Jayashree
5. Dr. Prabhakar Kore
6. Dr. R. Lakshmanan
7. Shri Rasheed Masood
8. Shri Jagat Prakash Nadda
9. Dr. Vijaylaxmi Sadho
10. Shri Arvind Kumar Singh

**LOK SABHA**

11. Shri Kirti Azad
12. Shri Mohd. Azharuddin
13. Shrimati Sarika Devendra Singh Baghel
14. Shri Kuvarjibhai M. Bavalia
15. Shrimati Priya Dutt
16. Dr. Sucharu Ranjan Haldar
17. Mohd. Asrarul Haque
18. Dr. Monazir Hassan
19. Dr. Sanjay Jaiswal
20. Shri Chowdhury Mohan Jatua
21. Dr. Tarun Mandal
22. Shri Mahabal Mishra
23. Shri Zafar Ali Naqvi
24. Shrimati Jayshreeben Patel
25. Shri Harin Pathak
26. Shri Ramkishun
27. Dr. Anup Kumar Saha
28. Dr. Arvind Kumar Sharma
29. Dr. Raghuvansh Prasad Singh
30. Shri P.T. Thomas
31. Vacant

**SECRETARIAT**

Shri P.P.K. Ramacharyulu Joint Secretary
Shri R. B. Gupta Director
Shrimati Arpana Mendiratta Joint Director
Shri Dinesh Singh Deputy Director
Shri Pratap Shenoy Committee Officer

& vacant vide disqualification as a member of the Council of States (Rajya Sabha) w.e.f. 19th September, 2013.
I, the Chairman of the Department-related Parliamentary Standing Committee on Health and Family Welfare, having been authorized by the Committee to present the Report on its behalf, present this Seventy-third Report of the Committee on the Indian Medical Council (Amendment) Bill, 2013.


3. The Committee issued a Press Release inviting memoranda/views from individuals and other stakeholders. (Annexure-II). In response thereto 24 Memoranda from individuals and others relevant to the Bill have been received till the last date. List of individuals from whom memoranda were received is at Annexure-III. Copies of the Memoranda and suggestions received were sent to the Ministry for comments.

4. The Committee held seven sittings during the course of examination of the Bill on 26th September, 04th October, 11th October, 21st October, 22nd October, 31st October, 11th November and 12th November, 2013 and . The list of witnesses heard by the Committee is at Annexure-IV.

5. The Committee considered the draft Report and adopted the same on 12th November, 2013.

6. The Committee has relied on the following documents in finalizing the Report.

   (i) Indian Medical Council (Amendment) Bill, 2013;
   (ii) Background Notes on the Bill received from the Department of Health and Family Welfare;
   (iii) Presentation, clarifications and Oral evidences of Secretary, Department of Health & Family Welfare;
   (iv) Memoranda received on the Bill from various institutes/bodies/associations/organizations/experts and replies of the Ministry on the memoranda selected by the Committee for examination.
   (iv) Oral evidences and written submissions by various stakeholders/experts from various medical professions, on the Bill; and
   (vi) Replies to the questions/queries raised by Members in the meeting on the Bill, received from the Department of Health & Family Welfare.

* Published in Gazette of India Extraordinary Part II Section 2, dated 19th August, 2013
7. On behalf of the Committee, I would like to acknowledge with thanks the contributions made by those who deposed before the Committee and also those who gave their valuable suggestions to the Committee through written submissions.

8. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI;
12th November, 2013
Kartika 21, 1935 (Saka)

BRAJESH PATHAK
Chairman,
Department-related Parliamentary Standing Committee on Health and Family Welfare
ACRONYMS

1. IMC (Amendment) Bill, 2013 - Indian Medical Council (Amendment) Bill, 2013
2. IMC Act, 1956 - Indian Medical Council Act, 1956
3. M.C.I. - Medical Council of India
4. NCHRH - National Commission for Human Resources for Health
5. UGC - University Grants Commission

(iv)
The Indian Medical Council (Amendment) Bill, 2013

Introduction

Upto 1956 the affairs of medical education and medical profession were governed by the Indian Medical Council Act, 1933 (27 of 1933), a British period legislation. In order to give representation to licentiate members of the medical profession, to provide for registration of the names of citizens of India who have obtained foreign medical qualifications, which were not recognized by the Act of 1933, to provide for the temporary recognition of medical qualifications granted by medical institutions in the countries outside India with which no scheme of reciprocity exists to provide for the formation of a Committee of Post-graduate medical education for the purpose of assisting the Medical Council of India to prescribe standards of PG medical education for the guidance of Universities and to provide for the maintenance of an all India register by the Medical Council of India, it became necessary to amend the Act of 1933 referred to above. Accordingly, a Bill was introduced in the Parliament and the Indian Medical Council Act, 1956 came into existence w.e.f. 30th December, 1956. Since then the said Act has been amended several times in 1958, 1964, 1993, 2001, 2005, 2010 & 2012.

2. The Ministry of Health and Family Welfare informed the Committee that consequent upon some reported irregularities in the functioning of the Medical Council of India and allegations of corruption against its elected functionaries, the Council was superseded for one year and a Board of Governors was notified to perform the functions of the Council during the interregnum through the Indian Medical Council (Amendment) Ordinance, 2010 issued on 15th May, 2010. Section 3A(2) of the above Ordinance stipulated that the Council shall be reconstituted within a period of one year on the date of its supersession. In July, 2010 a replacement Bill for Ordinance was passed by the Parliament and the Indian Medical Council (Amendment) Act, 2010 received assent of the President on the 4th September, 2010. Subsequently, the term of the Board of Governors was extended to one year at a time by amending the Act in 2011 and 2012. As per the provisions of Section 3A(2) of the Indian Medical Council (Amendment) Act, 2012, the Council has to be reconstituted within a period of three years from the date of its supersession i.e. latest by the 14th May, 2013.

3. It was further stated that in the meantime the Ministry of Health and Family Welfare initiated a proposal to set up a National Commission for Human Resources for Health (NCHRH), as an overarching regulatory body, thereby subsuming various functions of the existing Councils. Accordingly, the National Commission for Human Resource for Health Bill, 2011 was introduced in Rajya Sabha on the 22nd December, 2011 and referred to the Parliamentary Standing Committee on Health and Family Welfare for examination and report. The Committee presented its Report on the said Bill on the 30th October, 2012 wherein it has asked the Ministry to withdraw the Bill in its present form and bring a fresh Bill after appropriately addressing the apprehensions of the stakeholders. The Committee was informed that its recommendations are under consideration of the Ministry of Health and Family Welfare. The Ministry further stated that realizing the fact that there was extremely remote chance that the entire process for bringing the revised bill to set up the NCHRH before the term of Board of Governors expires on the 14th May, 2013 and it was not desirable to again amend the Indian Medical Council Act, 1956 for seeking another extension for the Board of Governors beyond the 14th May, 2013, it was decided to introduce a Bill to amend the IMC Act, 1956 and remove a number of infirmities from which the existing Act suffers, particularly in respect of the electoral process and elect a new council after following the due process. It was also decided to allow the Board of Governors to continue till the time the Council is reconstituted. Accordingly, the Indian Medical Council (Amendment) Bill, 2013 was introduced in the Rajya Sabha on the 19th March, 2013. However, the Bill could not be taken for consideration and passing during the Budget Session.
4. The Ministry stated that the Department of Legal Affairs was consulted in the matter and it was agreed that the only option that was left to enable MCI to function in the absence of an elected Council was to extend the term of Board of Governors till the time the Government was able to conduct election and reconstitute the Council as per provision of the above Bill. Thereafter, the Indian Medical Council (Amendment) Ordinance, 2013 was promulgated on the 21st May, 2013.

5. The Indian Medical Council (Amendment) Bill, 2013 introduced in the Rajya Sabha in the last Budget Session provides that the Central Government shall, as soon as possible, after commencement of the IMC (Amendment) Act, 2013, reconstitute the Council. The proviso to the Clause was modified in the Ordinance to provide that the Board of Governors of the Medical Council of India shall continue to exercise its powers till the Government is able to reconstitute the Council or to a maximum period of six months from the date of the commencement of the Act, whichever is earlier, meaning thereby that the Central Government has to reconstitute the Council latest by the 10th November, 2013.

6. As per the laid-down practice, the Ministry prepared another Indian Medical Council (Amendment) Bill, 2013 to replace the Ordinance during the Monsoon Session. Accordingly, the replacement Bill was introduced in the Rajya Sabha on the 19th August, 2013 and referred to the Standing Committee on Health & Family Welfare on the 12th September, 2013 for examination and report.

7. On termination of the Monsoon Session, the IMC (Amendment) Ordinance, 2013 promulgated on the 21st May, 2013 automatically ceased to operate on the 16th September, 2013. Thereafter, the Ministry of Health and Family Welfare re-promulgated a Second Ordinance on the 28th September, 2013. A few more amendments were incorporated in the Second Ordinance which were not included in the IMC (Amendment) Bill, 2013. The Committee has questioned legality of re-promulgation of the Second Ordinance by the Ministry of Health and Family Welfare and sought a clarification in the matter from the Department of Legal Affairs, Ministry of Law and Justice. The Department of Legal Affairs vide their note dated .....October, 2013 informed the Committee that in the present matter, the Ministry of Health and Family Welfare vide paras 2.7, 2.8 and 2.9 of its Cabinet Note dated the 17th September, 2013 had justified as to why re-promulgation of Second Ordinance was required which are reproduced below :-

"In pursuance of the said decision of the Cabinet, the Indian Medical Council (Amendment) Ordinance, 2013 was promulgated on the 21st May, 2013. Subsequently, a Bill namely, the India Medical Council (Amendment) Bill, 2013 to replace the Ordinance was introduced in the Rajya Sabha on the 19th August, 2013. The Bill, however, could not be taken up for consideration and passing. As the sais Replacement Bill could not be passed at the expiration of six weeks from the reassembly of Parliament in terms of the sub-clause(a) of clause(20) of Article 123 of the constitution, the aforesaid Ordinance ceased to operate on the 16th September, 2013. In view of the position explained above, and the fact that both the Houses of the Parliament have been prorogued, it is proposed that we may now promulgate a fresh Ordinance incorporating minor modifications to the provisions contained in the earlier Ordinance and making it effective w.e.f. the 15th May, 2013 so that the work already done by the Board of Governors of the Medical Council of India as per provisions of earlier Ordinance is validated and may continue. Thereafter, on reassembly of Parliament, steps shall be taken to withdraw the pending Bill and introduce a fresh Bill to the Second proposed Ordinance."

8. The Committee was further informed that in view of the language of Article 123 of the Constitution and various pronouncements in the matter of Dr. D.C. Wadhwa's case, Gyanender Kumar's case and R.C. Cooper's case and the precedents in this regard, there appears to be no legal or constitutional bar in re-promulgating the Indian Medical Council (Amendment) Ordinance, 2013 upon its cessation after termination of the Monsoon Session of Parliament.
9. The Committee was not satisfied with the clarification given by the Department of Legal Affairs and sought further clarifications as to why the fact that the IMC Bill, 2013 had been referred to the Standing Committee on Health and Family Welfare, was not mentioned in the Cabinet Note referred to above and what would be the fate of referring the IMC (Amendment) Bill, 2013 to the Committee for examination and report when Government proposes to bring another Amendment Bill before the Parliament to replace the Second Ordinance promulgated on the 28th September, 2013. The representative of the Ministry informed the Committee that until the date of sending the Cabinet Note, the Ministry of Health & Family Welfare was not aware of the fact that the Bill had been referred to the Committee. The Bill once referred to the Committee remains property of the House and it was still alive. The Second Ordinance has been brought only to validate the work done by the Board of Governors and it may continue till the Council is reconstituted.

10. While deposing before the Committee on the Indian Medical Council (Amendment) Bill, 2013, the Secretary, Department of Health and Family Welfare has stated that the Indian Medical Council (Amendment) Ordinance, 2013 was promulgated on the 21st May, 2013. As per provisions of the Ordinance, the Medical Council of India was to be reconstituted by the 10th November, 2013. As per the laid down practice the Ministry moved the Indian Medical Council (Amendment) Bill, 2013 and introduced in the Rajya Sabha on the 19th August, 2013 to replace the Ordinance during the Monsoon Session. However, the IMC (Amendment) Ordinance (4 of 2013) ceased to operate on the 16th September, 2013 and the Ministry had since decided to re-promulgate the Indian Medical Council (Amendment) Second Ordinance, 2013 so that the work already done by the Board of Governors of the Medical Council of India as per the provisions of the earlier Ordinance was validated and may continue till the Council was reconstituted on or before 10th November, 2013. The proposal to move a Second Ordinance and replace the IMC (Amendment) Bill, 2013 introduced on the 19th August, 2013 and presently before the Committee, was approved by the Cabinet on the 20th September, 2013 and the process was currently underway. The Second Ordinance had certain changes which had been incorporated to further facilitate functioning of the Council. Therefore, a fresh replacement Bill would be required to be placed before the Parliament in the next session. He further informed that this Bill still was the property of the House. However, since the life of the First Ordinance ceased, it was incumbent on the Ministry to put in some mechanism by which the Council was revived so that work of the Council would not cease till the process of election of new Council was completed. The Second Ordinance, when issued, would also need a replacement bill in the next session. The present Bill would be withdrawn for a new replacement bill for replacing the Second Ordinance. He further informed that all the State Governments, State Universities, State Medical Registers etc. have been asked to complete the election process and send nominations for the Council. In this regard 53 nominations had already been received out of 129 nominations. Once the Governing Board came to life, the Ministry would be able to complete this process. The Ministry was committed to complete the election process and had an elected Council in position as soon as it could.

11. The Committee was further informed that vide the Second Ordinance, the deemed Universities would not have the same authority as regular Health Universities to nominate a member to the Council. This aspect was overlooked when the election process began. After due consultation and consideration within the Department and with the permission of the Law Ministry, a decision had been taken that a deemed University would not be a University under Section 3 of the IMC Act for the purposes of election. The second change proposed to be brought vide the Second Ordinance was about Senate or Court. There were some universities that do not have a Senate or a Court. But instead has something called “The Board of Management” which would take care of those cases and would play same role as a Senate or Court.

12. The Committee received a considerable number of memoranda from various experts/stakeholders on the provisions of the Bill. A list of the experts/stakeholders who submitted their views in the form of written memoranda is placed at Annexure-I. A statement containing views/suggestions given by the experts/stakeholders through their written
memoranda and the Ministry's comments thereon on various provisions of the Bill is placed at Annexure-II.

13. In addition to the written memoranda, the Committee heard views of some experts/stakeholders on various provisions of the Bill. A list of the witnesses who appeared before the Committee for oral submission is placed at Annexure-III.

14. Various clauses included in the Amendment Bill, the justification given by the Ministry for suggesting the amendments, views/comments expressed by the experts/stakeholders on the suggested changes and the Committee's observations and recommendations on the suggested changes are discussed in the succeeding paragraphs. The Committee has also discussed the changes proposed in the Second Ordinance which were not there in the Bill.

15. **Clause 3 of Second Ordinance issued on the 28th September, 2013**: Proposes to amend Section 2 (l) of the principal Act defining the word "University" as under:

"University means any University in India established by law and having a medical faculty but does not include deemed university for the purpose of Section 3 of the Act".

16. **Justification**

The words "Deemed University" do not fall under the definition 'University'. The amendment is proposed to avoid any conclusion while electing members for the Council from the Universities. There was no representation of deemed universities in the erstwhile MCI. The proposed amendment simply clarifies the position. Besides, decision to exclude the representation of deemed universities in the MCI was taken on the basis of consultation and consideration within the Department and also in consultation with the Ministry of Law.

17. While deposing before the Committee during Clause-by-Clause discussion, the Health Secretary stated that the main reason was that the number of deemed Universities was very large and a majority of them were private which would make the number of members of the Council unwieldy.

18. **Views/comments of experts/stakeholders**

- Deemed Universities are universities for all purposes of the MCI Act, 1956 but this amendment excludes these universities for the purpose of Section 3 of the Act.
- Presently, there are 36 deemed universities (as per the information received from the Ministry, there are only 27 deemed universities) with medical faculty providing medical education but this amendment debars those universities to elect and send their representative to the Council which is not tenable.
- The proposed amendment is arbitrary, whimsical and untenable in the eyes of the law. Thus the definition of the word 'University' in the Principal Act needs to be replaced.

19. **Observation/recommendation of the Committee**

- The Committee notes that deemed universities are universities for all purposes of the MCI Act. These universities have been granted this status by the UGC after fulfilling all the requirements and proper scrutiny thereof. These universities are recognized by the Medical Council of India for imparting medical education for both UG and PG courses as per its norms and guidelines issued from time to time. But the proposed amendment debarred them from sending their representative to the Medical Council of India which is, in view of the Committee, not tenable as it is right of the Deemed Universities to have their representative in the Council. These Universities have every right to contribute and involve in regulation of Medical education and medical practice. The Committee was given to understand that presently there are 27 deemed universities with 32 medical colleges affiliated thereto which are imparting medical education. The Committee is not convinced with the Ministry's contention that the number of members of the Council would be unwieldy if each deemed University was allowed to send one representative. There is no
The basic difference between the medical colleges affiliated to the deemed Universities and those affiliated to other private universities. The Committee feels that it would not be justified to deprive the medical colleges affiliated with the deemed Universities from sending their representative to the MCI. Accordingly, the Committee recommends that the proposed amendment should be withdrawn and the deemed universities should be given representation in the Medical Council of India on the similar lines as the other medical colleges have been allowed. One representative each from the states with five or more Deemed Universities may be elected. All other Deemed Universities which are less than five in each State, may together elect one representative. Accordingly, the amendment proposed in Clause 3 of the Second Ordinance should be withdrawn and provision of Section 3(1)(b) should be suitably amended.

20. The Committee also takes note of the definition given for the word ‘University’ in the Indian Medical Council (Amendment) Bill, 2005 which also includes an institution deemed to be a university. The Committee recommends that the same definition may be brought in the Bill.

21. **Clause 3**: Proposes to amend Section 3 of the principal Act regarding constitution and composition of the Council.

   (i) **Sub-clause (a) (ii)**: Proposes to insert the following proviso to Section 3(1)(b) of Principal Act.

   "Provided that where there is a Health University in a State, that University shall elect one representative for every ten medical colleges affiliated to it to represent such medical colleges:

   Provided further that a Health University with less than ten medical colleges affiliated to it, shall also be eligible to elect one representative to represent such medical colleges:

   Provided also that such number of representatives shall be reviewed by the Central Government after every four years."

22. **Justification for the above Proviso**

   The Ministry stated that presently each University with medical facility is entitled to send a representative to the Council. The States which have established Health Universities can send only one member under this category whereas other States having more than one University can send as many members to the Council. Thus there was reverse discrimination against the States with large number of medical colleges since they have established Health Universities. The above proviso is proposed to be inserted to correct the anomaly.

   Vide the Indian Medical Council (Amendment) Second Ordinance, 2013 notified on the 28th September, 2013, the Ministry proposes to amend sub-section(1)(b) and proviso thereto of Section 13 of the Principal Act as under:

   "(b) one member from each University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no Senate, by members of the Court or in case the University has no Court, a body equivalent to the Senate or the Court:

   Provided that where there is Health University in a State, the Senate of the Health University or in case the Health University has no Senate, by members of the Court or in case the University has no Court, a body equivalent to the Senate or the Court of that University, shall elect one representative for every ten medical colleges affiliated to it, from amongst the medical faculty of those medical colleges, to represent such medical colleges:

   Provided further that a Health University with less than ten medical colleges affiliated to it, shall also be eligible to elect one representative to represent such medical colleges:
Provided also that such number of representatives shall be reviewed by the Central Government after every four years.

23. **Justification**

There were instances where University does not have a Senate or a Court and the powers of the Senate or Courts are exercised by Board of Management, it was desirable to amend the sub-section(1)(b) of Section 3 so as to avoid difficulty for a University with BOM to elect a representative. The amendment in the proviso thereto is consequential to the amendment in section(1)(b) of Section 3. Further it also clarifies representative to the Council from Health Universities will be elected from amongst the medical faculty of the affiliated medical colleges.

24. **Observation/recommendation of the Committee**

In the first proviso to Section 3(1)(b) as proposed in the IMC(Amendment) Second Ordinance, 2013, the words 'from amongst the medical faculty of those medical colleges, to represent such medical colleges' may be substituted by the words 'from amongst the Members of medical faculty of the University'.

25. The Committee further recommends that in the third proviso to the Section 3(1)(b) as provided in Clause 3 of the Bill, the words 'four years' may be substituted by the words 'five years'.

26. The Committee's attention has also been drawn to the fact that the Nursing Council, under the Ministry, has two Members from the Lok Sabha and one from the Rajya Sabha elected by the respective Houses. The Committee noted that the Joint Parliamentary Committee on the Indian Medical Council (Amendment) Bill, 1987 had also recommended in its Report presented to the House that three Members of Parliament, two from Lok Sabha and one from Rajya Sabha, should also be nominated on the Medical Council of India. The Committee in its 19th Report on the Indian Medical Council (Amendment) Bill, 2005, presented to the House on 19th December, 2006, again reiterated the recommendation made by the Joint Parliamentary Committee. On this issue, the Health Secretary stated that the intent of the provision of Clause 3(1) (e) was to associate all important functionaries, mainly associated with administering medical profession and education, with the functioning of the Medical Council of India. The Committee is not satisfied with the Ministry's contention. There are a number of medical professionals among Members of Parliament, both in Lok Sabha and Rajya Sabha, and they can extend constructive contribution in the field of medical education and medical practice.

27. The Committee, therefore, again reiterates its earlier recommendation that three Members of Parliament, two from Lok Sabha and one from Rajya Sabha should be nominated under the category of nominated Members under the Provision of Section 3(1)(e) of the Principal Act and the provision may be amended suitably.

(ii) Sub-clause (b) : Proposes to insert the following provision to sub-section(2) of Section 3 of Principal Act.
"Provided that no person shall hold office as the President or, as the case may be, the Vice-President for more than two terms."

28. **Justification**

The circumstances leading to dissolution of MCI in 2010 makes it imperative to fix the term of President and Vice-President of the Council providing that no person shall hold office of the President or Vice-President for more than two terms.

29. **Views/comments of experts/stakeholders**

- The word 'term' is not defined in the Act. It is not clear as to whether a portion of term would also be construed as a full term or not for the purpose of two terms prescribed in the provision.
- It is undemocratic to restrict the term of office upto two terms for a democratically elected body and not tenable before the law.
There is no restriction on the number of term of office for which a functionary of the Council can hold office in case of other Councils under the Ministry of Health and Family Welfare.

Similar amendment was also proposed by the Ministry in the Indian Medical Council (Amendment) Bill, 2005. The Committee in its report presented to the House on the 19th December, 2006 recommended as under:-

"Divergent views were put across to the Committee in this regard. While some of the witnesses did not have any objection to the proposed restriction in respect of term of President/Vice-President, other contended that it would be curtailment of individual rights and negation of democratic spirit. The Committee feels that the embargo of restricting the permissible number of terms to be two in number definitely amounts to violating the democratic norms and spirit, which is unheard of with reference to any elected professional Councils anywhere in the country, hence the clause needs to be deleted."

Notwithstanding the earlier recommendation of the Committee, some Members objected to allowing unlimited terms and supported the provision contained in the Bill. The Committee after some discussion decided not to change the provision as contained in the Bill. But the restriction of two terms should be two full terms.

30. **Clause 4**: Proposes to insert the following section after Section 3A of Principal Act.

"3AA. The Central Government shall, after the commencement of the Indian Medical Council (Amendment) Act, 2013, reconstitute the Council, by notification in the Official Gazette, and publish the names of the members nominated or elected to the Council under sub-section(1) of section 3 within a period not exceeding one hundred and eighty days:

Provided that the Board of Governors constituted under sub-section(4) of section 3A shall continue to exercise the powers and perform the functions of the Council till the new Council is reconstituted or for such period not exceeding one hundred and eighty days, whichever is earlier."

31. **Justification**
The new provision provides that the Central Government shall reconstitute the Council within a period not exceeding one hundred and eighty days. Further the Board of Governors shall continue to perform the functions of the Council till the new Council is reconstituted or one hundred and eighty days whichever is earlier.

32. **Views/comments of experts/stakeholders**
- Allowing Board of Governors to function after supersession came to an end is patently illegal and against democratic norms.
- There are apprehensions that in view of the fact that it would not be possible to complete the election process within the stipulated period. Whether the Council as proposed to be constituted will have a representative character in terms of two-third of its members should be elected and one-third should be nominated.

33. **Observation/recommendation of the Committee**
The Committee recommends that election process for nominated members of various Universities/Health Science Universities should be completed well in time so that the Council is reconstituted within the stipulated period by retaining its representative character i.e. two-third of its members should be elected and one-third should be nominated. The Committee further recommends that efforts need to be made for streamlining the election procedure.

34. **Clause 6**: Proposes to amend sub-section(1), (2) and (6) of Section 7 of the Principal Act by substituting the words "five years" by "four years" as term of office of President, Vice-President and members of the Council.

35. **Justification**
No justification given by the Ministry for reducing the term of office from five years to four years.

36. **Views/comments of experts/stakeholders**
- Term of office for all democratically elected bodies is five years. There is no logic in reducing the term to four years.
- Terms of office for all other Councils under the Ministry of Health and Family Welfare is five years.

37. **Observation/recommendation of the Committee**
The Committee noted that the Ministry has not given any justification for reducing the term of office from five years to four years. Some Members felt that there is no need to change the provision made in the Bill and instead it should be reduced further. The Committee, after some discussion, felt that all other bodies under the Health Ministry have five years term and there is no justification to reduce it. The Committee, accordingly, recommends that necessary amendment may be brought in the Bill.

38. **Clause 7**
Proposes to insert following new Section after Section 9 of the Principal Act:

"9A (1) The Council shall, subject to the Provisions of the Act and rules made thereunder, take measures to determine, coordinate and maintain the standards of medical education and practice in medicine, the Indian Medical Register and make endeavour in making available doctors in all States.
(2) Without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section(1), may, inter alia, provide for all or any of the following matters, namely :
(a) Lay down the standards of professional ethics in the practice of medicine;
(b) Grant or withdraw permission for establishment of medical college and course of study in medical education and ensure compliance of its terms and conditions for such permission;
(c) Maintain the Indian Medical Register;
(d) Render advice to the Central Government or the State Government on matters relating to the medical education and practice in medicine;
(e) Facilitate medical education in the institutions situated outside the country;
(f) Undertake and recommend to the Central Government or the State Government such measures as may be necessary to regulate medical education in or outside the country;
(g) Organize seminars, symposiums and workshops in order to promote continuous medical education and practice in medicine; and
(h) Perform such other functions as may be laid down in the rules made by the Central Government."

39. **Justification**
The new Section 9(A) specifies the function of the Council. Since the long title of the Act is proposed to be made more specific vide Clause 2 of the Bill, it is also necessary to insert the above new Section providing that the Council shall take measures to determine, coordinate and maintain the standards of medical education and practice in medicine and also endeavour to making doctors available in all the States.

40. **Justification for Sub-section(2)(e)**
This amendment has been proposed with a view to process the proposals received from Indian Institutions seeking permission to establish their offshore campuses in foreign coun

41. **Justification for Sub-section(2)(f)**
The existing Act under Section 12 allows the Council to enter into negotiations with any country outside India for setting of a scheme of reciprocity for the recognition of medical qualifications. In 2002 the Ministry has introduced screening test and a medical graduate obtaining preliminary medical degree from a University outside India has to qualify the Screening Test to become eligible for enrolment with MCI and practice medicine in the country.

42. However, in order to meet the shortage of faculty in the country, Screening Test Regulations were amended in December, 2011 to exempt all such persons from Screening Test, who hold a primary medical qualification from Australia, Canada, New Zealand, United Kingdom and USA and have also obtained a Post Graduate medical qualification and enrolment as medical practitioner, from any one of these five countries. In view of the fact that a large number of Indian students obtained their medical qualification from abroad and the Government has decided to allow Overseas Citizens of India to practice medicine in the country, it was essential to empower the Council to serve as a single point contact for foreign medical institutions, to coordinate and resolve complaints of the students and also to assess the kind of medical qualification being imparted by the foreign medical institutions.

43. Besides, some of the Indian Institutions have entered into agreements with foreign universities and started twining programme in medicine. A part of the course under the twining programme is taught in Indian campus of the collaborating intuitions. Presently Council has no powers to assess these programmes. It was, therefore, necessary to plug this infirmity in the existing act and provide oversight powers to MCI.

44. Here the meaning of regulation is to assess the standards of medical education being imparted in the foreign countries for induction of medical professionals into the country.

45. **Views/comments of experts/stakeholders**

**Section 9A(2)(e)(f)**
- Jurisdiction of IMC Act extends to whole of India *vide* above provisions, it is proposed to be extended outside India.
- The Institutions outside India would be bound to follow rules/regulations of the respective countries.
- It is an attempt to help some corporate houses who are running medical institutions outside the country.

46. **Observation/recommendation of the Committee**

The Committee is not sure whether the offshore medical institutions will be governed by the rules regulations of the MCI or by the regulations of the respective country. In this regard, the Health Secretary informed the Committee that the MCI has no authority to regulate education outside the country. The intention of the proposed amendment was that if a medical university or a medical college in India open a campus outside the country, then the content of education being taught in that campus should in some manner be appropriate to what the Medical Council would deem as appropriate within India. This intention should be reflected in the proposed amendment. On the amendments proposed in sub-section(1)(e)&(f) of Section 9A, the Committee agrees with the justification provided by the Ministry and recommends that the provision contained therein should be amended appropriately.

**Section 9A(2)(h)**

47. **Views/comments of experts/stakeholders**

- An ambiguous provision and gives wide powers to Central Government in framing rules/regulations without control of Parliament.
- Destroys autonomy of the Council.
- If provision of Section 32 of the current Act is complete then why a separate and parallel provision is required to be incorporated here.
The Committee recommends that the Department may have a relook at this provision in the light of the views of the stakeholders.

48. **Clause 9**: Proposes to amend Sub-section 1(b) of Section 14 of the Principal Act by omitting the words "for the time being for the purposes of teaching, research or charitable work".

49. **Justification**

The proposed amendment will also allow medical practice by foreign nationals who are registered medical practitioners in their country. However, they would continue to get only a temporary registration for a limited period and their medical practice shall remain limited to the institution to which they are attached.

50. **Views/comments of experts/stakeholders**

- Intention of inserting sub-section 1(b) of Section 14 of the Principal Act was to promote teaching and research work and its omission makes no sense at all. Instead such doctors should be allowed to practice anywhere in the country rather than restricting them to practice only in those institutes who have engaged them (mostly corporate institutions).

51. **Observation/recommendation of the Committee**

The Committee desires that before allowing medical practice by the foreign nationals who are registered medical practitioners in their countries, abundant safeguards should be provided in the form of Screening Test etc. to protect the interests of the people of the country.

52. **Clause 11**: Proposes to insert following new section after Section 30 of the Principal Act.

"30A (1) The President, Vice-President or any member of the Council may, by notice in writing under his hand addressed to the Central Government, resign from his office: Provided that the President, Vice-President or any member of the Council shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of a period of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) Notwithstanding anything contained in sub-section(1), the Central Government may remove from office the President, Vice-President, or any member of the Council, who

(a) Has been adjudged as an insolvent; or
(b) Has become physically or mentally incapable of acting as such President, Vice-President, or other member; or
(c) Is of unsound mind and stands so declared by a competent court; or
(d) Has been convicted of an offence involving moral turpitude; or
(e) Has acquired such financial or any other interest in any medical institution falling within the purview of the Council, which is likely to affect prejudicially the exercise of his functions as the President, Vice-President, or a member; or
(f) Is unable to perform or has made persistent defaults -

(i) in the performance of the duties imposed on him under this Act or has exceeded or abused his position; or
(ii) either willfully or without sufficient cause neglects to comply with the directions issued by the Central Government under section 33A and 33B;
(g) Has been guilty of proved misbehavior or his continuance in office would be detrimental in public interest.

(3) No person shall be removed from his office on the grounds specified in clause (e) or clause(f) or clause(g) of sub-section(2), unless he has been given a reasonable opportunity of being heard in the matter.”

53. Justification

Presently there is neither any provision in the Act to allow resignation by the President, Vice-President and members nor any provision for their removal, if demanded by any extraordinary situation. In order to improve accountability in relation to the duties and responsibilities entrusted to the Council under the Act, it is proposed to make suitable provision in the Act to empower the Central Government to remove from office the President, Vice-President or a Member under certain specified circumstances.

54. Views/comments of experts/stakeholders

- The proposed Section 30A vests the Central Government with the power of removal and it would be dangerous as most of the terms used in the provision are completely ambiguous, unbridled, sweeping and are not defined precisely and would be opened to any interpretation.
- Power of removal should be with the nominating body or with the electorate.
- Sub-sections (2)(e), (f) & (g) are worded very loosely and discretionary. These are open to grave misuse leading to avoidable litigations.
- Provision nullifies autonomy of the Council.
- Provision is deterrent to independent and unbiased decisions by the functionaries.

55. Observation/recommendation of the Committee

The Committee agrees that most of the terms used in various provisions of the proposed amendment are ambiguous, unbridled, sweeping and not defined precisely and are opened to any interpretation. Particularly, the proposed sub-sections(2)(e), (f)
& (g) are vague and worded very loosely and are discretionary. Vesting the Central Government with such powers of removal of President, Vice-President and Members of the Council through such vague and undefined provisions would not be in the public interest as these are likely to be misused. Such sweeping powers will destroy the very autonomy of the Council as it would not be possible for the functionaries and members of the Council to function and take any decision independently.

56. In this regard, the Committee takes notes of a similar amendment proposed by the Ministry in the Indian Medical Council (Amendment) Bill, 2005. The Committee in its 19th Report, on the above Bill, presented to the House on 19th December, 2006 recommended as under:

"The Committee observes that the decision for the removal of President/Vice-President Member would be based on a majority decision taken by the Council after giving a reasonable opportunity of being heard. The Committee, however, notes that a distinction is proposed in the case of a Member where such a decision would be based on the views of a Disciplinary Committee which would follow such procedure as determined by rules to be framed by the Government. The Committee fails to understand the rationale for having such a provision. It cannot be considered an additional safeguard as claimed by the Department. It is not known what would be the composition of such Disciplinary Committee and the authority under which it would be working. The Committee apprehends that by virtue of such a provision, Member of the Council would not be in a position to act independently. Further, the Committee would like to point out that in the light of the proposed definition of Member which includes both President and Vice-President; it is not clear whether their misconduct or incapacity could be considered by this Disciplinary Committee. The Committee, therefore, recommends that the action envisaged under Section 30A should remain confined to the Council only and while doing so, the Council should ensure that principles of Natural Justice are followed in true letter and spirit and there should also be no arbitrary action".

57. The Committee, therefore, recommends that the powers of removal should not be given to the Central Government. Instead it should remain confined to the Council only and while doing so, the Council should ensure that principles of natural justice are followed in true letter and spirit and there should also be no arbitrary action. Besides, all the terms used in the clauses should be precisely defined and the provisions should be amended suitably to avoid any ambiguity and misuse thereof. Government may have a relook at this provision.

58. **Clause 14**: Proposes to insert following sections after Section 33 of the Principal Act.

"33A(1) Without prejudice to the foregoing provisions of this Act, the Council shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.
(2) The decision of the Central Government whether a question is one of policy or not shall be final.

33B(1) Where the Central Government considers it expedient so to do, it may, by order in writing, direct the Council to make any regulations or to amend or revoke any regulations already made by it, within such period as the Central Government may specify in this behalf.

(2) If the Council fails or neglects to comply with such order within the specified period, the Central Government may make the regulations or amend or revoke the regulations made by the Council, as the case may be, in such manner as the Central Government thinks fit.

59. **Justification**

_Vide_ Section 33A it is proposed to provide that the Central Government can give directions to the Council on matters of policy. In case the Council fails or neglects to comply with such directions within a specified period, under the provision of Section 33B, the Central Government may itself makes the regulations or amend or revoke the regulations made by the Council.

60. **Views/comments of experts/stakeholders**

- The provisions are sweeping and against the democratic tenets. Such provisions are impermissible and unsustainable.
- Destroy autonomy of the Council.
- Council is an expert body to advice the Central Government on medical education and medical practice. The Council should discharge its duties without any interference and pressure from Central Government.
- The provisions give overriding power to Central Government to give directions. To follow a policy and to decide what is a policy cannot be in the hand of same authority i.e. a Central Government. It would be detrimental to overall development of medical education and medical practice.
- There are no such provisions for other regulatory bodies under the Ministry.
- Power to issue directions (Section 33A) and power to assume discharge of core matters regarding standards of medical education etc. by framing regulations by the Central Government is completely contradictory to the entire scheme of the Act.

Sub-section(2) of newly inserted Section 33A is proposed to be deleted _vide_ the second ordinance issued on the 28th September, 2013 and the provision contained therein has been merged with the newly inserted Section 33A itself.

61. **Justification**
The modification has been desired by some Members of Parliament during their discussion with the Health Minister.

62. **Observation/recommendation of the Committee**
63. **Clause 33A**

The issue pertaining to the directions to be issued to the Council by the Central Government has already been deliberated upon by various Parliamentary fora. In this regard, attention of the Committee has been drawn to the following recommendations made in this regard by the Joint Parliamentary Committee on the Indian Medical Council (Amendment), Bill, 1987:

"The Central Government may, from time to time, give such directions to the Council as it may think fit for carrying out any provisions of this Act or any order, rule or regulation made thereunder and when such direction is given, the Council shall carry out such directions."

64. The matter was again deliberated upon by the Parliamentary Standing Committee on Health & Family Welfare while examining and reporting on the Indian Medical Council (Amendment), Bill, 2005. The Committee in Para 14.17 of its 19th Report on the said Bill, recommended as under:

"14.17 The Committee feels that the proposed Section 30C in the IMC Act, 1956 may lead to situations when in the name of 'public interest', day to day functioning of the Council would be hampered. The Committee, therefore, feels that the recommendation made by Joint committee on IMC (Amendment) Bill, 1987 would be appropriate for the purpose of direction by Central Government. The Committee recommends that Section 30C be substituted with the following :-

"The Central Government may, from time to time, give such directions to the Council as it may think fit for carrying out any provisions of this Act or any order, rule or regulation made thereunder and when such direction is given, the Council shall carry out such directions."

65. The Committee observes that the provisions of the proposed new Section 33A & 33B inserted vide Clause 14 of the Bill are ambiguous and give sweeping powers to the Central Government to influence functioning of the Council and interfere with their day-to-day working. Accordingly, these provisions are against the democratic tenets and are impermissible and unsustainable before the law. Vesting the Central Government with such sweeping powers will destroy the very autonomy of the Council. The Council is an expert body of the medical
professionals to advise the Central Government on regulation of medical education and medical practice. If the above amendments are approved, then it would not be possible for the Council to discharge its duties without any interference and pressure from the Central Government. Vesting the Central Government with such sweeping powers would be detrimental to the overall development of medical education and medical practice and there are no such provisions for the other regulatory bodies under the Ministry. The power to assume discharge of core matters like standards of medical education etc. by framing regulations by the Central Government is contradictory to the entire scheme of the Act. Such directions should be issued by the Central Government after proper consultation with the Council. The Committee, therefore, disapproves the new Section 33A in its present form.

66. Some Members, however, felt that colleges are given recognition without meeting the basic requirements and this has been affecting the quality of the doctors being produced in the country and desired that a regulatory mechanism should be there. The Committee feels that though it is in agreement that there should not be any control on the autonomy of the Council, but there should be a regulatory mechanism to ensure that the Council functions in the right direction. Whenever there are any complaints, the Regulatory Mechanism should look into them and take appropriate action. The Committee recommends that Government may look into this and bring appropriate amendment in the Bill.

67. Clause 33 B

Section 33 of the Principal Act provides that the Council with the previous sanction of the Central Government may make regulations necessary for its functioning. The issue pertaining to the powers to the Central Government to direct the Council to make regulations and to amend the regulations was also deliberated upon by the Committee while examining the Indian Medical Council (Amendment) Bill, 2005.

68. The Committee in Para 15.4 of its 19th Report on the said Bill, presented to the House on 19th December, 2006 recommended as under:

"Section 33 of the Act provides that the Central Council with the previous sanction of the Central Government may make regulations necessary for its functioning. The Committee fails to understand the justification for assumption of overriding powers by the Central Government as against the powers given to the Central Council, a professional body which will be making / amending / revoking regulations with the previous sanction of the Central Government. The Committee also feels that the provision of the proposed Section 30 C provides the Central Government enough powers to give directions to the Council for carrying out any provision of the Act and there is no need for a separate Section for this purpose. Accordingly, the Committee recommends deletion of Section 33A."
69. The Committee reiterates its earlier recommendation referred to above. Accordingly, the Committee disapproves the new Section 33 B proposed to be inserted vide Clause 14 of the Bill as there is no need for having a separate Section for this purpose.

70. Subject to various observations and recommendations made in the preceding of paragraph, all the clauses of the Bill are adopted. The Bill may be passed after incorporating the suggestions made by the Committee.

**General observations/recommendations**

71. The Ministry's attention was also drawn to the provisions of Section 3A, 3B and 3C of the Principal Act which were inserted vide the Medical Council (Amendment) Act, 2010 and pertain to supersession of the Council, its replacement by the Board of Governors etc. The Health Secretary informed the Committee that there would not be any ambiguity. As soon as the new Council is constituted, the provisions in question would not be in existence. The Committee, desires that an amendment to this effect may also be included in the revised amendment bill.

72. The Committee's attention has also drawn to the increasing incidents of negligence on the part of doctors treating the patients in Government hospitals, private hospitals and private clinics and nursing homes. All ......of the Members of the Medical Council of India are medical professionals and whenever any complaint of medical negligence or violation of code of ethics is brought before the Council such cases are decided by the medical professional themselves. There are reports that the medical professionals probing into the allegations of medical negligence are very lenient towards their colleagues guilty of negligence and none of them is willing to testify another Doctor as negligent. The immediate impact of this arrangement is that the percentage of prosecution in the medical negligence cases by the MCI is almost negligible. In other countries Non-doctors like patients and social workers are mandatorily made members of the Medical Council and they are known as 'lay members' and on occasions they may even lead the Council as was the case with UK's General Medical Council. **The Committee, therefore, recommends that all such cases of such medical negligence should be inquired into by a Committee of experts drawn from various fields and experience including social activists, patient's representative, etc.**

73. The Committee's attention has also been drawn to the provisions of Section 21(3) of the Principal Act whereby six Members for the Post-Graduate Medical Education Committee are to be nominated by the Central Government and the remaining three members to be elected by the Council from amongst its members. The Committee desires that in order to retain the representative character of the Committee, its six members should be elected from amongst its Members and three members should be nominated by the Central Government.
74. Section 10A of the IMC Act provides for establishment of new medical college and starting new course of study with the previous permission the Central Government. Some Members felt that besides the permission of Central Government, permission of State Government should also be obtained. The Committee recommends that necessary amendment may be made in section 10A to provide for previous permission of State Government for the purpose.