of compensation paid to the victim from the negligent staff concerned.

In the end it is worth mentioning about Sri *Sachchidananda Sinha* in his inaugurate address, as Provisional Chairman to the consitutent assembly on 9th December, 1946 quoting the words of 'Joseph Story' which are as follows:

"The constitution has been reared for immortality if the work of man may justly aspire to such a title, it may, nevertheless, perish in an hour by the folly or corrupt or negligence of its only keepers **"THE PEOPLE"**.

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GOVERNING MEDICAL EDUCATION — MEDICAL COUNCIL OF INDIA REGULATIONS AND EVOLVING JUDICIAL APPROACHES[1]

By

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Under the Medical Council of India Act, 1956, as amended from time to time, the Council has the power to make regulations to maintain minimum standards of medical education. According to Section 10A, [Ins. By Act 31 of 1993, Section 2 (w.e.f. 27, 1992)], of M.C.I. Act, 1956, permission of the Central Government is essential to establish a new medical college or a new course of study. The permission will be given only on the basis of the recommendations of Medical Council of India, subject to other conditions. Section 10B, See note supra, of the Medical Council of India Act deals with non-recognition of medical qualification in certain cases. Section 19-A of M.C.I. Act, 1956, [Ins. By Act 24 of 1964, Section 10 (w.e.f. 16-1964)], deals with powers of the M.C.I. to prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India. Section 33 of the Act deals with power the M.C.I. to make regulations generally to carry out the purposes of this Act. This can be done with the previous sanction of Central Government. Very interesting case law has developed in the above areas with respect to the powers of M.C.I. to govern medical education.

The object of this study is to analyse the evolving judicial approaches with respect to the M.C.I. Regulations in governing medical education.

This study is divided into three parts. Part I analyses mainly the case law surrounding Sections 10A, 10B, & 10C, See note supra, of the Indian Medical Council Act, 1956. The cases of withdrawal of recognition of medical colleges for non-compliance with the provisions of the Act, consequential problems, judicial approaches in accommodating students displaced in this connection is looked into. Approach of the Apex Court towards powers of High Court in giving directions to the Central Government against provisions of M.C.I. Act is analysed. In case of repugnancy between Central Government and State Government enactments, the Apex Court's response is studied. In a catena of cases, the Apex Court had to decide whether the

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regulations made under the provisions of Medical Council of India Act, 1956, are regulatory in nature or mandatory.

Part II of the study deals with midstream medical admissions, looking into the emerging case law on the subject. It examines how the Apex Court weighed the *pros* and *cons* between the wastage of valuable medical seats and the maintenance of standards of medical education, in light of the spirit and letter of the Act.

Part III of the study deals with other Regulations made in accordance with the Medical Council of India Act,1956. Regulations on Graduate Medical Education , 1997 are challenged on many occasions in the Courts of law. The response of the judiciary in this aspect is studied. Similarly Governments can reduce or increase the conditions of eligibility other than the conditions by M.C.I for the entrance examinations either for undergraduate or postgraduate courses, in the light of Judicial decisions is studied.

The approach of the judiciary in doing a delicate act of balancing of powers between M.C.I and Central Government on one side and State Government and Universities/ Educational institutions on the other side is analysed.

The internal contradictions in the Regulations of M.C.I, practical problems faced by the Universities/Educational institutions is looked into.

Research Methodology

This paper is based on participatory observation, interviews, and secondary sources such as cases referred to in various law journals. Assisting the Hon'ble High Court of Andhra Pradesh on several occasions on the subject, improved the author's understanding of the various issues involved. Interviews with Prof. *G. Sham Sunder*, Vice-Chancellor of NTR University of Health Sciences, and discussion with other Counsels in High Court of A.P. were helpful in analysing different aspects of the subject.

Limitations of the Study

The subject of study being vast, facts pertaining to some important cases, although very interesting, could not be dealt with in detail. Only legal propositions laid down or reliefs granted, could be incorporated as parts of the study.

PART I

The Indian Medical Council Act, 1933, was amended in the year 1956. It was further amended in the years 1958, 1964, 1993, and 2001.

According to Section 10A, of the Indian Medical Council Act, 1956, to establish a new Medical College, or a new course of study, or increase in admission capacity in any case of study or training, previous permission of the Central Government needs to be obtained in accordance with the provisions of this section. Every person or Medical College, shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government, a scheme in accordance with the provision of Clause (b) and the Central Government shall refer the scheme to the Council for its recommendation.

The Council, while making its recommendation under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the Scheme under sub-section (4), shall have due regard to the following factors, namely:

(a) Whether the proposed medical colleges or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under Section 19A or, as the case may be, under Section 20 in the case of postgraduate medical education;

(b) Whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) Whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) Whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time limit specified in the scheme;

(e) Whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) The requirement of manpower in the field of practice of medicine; and

(g) Any other factor as may be prescribed.

An interesting case law has evolved around Sections 10A, 10.B, & 10.C of the M.C.I. Act, 1956. In adjudicating cases, the judiciary has to weigh between the pulls of equities and the rigor of Medical of India Regulations.

Asheesh Pratap Singh and others v. M. Sachdeva and others, (2003) 2 SCC 309, is a contempt case. Supreme Court directed M.C.I, DG, ME, and U.P, to accommodate in appropriate institutions the students of closed Azamgarh Medical College, who had passed the 1st Professional Examination. When the order was not complied with, the Supreme Court directed MCI and DG, ME to work out a solution to accommodate all the students covered by the Supreme Court's directions in respective colleges in the 2nd Professional course. It was directed that the manner of accommodating such students as to avoid the enhancing of overall strength of the two colleges and to ensure the availability of infrastructure to all the students within the intake of the college laid down in detail.

In this case, the Apex Court tried to protect the interest of the students by giving direction to allot them to different colleges by working out appropriate solutions .One way we have to say that the Apex Court leaned in favour of students whose interest will be suffered by joining in a college where colleges were closed because they did not have the necessary infrastructure.

In the *K.S. Bhoir v. State of Maharashtra and others*, along with *Anuj Suresh Saraogi and others v. State of Maharashtra and others*, (2001) AIR SCW 5055, the Supreme Court held that the object behind insertion of Sec. 10A, 10B, & 10C, was for a specific purpose of controlling and restricting the unchecked and unregulated mushroom growth of Medical Colleges without requisite infrastructure resulting in decline in the maintenance of highest standards of education. Unless an institution can provide complete and full facilities for training to each student who is admitted in various disciplines, the medical education would remain incomplete and the medical college would be turning out half baked doctors, which in turn, would adversely affect the health of public in general. Thus for every increase in the admission capacity, either it is one time or permanent, the Council is obliged to ensure a proportionate increase in infrastructure facility. The Medical Council can only make recommendations to the Central Government for grant of permission for one time intake capacity in seats only when it is satisfied that scheme to be submitted by the Medical Colleges fulfil all the requirements ….. . Similarly, the Central Government without compliance of the Act and the regulations, cannot grant, without recommendation of the Medical Council, any permission for one time increase in the admission capacity in various courses conducted by the Medical Colleges.

In the present case, the State Government sought a one-time increase in admission capacity in various medical colleges on the premise that medical colleges possessed all the facilities. In this case, the Apex Court held that so long as the requirements under

Section 10A of the Act, are not complied with, no permission can be granted by the Central Government. If any direction is issued by the High Court to the Central Government, to increase the admission capacity in a medical college, it would be in the teeth of the statutory provisions and mount to amending the provisions of Section 10A. It is not permissible for the High Court to direct an authority under the Act, to act contrary to the statutory provisions.

The Apex Court held that it is no doubt true that a large number of students who were already admitted in the medical/dental colleges and who had incurred a lot of expenditure in taking admission were to be dislodged because of the mistake committed by the examiners and consequent issue of the revised merit lists. ….. In such a situation one can sympathise with the plight of such students who for no fault of their own were to be dislodged. However the compassion and sympathy has no role to play where a rule of law is required to be enforced. Adjusting equities in an exercise of extraordinary jurisdiction under Article 226 is one thing, and the High Court assuming the role of the Central Government and the Medical Council under Section 10A of the Act, is a different thing. The refusal by the High Court to issue directions to Central Government was therefore proper. In the instant case, the Apex Court endorsed strict adherence to law notwithstanding hardship likely to be caused to the already admitted students in violation of M.C.I. regulations.

In the instant case, the Apex Court relied on previous Apex Court judgement in *Medical Council of India v. State of Karnataka and others*,(1998) 6 SCC 131, wherein it was held that Regulations framed with previous sanction of Central Government under M.C.I. Act, 1956 (Sections 33 & 19A) have statutory force and if they fall within the purposes referred to under Sec. 33 will have mandatory force. In this case, the Apex Court held that the Indian Medical Council Act is relatable to Entry 66 of list I (Union list). It prevails over any State enactment to the extent the state enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entry 25 or 26 of list III (Concurrent List). In this case, the Apex Court while discussing the scope of Sections 10A, 10B, 10C, 19A and 33(fa), (fb), (fc), j, k, l, held that fixation of admission capacity in Medical Colleges/Institutions is the exclusive function of M.C.I. Increase in number of admissions can only be directed by Central Government on the recommendation of Medical Council. State Governments and/or Universities are not entitled to do so, even prior to 1-6-1992. Section 10A to 10C of the Central Act conferring such power on Medical Council and Central Government prevail over Section 53 (10) of Karnataka State Universities Act, 1976 and Section 4 (1) (6) of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 in view of repugnancy. Situation equally applicable under the Dentist Act, 1948.

In *Dental Council of India v. Subarti K.K.B. Charitable Trust and another*, (2001) 5 SCC 486, the Apex Court held that normally the Court should not interfere with the function of the educational institutions, particularly, expert bodies like M.C.I. or D.C.I. The Court jurisdiction to interfere with the discretion exercised by such expert body is limited even though the right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution. ….. If the High Court finds that the order passed by the Central Government is *de hors,* the statutory provisions are arbitrary for some reasons, the course is open to it to remit the matter to D.C.I. for re-inspection of the establishment and for reconsideration by the Central Government, rather than to issue a writ of *mandamus*.

In the instant case, the Court held that since ages our culture and civilisation have recognised that education is one of the pious obligation of the society to be discharged by the 'learned' and/or the state. It is for us to preserve that rich heritage of our culture of transcending the education continuously unpolluted. ….. The private institutions cannot be permitted to have educational shops in the country.

However, if such bodies act arbitrarily for such ulterior purpose, the Court has power to set aside such arbitrary exercise of power by such authorities. However citizens would loose faith in such situation if the obligations made in this appeal are repeatedly made with required to the inspections reports and granting of approval by the Central Government. This question is left for the Central Government to deal with appropriately, as it is the function of the authorities concerned to plug the loopholes and see that in such matters nothing hanky-panky happens.

A Division Bench of A.P. High Court, discussing the scope of Sec. 10A of the Indian Medical Council Act, 1956, in *M.C.I., New Delhi v. Mamata Educational Society, Khammam and others,* (2000) (2) ALD 593 (DB), held that grant of permission to start a medical college by Government of India is not a mere formality on the mere ground that the Medical Council of India already recommended the case. Permission of Government of India is a *sine qua non* of the legal existence of a medical college and no medical qualification granted to a student by a college which operated without the permission of Government of India is entitled to recognition.

The ratio laid down in the above cases by the Apex Court as well as this Hon'ble Court *vis-a-vis* scope of Sec. 10A, 10B, 10C, and Sec. 33, 19A, is by and large upheld the M.C.I. Regulations as mandatory and not directory. The ratio laid down in *State of M. P. v. Nivedita Jain,* (1981) 4 SCC 296, is explained and distinguished in *M.C.I. v. State of Karnataka,* see note supra, In case of repugnancy between Central Enactment and State Enactment, Provisions of the Central Act are upheld.

PART II

The development of case law in recent years on midstream admission is also very interesting.

In *Paramjeet Gambhir and another v. State of M.P. and others,* (2003) 4 SCC 276, the Supreme Court held that the time table for course should be strictly adhered to and there is no scope for admitting students mid-stream which would be against the very spirit of the statute governing medical education. However in the present case (i) certain seats which had been surrendered from the All India Quota even before the 1st counselling had been done were not included in the said counselling and (ii) before the High Court, the State had pleaded that Rule 15.8 had been deleted and the old system of opt-for-waiting had been revived.

It is held that in view of the peculiar facts and circumstances of the case and in the interest of justice appeals are disposed off with a direction to the respondents to consider the candidature of appellants for giving them admissions in a post graduate course in the disciplines in which seats are still lying vacant taking into consideration their rank and choice. But the order made herein not to be used as a precedent either for holding 3rd counselling or for granting midstream admissions.

On the other hand, in *Neelu Arora (MS) and another v. Union of India and others,* (2003) 3 SCC 366, the Apex Court held that when a detailed scheme has been framed through orders of the Supreme Court (*Shravan Kumar v. Director General of Health Sciences,* (1993) 3 SCC 332,) and the manner in which it has to be worked out is also indicated therein, if in a particular year, there is any shortfall of a certain number of seats are not filled up, the same need not be done by adopting one more round of counselling because there is no scope for the 3rd round of counselling under the scheme. ….. There is no scope for admitting students midstream as that would be against the very spirit of the statute governing medical education. Even if seats are unfilled, that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year.

In the instant case, the Apex Court has relied on ratio laid down in *Medical Council of*

India v. Madhu Singh, (2002) 7 SCC 355. In the *Madhu Singh* case, see note above, the Medical Council of India Regulations on Graduate Medical Education, 1997, Regulation 7(1) & (6) and M.C.I. Act, 1956, Sec. 10A, 10B & 19 & M.C.I. Establishment of Medical College Regulations, 1999 Regulation 2(7) & 7 are considered. The Supreme Court set aside the High Court order and held that High Court was in error in directing mid-session admissions. The Court held that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. ….. The submission that with the object of preventing loss to National ex-chequer should be permitted, cannot be a ground to permit. Mid-stream admissions which would be against the spirit of governing statutes. The further suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the students to study and the appropriate spacing of classes. The students also need rest and continuous taking of classes with the object of fulfilling the requisite number of days would be harmful to the student physical and mental capacity to study. The Apex Court held that no variation of the schedule. So far as the admissions are concerned shall be allowed and in case of any deviation by the institution concerned action as prescribed shall be taken by M.C.I. Interestingly the Apex Court held that the admission of respondent No.1 would not be effected by allowing the appeal.

In *Safali Nandwani v. State of Haryana*, (2002) 8 SCC 152, it is held that the clause in the prospects makes it clear that there would be no change in the subject or re-admission into a different course once the last date of admission was over. To permit the respondent No.4 to take admission in M.D (Medicine) for the subsequent academic session would not only be a contravention of the prospects but would also amount to an increase in the permissible seats for Post-Graduate students in M.D. (Medical) for the subsequent year. This is impermissible under Regulation 10(A) of the M.C.I. Regulations on Graduate Medical Education, 1997 which provides, *inter-alia*, that no medical college shall increase its admission capacity in any course of study or training (including a P.G. Course of study or training except with previous permission of the Central Government. An academic seat is limited to an academic session. It cannot like a vacant Government post be "carried forward" to the next year. In this case, the ratio laid down in *Arvind Kumar v. State of U.P.,* (2001) 8 SCC 355, is applied and the ratio laid down in *Indukanth v. State of U.P.,* (1993) Supp. (2) SCC 71, *The Medical Council of India v. State of Karnataka,* see note supra, and *M.C.I v. Madhu Singh,* see note supra, relied upon.

In *State of U.P. v. Dr. Anupam Gupta,* (1993) Supp. (1) SCC 594, the Supreme Court held that to maintain excellence, the courses have to be commenced on schedules and to be completed within the schedule, so that the student would have full opportunity to study full course to reach their excellence and come at par excellence, ….. considered from this pragmatic point of view vacancies of seats should not be taken as a ground to give admission to the post graduate course, which require securing of cut off 50% marks in entrance examination. Therefore, the direction by the High Court to admit of candidates into the vacant seats cannot be sustained ….. Exercise of equity jurisdiction and prescription of minimum cut off are naturally incompatiable and counter productive. It would frustrate excellence. In this case the direction given in *Jeevak Almast v. Union of India*, (1988) 4 SCC 27, is distinguished and limited.

PART III

In *Dr. Preeti Srivatsava and another v. State of M.P. and another,* (1999) 7 SCC 120, along with other cases the Apex court discussing the scope of Sec.20 & 23 of Indian Medical Council Act, 1956 held that under the Indian Medical Council Act, 1956 the M.C.I is empowered to prescribe, *inter alia*, standards of post graduate Medical Education. In the

exercise of its powers under Sec.20 r/w Section 33 the Indian Medical Council has framed regulations which govern Post Graduate Medical Education. These regulations therefore, are binding and the states cannot, in the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India for Post Graduate Education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List-I, the exercise of that power is inclusively within the domain of the Union government. The power of the States under Entry 25 of List-III is subject to Entry 66 of the List-I. It is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the concurrent list. Therefore, any power exercised by the State in the area of education under Entry 25 of List-III will also be subject to any existing relevant provisions made in that connection by the Union subject, of course, to Art.254.

The Apex Court in the instant case held that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education including medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act, an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. The Universities must necessarily be guided by the standards prescribed under Sec. 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. The scheme of the Indian Medical Council Act, 1956 does not give an option to the Universities to follow or not to follow the standards laid down by the Indian Medical Council.

In this case, the court held that lower qualifying marks for reserved categories viz., SCs., STs., OBCs., for admission to post graduate medical courses is permissible. But there should not be a wide disparity in qualifying marks between reserved and general categories. It is however, basically for an expert body like the Medical Council of India to determine whether in the common entrance examination *viz*., PGMEE however qualifying marks can be prescribed for the reserved category of candidates as against the general category of candidates since it affects the standards of postgraduate medical education.

In *Dr. Ambesh Kumar v. Principal, L.L.R.M. Medical College, Meerut and others*, 1986 (Supp.) SCC 543, along with other cases, the Apex Court held that the State Government can in exercise of its powers under Article 162 make an order relating to matters referred to in Entry 25 of the concurrent list in the absence of any law made by the State Legislature. The impugned order made by the State Government pursuant to its executive powers was valid and it cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in Entry 66 of List-I.

The order in question merely specified a further eligibility qualification for being considered for selection for admission to the postgraduate courses (degree and diploma) in the Medical Colleges in the State in accordance with the criteria laid down by Indian Medical Council. The number of seats for admission to various Post Gradate courses both degree and diploma in medical colleges are limited and a large number of candidates apply for admission to these courses of study. In such circumstances, the impugned order cannot be said to be in conflict with or repugnant to or encroach upon the regulations framed under the provisions of Section 33 of the Indian Medical Council Act. On the other hand, by laying down a further qualification or eligibility it promotes and furthers the determination of standards in institutions for higher education.

The comparison of the above decisions would reveal that the State Government can add additional eligibility criteria laid down by M.C.I in accordance with the Central Act.

In *State of Punjab v. Dayanand Medical College and Hospital and others,* (2001) 8 SCC 644, the Supreme Court speaking though *Rajendra Babu*, J., held that a proper balance will have to be struck both by Medical Council of India and by the Government, Central and State, in exercise of their respective powers. The M.C.I., a creature of a statute, cannot be ascribed with such powers so as to reduce the State Governments to nothing on and in respect of areas over which the States have constitutional mandate and goal assigned to them to be performed. The Medical Council of India cannot also purport to arm itself with powers to prescribe a standard, which is impossible of attainment by a candidate belonging to a reserved category or for that matter even general candidates and whatever fixed, must be realistic and within attainable limits. In conclusion, the finding of the High Court that the notification issued by the appellant State is invalid to the extent of making reservations in terms of Article 15(4) of the Constitution of India is set aside.

At the same time it is been held that it is not open to the University or the Government to dilute that standard by fixing marks lower than what is set out by the Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly started by the Supreme Court to be the repository of the power to prescribe standards in post graduate studies subject, of course, to the control of the Central Government as envisaged in the Act constituting the Council.

In *Maharshi Dayanand University v. Dr. Anto Joseph and others*, (1998) 6 SCC 215, the Honourable Supreme Court dealing with a case pertaining to eligibility for taking examination in three year M.D. Course, held that conditions prescribed by Medical Council of India and University, held should not be lightly deviated from. In this case, where the Medical Council of India and the University prescribed a minimum period of three years training for eligibility for M.D Examinations and the respondent candidate was given leave for 42 days subject to the condition that he would have to repeat the training before appearing in the final examination and the University, though empowered to condone 30 days absence did not exercise that power, held, the said candidate, on account of 42 days shortage in the required training period could appear only at the next examination and not at the 1996 examination.

In the same case it is held "….. we might not have interfered had this been an isolated case but we find from reading the orders which have been placed on the record that though the impugned order stated that it was not to be treated as precedent, it has been followed repeatedly by the High Court and Courts below. It appears then that it is necessary to interfere to uphold the sanctity of the requirements of the Medical Council of India and the University. These requirements are laid down to ensure that the full period of training necessary for acquiring the qualification is completed and it is in the public interest that they are lightly deviated from and accordingly the appeal is allowed."

In *Medical Council of India v. Sarang and others*, (2001) 8 SCC 427, the Apex Court held that the object of the said regulation (Regulation 6(5) of the Medical Council of India Regulations on Graduate Medical Education, 1997) appears to be that although the course of study leading to the IInd professional examination is common to all medical colleges, the sequence of coverage of subjects varies from college to college. Therefore, the requirement of 18 months of study in the college from which the student wants to appear in the examination is approximately insisted upon. Migration is not normally allowed and has to be given in

exceptional circumstances. In the absence of such a stipulation as contained in Regulation 6(5), it is clear that the migrated student is likely to miss instruction and study in some of the subjects, which will ultimately affect his academic attainments. Therefore, the strained meaning given by the High Court, which actually changes the Regulation 6(5), is not permissible.

In the instant case the apex Court relying on previous Supreme Court judgments in *University of Mysore v. C.D. Govinda Rao*, AIR 1965 SC 491, *State of Kerala v. Kumari T.P.Roshana*, (1979) 1 SCC 572, *Shirish Govind Prabhu Desai v. State of Maharashtra*, (1993) 1 SCC 211, held that in academic matters Courts should not normally interfere with or interpret the rules and should instead leave the matter to the experts in the field.

In *U. Anveshini and another v. Convenor, EAMCET-2000 and others*, 2001 (6) ALD 180. Honourable High Court of A.P. dealing with Sections 19-A and 33 of Indian Medical Council Act, 1956, and Regulation 4 on Regulations on Graduate Medical Education, 1997 held that fixation of minimum age of 17 years for admission to Medical Course as on 31st December of the year in which admissions are being made are not arbitrary or irrational. A plain reading of Sections 19-A of the Act together with Section 33(j) of the Act would make it clear that the Council is entitled to prescribe the minimum standards on medical education including the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or Medical Institutions for grant of recognition medical qualifications. The power to prescribe minimum age is traceable to Section 19-A of the Act. Admission rules framed by the State Government fixing the minimum age of 17 in conformity with the regulations framed under the Medical Council Act are not liable to be challenged.

In *Ravindra Kumar Rao v. State of Maharashtra and others,* (1998) 3 SCC 183, the petitioner sought a writ or direction commanding the State of Maharashtra to hold a combined entrance examination for admission to Medical Colleges in the State as required under Regulation 5(2) of the Regulations on Graduate Medical Education, 1997. The Supreme Court held that as there are three Boards in Maharashtra State which conduct the qualifying examination and inasmuch as there are several Universities, the State of Maharashtra would clearly fall under Regulation 5(2) and not Regulation 5(3) made by the Medical Council of India. It is also not possible for the State to say that conducting a common entrance examination would delay the admission process or that would be extremely difficult to conduct the examination.

In this case it is held that even assuming that Medical Education falls within the scope of Article 371(2)(c), the compliance with Regulation 5(2) of the Regulations made by the Medical Council of India cannot be expected in any manner to come in the way of giving effect of the Provisions of Article 371(2)(c).

In *State of Punjab and others v. Renuka Singla and others,* (1994) 1 SCC 175, the Apex Court discussing the scope of Dentists Act 1948, Sections 20-A and 10-B(3), held that Court cannot direct creation of additional seat contrary to the Statutory Provisions in order to accommodate the litigating candidate.

In *Nisha A Shenai v. NTR University of Health Sciences,* AIR 1999 (AP) 233, the High Court of Andhra Pradesh held that Medical Council of India Regulations of Graduate Medical Education 1997 framed by the Medical Council under Section 33 of the Act are statutory in nature. They are mandatory and binding on the University, Medical Colleges as well as students. When the said regulations come into force with effect from the date of their publication in the Gazette, it is not open to the University or the college to postpone their implementation to the next academic year.

In *Dr. P. Krishna Mala Konda Reddy v. NTR University of Health Sciences, Vijayawada and others*, 2000 (6) ALD 170, dealing with Regulations on Post Graduate Medical Education - Admission to DM (Cardiology Course) held that as per the Regulations only MD for Medicine and Paediatrics is the prescribed qualification for admission but not DNB qualification - Admission given to the third respondent contrary to the regulations basing on a clarification issued by Post-Graduate Committee is illegal. Case of the petitioner who is next in rank to third respondent directed to be considered for admission to DM (Cardiology) Course.

The Honourable High Court of A.P. upheld the Regulation 7(1) of Regulations on Graduate Medical Education, WP No.19974/ 2001, Judgment dated 26-9-2001, WP No.95/ 2000 and batch, judgment dated 4-7-2000. Regulation 7(1) on Graduate Medical Education, 1997 reads as follows:

"Every student shall undergo a period of certified study extending over 4½ Academic years divided into 9 semesters (*i.e.,* of 6 months each) from the date of commencement of study for the subjects comprising the Medical Curriculum to the date of completion of examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of 8 hours of each college working time, including one hour lunch.

Regulation 7(7) on Graduate Medical Education, 1997 reads as follows:

Supplementary examination may be conducted within six months so that the student who pass can join the main batch and failed students will have to appear in the subsequent year.

The Hon'ble High Court, A.P. in an order reported in ALD 2002, WP No.4108 of 2001, judgment dated 2-11-2001, held that on harmonious interpretation of Regulation 7(1) and 7(7), it has to be concluded that the M.C.I. while making the regulation presumably intended not to apply the requirement under Regulation 7(7) that each semester shall consist of 6 months, to students who passed the supplementary examination conducted under Regulation 7(7). In the instant case the Hon'ble Court held that it is open to the rule making authority to bring about an amendment but on the grounds of amendment proposed, the petitioner cannot be denied the benefit of Regulation 7(7) as it stands on that date. The Hon'ble Court disposed off the writ petition with the direction that the respondent shall hold the examination of phase-2 of M.B.B.S. Course to the petitioner and other similarly faced persons who passed the subject of Phase-I in supplementary examination, at the earliest, preferably before declaring the results of Phase-II examinations of regular batch held in October, 2001.....so that an integrated batch can be commenced in Phase-3 of the course.

Interesting case law evolved with respect to Regulation 7(3) of M.C.I. Regulations on Medical Graduation, 1997, Regulation 7(3) of M.C.I. reads as follows:

No student shall be permitted to join the phase-II (Para Clinical/Clinical) Group of subjects, until he has passed in all the phase-I (Pre/Clinical) subjects for which he/she will be permitted not more than four chances (actual examinations) provided four chances are completed in three years from the date of enrolment.

In *Vijay Kumar and others v. Kakathiya Medical College; and NTR UHS and others*, WP No.7442/2002, judgment dated 9-9-2002, the Writ Petition is filed seeking relief of declaring the Regulation 7(3) of the Regulations on Graduate Medical Education, 1997 as illegal, arbitrary, and unconstitutional, apart from being violative of principles of Natural justice, and discriminatory and beyond the powers vested in M.C.I under Sections 19(a) and 44 of Indian Medical Council Act, 1956.

This Hon'ble Court in this case, held that Regulations framed by M.C.I. have got both

statutory and mandatory force and the petitioners have no vested or legal right to seek any relief questioning the authority of Medical Council.

This Hon'ble Court observed that in view of various judgements referred to above, it was found that the Council does not have the power to relax any of the regulations. In the absence of any such power to relax the regulation, even the Courts cannot direct the authority by issuing a Writ to act contrary to the Regulations. And accordingly the W.P. dismissed ."

Against the order of the single learned Judge Writ Appeal was preferred and the same has been dismissed at the admission stage considering all the relevant issues, WA No.525/2003, judgment dated 26-3-2003.

Conclusion

When we analyse cases dealt under Part I of the Article, the trend of judicial decisions is to uphold the regulations made by M.C.I. in accordance with the Act. In some cases, see note supra, the Apex Court extended the jurisdiction of equity by allotting the students admitted in the colleges where the permission was withdrawn, to some other colleges. But in other cases, see note supra, the Apex Court held that compassion and sympathy has no role to play where a rule of law is required to be enforced.

In the case of *Medical Council of India v. State of Karnataka and others*, see note supra, the Apex Court held that an increase in the number of admissions can only be directed by the Central Government on the recommendation of the Medical Council. State Governments and/or Universities are not entitled to do so. Sections 10A to 10C of the Central Act conferring such power on the Medical Council and the Central Government, prevail over Section 53(10) of Karnataka State Universities Act, 1976 and Section 4(1)(6) of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, in view of repugnancy. The Apex Court opined, see note supra, that Courts should not interfere with the function of the educational institutions, particularly with expert bodies like M.C.I. or D.C.I.

Part II of the Article deals with the interesting case law that has evolved on M.C.I. Regulations and Midstream Admissions. In spite of the possibility of valuable, medical seats going unfilled and wasted, the Apex Court in a series of decisions held that, see note supra 9 to 20, there is no scope for admitting students midstream as that would be against the very spirit of the statute governing medical education. An academic seat is limited to an academic session. It cannot, unlike a vacant Government post, be 'carried forward' to the next year. The courses have to be commenced on schedule and have to be completed within the time schedule, so that the student would have the opportunity to undergo the full course in order to reach standards of excellence.

Part III deals with other regulations of the Medical Council of India, made in accordance with the purposes of the Act. The analysis of the case law under this part reveals that Universities must necessarily be guided by the standards prescribed under Section 20(1), if their degrees or diplomas are to be recognised under the Medical Council of India Act. The scheme of the Indian Medical Council Act, 1956 does not give an option to the Universities to follow or not to follow the standards laid down by the Indian Medical Council, see note supra. The State Government can add additional eligibility criteria laid down by M.C.I. in accordance with the Central Act, see note supra 22.

The Hon'ble Supreme Court while upholding the M.C.I. Regulations, see note supra, held that a proper balance will have to be struck both by Medical Council of India and by the Government, Central and State, in exercise of their respective powers. The M.C.I., a creature of statute, cannot be ascribed with such powers so as to reduce the State Governments to nothing, in respect

of areas over which the States have constitutional mandate and goals assigned to them to be performed.

In construing attendance requirements, see note supra 24, and other regulations on Graduate Medical Education, 1997, with respect to migration, see note supra, (Reg. 6 (5)), fixation of minimum age of 17 years for admission to Medical Course (Reg. (4), see note supra 29, holding a combined entrance examination (Reg.5(2)), see note supra 30, period of study (Reg. 7(1)), see note supra 34, 35, clubbing supplementary batch with the main batch (Reg. 7(7)), see note supra 36, fixing limit of four chances or three years limit from the date of enrolment to get into phase II of Medical Examinations (Reg. 7(3)), see note supra 37, are all upheld by the Honourable High Court of A.P or by the Apex Court.

By and large, though the judiciary strictly upheld the regulations made by the Medical Council of India to maintain minimum standards of Medical Education, still, there are many practical difficulties experienced by the Institutions/Universities in day-to-day management. Though midstream admissions are not allowed as per the latest Apex Court judgements, the regulations of the M.C.I. regarding the time schedule of the course are often violated, since some medical colleges are granted permission late, or new seats are created late in some course, and counselling for the admission year goes on indefinitely. By the time the last round of counselling is completed, the students admitted in the first/second rounds of counselling would almost be completing a semester. In order to comply with the attendance requirement and time schedule, the students admitted in the same academic year, would have the MBBS examination, six months after their batch-mates who were admitted in the first/second rounds of counselling. Hence, students admitted in the last round of counselling feel discriminated *vis-a-vis* their other batch-mates. Very frequently, they move the Courts seeking judicial sanction for taking the examinations in common with their batch-mates of the first/second round of counselling.

There is also the knotty question of the status and implications of amendments proposed by the M.C.I., that have yet to get statutory force due to the pendency of Central Government approval and/or gazette publications. For instance, there are amendments to Regulations 7(7) and 7(3) that are proposed by the M.C.I., that have not yet acquired statutory force. However, they are in the pipeline. The extent to which the Judiciary should be informed by the thinking underlying such 'not yet statutory' amendments while balancing between equity and rigour, between the interests of petitioners and the standards of Medical Education, is a controversial /unsettled issue.

Raising the standards of medical education requires a consistency in approach by the Medical Council of India in decisions giving effect to Regulations made under the M.C.I. Act, 1956, a corresponding commitment on the part of the Central and State Government as well as Universities/institutions/colleges, and the co-operation of students. As envisaged by the Apex Court in the *Madhu Singh* case, see note supra 13, the students should step out of a medical college as full fledged medical graduates, but not as half-baked products.

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