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Analysis of the National Commission for Allied and Healthcare Professions Act, 2021

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ABSTRACT

This paper analyses the long awaited and recently enacted legislation called the National Commission for Allied and Healthcare Professions Act, 2021. The need for overhauling, regulation and standardization of allied and healthcare professions has been encountered for several decades, but 'efforts' to establish a regulatory body began only in the early 90's when the bill for Physiotherapists and Occupational Therapists was drafted. The coronavirus pandemic has received invaluable contribution from allied healthcare professionals such as lab technicians and paramedics, and regulating their profession will create employment opportunities not only in India, but in the international markets as well. The World Health Organization (WHO) has estimated that by 2030, there will be a requirement of more than 40 million healthcare professions all over the world and this legislation, by regulating, standardizing and giving recognition to such allied professions and institutions will help them in securing those opportunities thereby increasing access to quality health-education and services.

Keywords: *Allied, Healthcare, National Commission, State Council, Healthcare Institutions*

I. INTRODUCTION

The Parliament passed the National Commission for Allied and Healthcare Professions Bill, 2021 on 24.3.2021. The President of India gave its assent to the National Commission for Allied and Healthcare Professions NCAHP Act, 2021 ('NCAHP Act') on 28.3.2021 and the same came into force on 25.5.2021.²

The aim of the NCAHP Act is to maintain and regulate - the standards of education and services of over 56 allied and healthcare professionals, assessment of institutions, creation of a Central and State Register and a system to improve access and R&D by adopting latest scientific advancement, and for other relevant matters as well.

The NCAHP Act provides an appropriate regulatory framework which has been long overdue

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² National Commission for Allied and Healthcare Professions Act, 2021, No. 14, Acts of Parliament, 2021 (India).

for the development of competent non-physician healthcare providers who have the necessary skill sets required to deliver health services in varying environments of care. The Act gives heed to the invaluable contribution of the paramedics and allied health care workers, lab technicians, radiographers and others during the coronavirus pandemic. This is an advancement towards achieving primary healthcare led universal health coverage.³

In early 1990's, allied health professionals were participatory, however, after numerous consultations with key stakeholders, the first draft Bill was introduced in 2015.⁴

In December 2018, the Allied and Healthcare Professional Bill, 2018 was introduced in the Rajya Sabha and was referred to the Health Department-Related Parliamentary Standing Committee On Health and Family Welfare which recommended certain amendments and thus, the panel incorporated the recommendations and also changed the nomenclature "Allied and Healthcare Professional" to "National Commission for Allied and Healthcare Professions."⁵

II. ALLIED AND HEALTHCARE PROFESSIONAL: INTERNATIONAL STANDARD CLASSIFICATION OF OCCUPATIONS (ISCO-08) FOUR DIGIT CLASSIFICATION SYSTEM

The recognised categories of Allied and Healthcare Professionals specified in the Schedule of the NCAHP Act 'broadly' cover 10 categories of professionals including Medical Laboratory and Life Sciences; Trauma, Burn Care and Surgical and Anaesthesia-related technology; Physiotherapy Professional; Nutrition Science Professional; Ophthalmic Sciences Professional; Occupational Therapy Professional; Community Care, Behavioural Health Sciences and other Professionals; Medical Imaging and Therapeutic Technology Professional; Medical Technology and Physician Associate / Assistant Professional.⁶

The abovementioned Professionals specified in the Schedule are selected on the basis of International Labour Organisations' ("ILO") International Standard Classification of Occupations - 08 ("ISCO-08"), a system for classifying and aggregating occupational information obtained by means of population censuses and other statistical surveys, as well as from administrative records.⁷ According to acceptable international standards, the World

³ Neetu Sharma, *Lok Sabha passes National Commission for Allied and Healthcare Professions Bill, 2021*, *LiveMint* (2021).

⁴ Preeti Sudan, *Why government's recognition of allied healthcare professionals is a paradigm shift*, *Indian Express* (2021).

⁵ No. 117, Department-related Parliamentary Standing Committee On Health and Family Welfare, *Report on the Allied and Healthcare Professions Bill, 2018* (2020).

⁶ See *supra* note 2, at § 2(s).

⁷ Vol 1, ISCO-08, (International Labour Organisation 2012).

Health Organisation (“WHO”) acknowledges ISCO-08 while classifying health professionals.⁸ The NCAHP Act codes all professional categories on the basis of ISCO-08 in order to give global recognition which will ultimately facilitate in global mobility.

The NCAHP Act, in its definition of Allied Health Professional includes *any associate, technician or technologist who is trained to support diagnosis and treatment of illness, disease, injury or impairment, and implementation of any healthcare treatment recommended by a healthcare professional.*⁹ This definition has relied upon the definition of ‘Health Associate Professionals’ provided by the WHO: Classification of Healthcare Workers on the basis of ISCO-08.¹⁰

Similarly, the NCAHP Act defines a Healthcare Professional as a *scientist, therapist or other professional who studies, advises, researches, supervises or provides preventive, curative, rehabilitative, therapeutic or promotional health services,*¹¹ that also relies upon the definition of “Health Professionals” provided by the WHO.

III. NATIONAL COMMISSION

Chapter II of the NCAHP Act provides for the constitution of a National Commission thereby adopting a similar regulatory framework by switching over to commission, like the National Medical Commission Act, 2019 (**NMC Act, 2019**) which constituted the National Medical Commission superseding the Medical Council.

Section 3 of the NCAHP Act provides that the Chairperson and Vice Chairperson which are to be appointed by the Central Government, must be possessing a postgraduate degree in any profession of recognised category of allied and healthcare sciences mentioned in the Schedule.¹² The Chairperson, Vice-Chairperson and the Secretary of the Commission shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee (an eight-member committee, the constitution of which will be governed in terms of Section 21(2) of the NCAHP Act).¹³ The Commission also comprises of ex-officio members and part-time members nominated by State or Central Government (in terms of Section 3(d) of the NCAHP Act).¹⁴

⁸ CLASSIFYING HEALTH WORKERS: MAPPING OCCUPATIONS TO THE INTERNATIONAL STANDARD CLASSIFICATION, (World Health Organisation 2011).

⁹ See *supra* note 2, at § 2(d).

¹⁰ World Health Organisation, *supra* note 7.

¹¹ See *supra* note 2, at § 2(j).

¹² *Id.* § 3.

¹³ *Id.* § 21(3).

¹⁴ *Id.* § 3(d).

Section 11(1) of the NCAHP Act elaborates on the powers and functions of the Commission. The powers and functions are two-fold and include, inter alia, the laying down of policies and regulations to (a) provide for and maintain standards for governance of education and services in accordance with the global standards (b) regulate and maintain standards of allied and healthcare- qualifications, exit and entry / licensing examinations, institutions and professionals.¹⁵

By extension, the Commission is also empowered to maintain professional conduct and code of ethics and etiquettes, maintain an up-to-date online and live Central Register with details of academic qualifications, institutions, training, skill and competencies of the recognised professionals and also hold annual meetings with the National Medical Council constituted under section 3 of the National Medical Commission Act, 2019 and the Central Council constituted under section 3 of the Homoeopathy Central Council Act, 1973 (**HCC ACT, 1973**). (However, the HCC Act, 1973 has been repealed and been replaced by the National Commission for Homoeopathy Act, 2020 which by notification of Central Government will dissolve the Central Council established under the HCC ACT, 1973.)¹⁶

Central Allied and Healthcare Professionals' Register

The Commission, as part of its function, shall, according to a standardised format (as specified by regulations), maintain an online and live Register of persons in each of the recognised categories - which is to be known as the Central Allied and Healthcare Professionals' Register (**'Central Register'**).¹⁷ It shall maintain live and up-to-date information including the names of persons and academic qualifications, institutions and skills relating to their respective recognised categories. No other person, other than a registered recognised professional shall hold office in a Government or any Institution, provide any recognised categories services and sign / authenticate any certificate which is to be a signed by a duly qualified recognised professional under the Schedule of this Act.

With respect to 'Existing Professionals,' as per Section 38 – all persons already offering services in any of the recognised categories on / before commencement of this Act – shall be allowed to register provisionally within such period as may be specified by regulations.¹⁸

The Central Register is deemed to be a public document within the meaning of the Indian

¹⁵ *Id.* § 11(1).

¹⁶ National Commission for Homoeopathy Act, 2020, § 58(1), No.15, Acts of Parliament, 2019 (India).

¹⁷ See *supra* note 2, at § 13(1).

¹⁸ *Id.* § 38.

Evidence Act, 1872.¹⁹

National Allied and Healthcare Advisory Council

Section 12 of the NCAHP Act provides for the constitution of an advisory body, known as the National Allied and Healthcare Advisory Council (**Advisory Council**) by the Central Government on the lines of the Medical Advisory Council in the NMC Act, 2019.²⁰

The Advisory Council shall act as a platform to coordinate and harmonise the general interest of each recognised profession by giving recommendations or advising the commission on several issues and finalizing the advice/suggestion that may be referred to any of the Professional Councils.

IV. PROFESSIONAL COUNCIL

Section 10 of the NCAHP Act states that the Commission shall constitute a Professional Council for every recognised category and shall consist of a president and members representing each profession in the recognised category, who shall also be registered professionals of the respective category.²¹

As per Section 11(2) of the NCAHP Act, the Commission may delegate its powers and functions pertaining to that specific category of profession to these Professional Councils, for the purpose of decentralization of functions and ensure growth and development of the allied health profession.²²

State Allied and Healthcare Council

Chapter III of the NCAHP Act provides for the constitution of a State Council which is to be established by every State Government within six months from the date of commencement of this Act.²³

The main responsibility of the State Councils is to implement the regulatory framework by enforcing the professional conduct, code of ethics and etiquette, taking disciplinary action, ensuring minimum standards, uniform entry examination with common counselling for admissions and uniform exit / licensing examination, conduct inspections of institutions and registered professionals in the State, and ensuring compliance of all directions entrusted by the State Government or the Central Commission.

¹⁹ *Id.* § 13(3).

²⁰ *Id.* § 12.

²¹ *Id.* § 10.

²² *Id.* § 11(2).

²³ *Id.* § 22(1).

As per section 31 of the NCAHP Act, the State Council, to examine any issues relating to one or more recognised categories, may constitute as many Professional Advisory Boards as may be necessary.²⁴

State Allied and Healthcare Professionals' Register

The State Council shall maintain an online and live Register of persons in separate parts for each of the recognised categories which is to be known as the State Allied and Healthcare Professionals' Register (**'State Register'**). It shall contain information including the name of person. academic qualifications, institutions, training, skill and competencies of Allied and Healthcare Professionals related to their profession according to their recognised categories.²⁵

The State Register is deemed to be a public document within the meaning of the Indian Evidence Act, 1872.²⁶

As per section 16 of the NCAHP Act, on receipt of the report on registration in the State Register, the name of the registrant will be automatically reflected in the Central Register as well.²⁷

V. AUTONOMOUS BOARDS

Section 29 of Chapter III provides for constitution of the following Autonomous Boards by the State Council:

- Under-graduate Allied and Healthcare Education Board,
- Post-graduate Allied and Healthcare Education Board,
- Allied and Healthcare Professions Assessment and Rating Board, and
- Allied and Healthcare Professions Ethics and Registration Board.

The powers and functions of the abovementioned Autonomous Boards have been provided for under Sections 29(2), (3), (4) and (5) of the NCAHP Act.²⁸

Recognition of Allied and Healthcare Institutions and Reciprocity

Section 39 of Chapter IV of the NCAHP Act states that any Indian citizen, who holds a qualification granted by an institution outside India, then his / her qualification is entitled to be a recognised allied and healthcare qualification, and that citizen is entitled for registration under this Act; provided that such citizens possessing such qualifications are enrolled as registered

²⁴ *Id.* § 31.

²⁵ *Id.* § 32(1).

²⁶ *Id.* § 32(3).

²⁷ *Id.* § 16.

²⁸ *Id.* § 29 (2), (3), (4) and (5).

Allied and Healthcare Professionals in that country.²⁹

Scheme of Reciprocity

As per section 39(5) of the NCAHP Act, for the purpose of reciprocity and recognition of persons coming to India and seeking education / to practice their rights, the National Commission may enter into negotiations with the concerned authority in the respective country outside India for setting up of a scheme of reciprocity for the recognition of Allied and Healthcare Professionals.³⁰

VI. ESTABLISHMENT OF NEW ALLIED AND HEALTHCARE INSTITUTIONS

Section 40(1) of Chapter V of the NCAHP Act states that, only those persons or allied and healthcare institutions who have taken previous permission of the State Councils can open a new or higher course of study / training, or increase its admission capacity of students.³¹ This permission will be given to such persons while considering basic factors such as – standard of education, adequate financial resources, necessary facilities for increasing capacity or for proper functioning, and other factors as per Section 40(5) of the NCAHP Act. (For purposes of Section 40, ‘person’ includes Universities, Institutions or Trusts but does not include the Central or the State Governments.)

In terms of Section 42, the State Councils will verify the standards of the institutions- for the purpose of recognition of allied and healthcare qualifications provided by the respective institutions.³²

In case of failure to maintain essential standards specified by the commission and the autonomous boards, the State Councils may issue warnings, impose fines or even recommend withdrawal of recognition against such institutions.

VII. FINANCE, ACCOUNTS AND AUDIT

(A) National Allied and Healthcare Fund

As per Section 46 of Chapter VI of the NCAHP Act, for the discharge of the functions of the National Commission and for purposes of this Act, a Fund called the National Allied and Healthcare Fund (‘NAHF’) shall be constituted and the Central Government may, by the way of grants, benefactions, bequests, transfers and fees, transfer such sums of money to the

²⁹ *Id.* § 39.

³⁰ No. 117, Department-related Parliamentary Standing Committee On Health and Family Welfare, *Report on the Allied and Healthcare Professions, 2018, 4.28.3, (2020).*

³¹ See *supra* note 2, at § 40(1).

³² *Id.* § 42.

National Commission and credit into the NAHF to clear the expenses.³³

(B) State Allied and Healthcare Fund

Similarly, as per Section 51, a Fund to be called the State Allied and Healthcare Council Fund ('SAHF') is to be constituted and the State Governments may, by way of grants, benefactions, bequests, transfers and fees, transfer such sums of money to the respective State Councils to credit into the SAHF.³⁴

The National Commission and the State Councils shall maintain appropriate accounts, annual records and prepare an annual statement of accounts including the balance sheet, in accordance with such directions as may be issued and in consultation with the Comptroller and Auditor-General of India.

VIII. OFFENCES AND PENALTIES

The penalty clauses in Chapter VII of the NCAHP Act are in line with the NMC Act, 2019 and other regulatory frameworks. As per Section 56 of the NCAHP Act, any person falsely claiming to be entered in the Central or State Register, shall be punishable on first conviction with a fine of fifty thousand rupees and on subsequent conviction – with imprisonment extending to six months or with fine not exceeding one lakh rupees or with both.³⁵

In terms of Section 57, any person not registered in the Central or State Register- uses description of an allied and healthcare professional, or who is not possessing any qualification under this Act, uses a degree or a diploma or a license or an abbreviation implying such qualification, shall be punished on first conviction with fine of one lakh rupees, and on subsequent conviction - with imprisonment which may extend to one year or with fine not exceeding two lakh rupees or with both.³⁶

Chapter VII deals with offences and penalties for only for individuals and not institutions. The Allied and Healthcare Profession Assessment and Rating Board is responsible for regulating institutions and take such measures including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the National Commission for withdrawal of recognition, against a medical institution for failure to maintain the minimum essential standards specified by the Autonomous Boards. Also, since many medical institutes regulated by the Medical Assessment and Rating Board constituted under the NMC Act, 2019

³³ *Id.* § 46.

³⁴ *Id.* § 51.

³⁵ *Id.* § 56.

³⁶ *Id.* § 57.

also run allied and healthcare profession courses, they will have to work in coordination and co-operation with the Assessment and Rating Board constituted under this Act.³⁷

IX. ENTRANCE AND EXIT TESTS

Section 11(1)(g) of the NCAHP Act states that, it is the duty of the National Commission to provide for uniform Entry Examinations with common counselling for admission into the allied and healthcare institutions.³⁸ According to the Allied and Healthcare Professions Bill, 2018, it was recommended that a Common Entrance Test should be conducted under the overall supervision of the National Commission.³⁹ In the coming months, the National Commission which is to be constituted under this act will coordinate with State Council's and devise one uniform entrance exam similar to the National Eligibility-cum-Entrance Test (**NEET**).

Why can NEET not be expanded for admission of candidates to the undergraduate and postgraduate Allied and Healthcare courses?

Although, during the drafting of the NCAHP Bill, the expansion of NEET for admission and counselling in Allied and Healthcare courses for candidates was considered, but it was not considered feasible – as certain allied and healthcare professions do not necessarily require Biology / Physics / Chemistry as a compulsory intermediate subject.⁴⁰

Section 11(1)(h), mandates the National Commission to provide for exit / licensing examinations for allied and healthcare professionals for professional practice or entrance into postgraduate or doctoral level and National Teachers Eligibility Test for academicians.⁴¹

Why no 'single' exit / licensing examination for all professions?

There will be separate exit / licensing examinations for all professions because the licensing standards will differ from profession to profession. Also, every profession follows a specified curriculum and deals with different technical skills.

Similarly, a separate examination for the teaching profession called the National Teachers Eligibility Test (**NTET**) for allied and healthcare professionals will be conducted, so as to improve the adequacy of the education faculty and for imparting quality education which will ultimately improve the quality of healthcare services.

³⁷ No. 117, Department-related Parliamentary Standing Committee On Health and Family Welfare, *Report on the Allied and Healthcare Professions, 2018*, 4.30.4, (2020).

³⁸ See *supra* note 2, at § 38.

³⁹ See *supra* note 37, at 4.10.15.

⁴⁰ *Id.* 4.10.16.

⁴¹ See *supra* note 2, at § 11(1)(h).

X. PRINCIPLE OF FEDERALISM

The Hon'ble Supreme Court, in the case of "*Government of NCT of Delhi v. Union of India and Ors.*" has held that, "*the Union and the State Governments must embrace a collaborative federal architecture by displaying harmonious coexistence and interdependence so as to avoid any possible constitutional discord.*"⁴²

The NCAHP Act has received unanimous support for legislation which has displayed harmonious coexistence between both houses of parliament, thereby embracing the principle of federalism.

XI. CONCLUSION

Although the legislation is a step in the right direction, there are certain lacunas in the system. Section 38 of the NCAHP Act states that those persons who offer services in the recognised categories will be allowed to be provisionally registered, however, there is a lack of provision for those who have already enrolled into the distance learning courses for the recognised categories. The Act states that only those persons will be qualified as allied and healthcare professionals if they have been granted a degree / diploma by a recognised college / institution through "regular learning mode."⁴³

It is recommended that the government along with the National Commission and State Councils, while implementing the provisions of the NCAHP Act, must formulate a uniform system for availability of qualified teaching faculty, libraries, upgradation in infrastructure and modern technology for the development of an augmented form of learning.

⁴² Government of NCT of Delhi v. Union of India and Ors., (2018) 8 SCC 501.

⁴³ See *supra* note 2, at § 2(e).