

Legislative Brief

The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010

The Bill was introduced in the Lok Sabha on May 3, 2010 by the Ministry of Human Resource Development. The Bill was referred to the Standing Committee on Human Resource Development (Chairperson: Shri Oscar Fernandes) on May 14, 2010. The committee is scheduled to submit its report within two months.

Highlights of the Bill

- ◆ The Bill seeks to regulate the entry and operation of foreign educational institutions seeking to impart higher education.
- ◆ Every foreign educational institution intending to operate in India has to be notified as a foreign educational provider by the central government on the recommendation of the Registrar (Secretary of the University Grants Commission).
- ◆ Foreign educational providers have to maintain a corpus fund of a minimum of Rs 50 crore. Upto 75% of any income generated from the corpus fund shall be utilized for developing its institution in India and rest should be put back in the fund.
- ◆ The central government may exempt any institution, on the advice of the Advisory Board, from conforming to the requirements of the Bill except the penalty provision and the ban on revenue repatriation.

Related Briefs:

The National Accreditation Regulatory Authority for Higher Educational Institutions Bill, 2010

The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010

The Educational Tribunals Bill, 2010

Key Issues and Analysis

- ◆ There are three views on the issue of foreign educational institutions operating in India. Opponents argue that it would limit access and lead to commercialisation. Proponents of the Bill argue that it would increase choices for students and enhance competition in the sector. There are some experts who support limited entry based on the reputation of the institution.
- ◆ Present rules permit foreign universities to collaborate with Indian partners through various mechanisms. However, few globally renowned universities collaborate with India. It is not clear if the Bill would attract quality foreign universities given the stricter guidelines.
- ◆ The Bill lacks clarity on what provisions the foreign institutions may be given an exemption from since they have to follow all other laws in force. This effectively means that they have to conform to standards set by statutory authorities on curriculum, methodology and faculty and mandatory publication of prospectus.

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PART A: HIGHLIGHTS OF THE BILL¹

Context

Higher educational institutions (including foreign institutions) are regulated by the University Grants Commission (UGC) and the All India Council of Technical Education (AICTE). The UGC regulates degrees and diplomas awarded by all universities. These include universities which grant degrees and diplomas through collaboration with foreign educational institutions.² The AICTE regulates foreign institutions, which provide technical education either directly or through collaboration with Indian partners.³ Although, government data is not publicly available, a 2008 study commissioned by the UK-India Education Research Initiative identified 640 collaborative programmes in India.⁴

The National Knowledge Commission (NKC) estimated that every year about 160,000 students from India study abroad, spending about US\$4 billion. It recommended that India should frame policies for the entry of foreign institutions.⁵ According to the Ministry of Overseas Indian Affairs, as of July 15, 2009, about 264,324 Indian students are studying abroad.⁶

The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010 seeks to regulate the entry and operation of foreign educational institutions seeking to impart higher education. Higher education includes technical and medical education and the award of degree and diploma.

Key Features

Notification of Foreign Educational Provider

- A “foreign educational institution” is defined as any institution established outside India, which has been offering educational services for a minimum of 20 years and proposes to offer courses which shall be taught through conventional teaching methods (including classroom teaching). It excludes distance education (offered independently or through collaboration, partnership or twinning arrangement). The Bill also lays down norms for foreign institutions conducting certificate courses.
- Every foreign institution intending to operate in India has to be notified as a foreign educational provider by the central government on the recommendation of the Registrar (Secretary of UGC) in the prescribed manner. The application has to be endorsed by the High Commission of that country in India. An existing institution has to apply within six months of the Act coming into force.
- The central government, based on the recommendation of the UGC, may withdraw recognition in case a foreign educational provider violates any provision of the regulations. The management, teacher, students or parents may make representation against the proposed withdrawal.
- The programme of study offered by the foreign university has to conform to standards laid down by the statutory authority (such as UGC, AICTE, Bar Council of India) and the quality in terms of curriculum, methods of teaching and faculty is comparable to that offered to students in the main campus.
- Every foreign institution has to publish a prospectus 60 days prior to admission which shall include information about fees, amount of fees refundable, approved number of seats, conditions of eligibility, and details of teaching faculty.

Mandatory Conditions

- The foreign university has to maintain a corpus fund of a minimum of Rs 50 crore. Maximum of 75% of any income generated from the fund shall be utilized for developing the institution in India and the rest should be reinvested in the fund.
- Any surplus in revenue generated in India by the foreign university has to be invested in the development of the educational institution established by it in India.

Penalties

- Any person who offers admission to an unrecognised institution or makes misleading advertisement shall be liable to a minimum fine of Rs 10 lakh (upto Rs 50 lakh) in addition to refunding the fees collected. Any recognised foreign institution that violates the law shall be liable to a fine between Rs 10 and 50 lakh and forfeiture of the corpus fund.

Provision of Exemption

- The central government shall establish an Advisory Board, consisting of three national research professors, Chairman of the UGC and Chairman of one of the other statutory authorities. The central government may exempt any institution, on the advice of the Advisory Board, from conforming to certain provisions of the Bill. However, they would be subject to the ban on revenue repatriation and penalties for offences.

PART B: KEY ISSUES AND ANALYSIS

Debate on entry of foreign educational institutions

The debate over whether foreign educational institutions should be allowed to operate in India is divided into three camps.

- The opponents argue that it would lead to commercialisation of higher education, which would lead to withdrawal of the government from the sector. It would also increase the disparity of access to quality education between the rich and the poor.⁷
- The proponents argue that it would increase choices for students, enhance competition in the sector with potential for qualitative improvement in the Indian educational institutions, provide technical skills for the job market and retain some of the funds that flow overseas.⁸
- Some experts take a middle view arguing that foreign institutions should have limited entry so long as certain concerns over the quality of the education provided, the type of subjects that would be taught, and the possibility of faculty moving from Indian institutions are addressed.⁹

Adequacy of the Provisions of the Bill

According to the Ministry of HRD, some of the possible benefits of foreign universities include participation of globally renowned universities, skill development, increasing access to innovative areas of studies, and increase in Gross Enrolment Ratio.¹⁰ However, some experts argue that the provisions of the Bill would neither attract quality institutions nor would it adequately regulate existing institutions.¹¹

Attraction for foreign educational providers

India does not maintain a central database of foreign universities.¹² Only six foreign universities have AICTE approval to collaborate with Indian institutions¹³; none of these figure highly in global ratings.¹⁴ Also, there are 67 institutions running technical programmes with foreign collaboration without AICTE approval.¹⁵

The Bill increases the constraints for foreign universities. Given such conditions, it is an open question whether top foreign educational institutions would choose to come to India.

Both the Yash Pal Committee Report¹⁶ and the NKC report⁵ emphasised that any policy framed for regulating foreign institutions should ensure that there is an incentive for good institutions and a disincentive for sub-standard institutions to come to India.

Presently, foreign institutions are allowed to operate in India through various modes. Universities can sign MoUs with foreign universities without prior approval of state or central government or UGC.¹⁷ The Bill allows foreign universities to set up branch campuses without an Indian partner. But it includes requirements such as maintaining a corpus fund of at least Rs 50 crore, not allowing repatriation of funds and a track record of 20 years in the parent country. Countries such as South Korea, Singapore, and UAE offer incentives that reduce the costs and the risks associated with establishing a campus in a different country.¹⁸

Lack of clarity on exemption

The Bill allows the central government to exempt a foreign institution from certain provisions of the Act except the penalties provision and the provision that prohibits repatriation of surplus revenue. Foreign universities (including such exempted ones) shall be penalised if they: (a) operate without recognition; (b) do not maintain standards to be prescribed; (c) do not comply with any provisions of the University Grants Act, 1956; (d) do not maintain a corpus fund; and (e) do not publish a prospectus in the specified form. Also, the Bill states that all other laws in force will apply to all foreign universities.

This could imply that that exempted foreign institutions have to conform to all the norms for the non-exempt ones. Therefore, it is not clear what provisions the foreign institutions are exempted from, other than the provision on withdrawal of recognition.

Clauses
5, 6, 7, 8,
9(1), 12

Notes

1. This Brief has been written on the basis of the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, which was introduced in the Lok Sabha on May 3, 2010. The Bill was referred to the Standing Committee on Human Resource Development (Chairperson: Shri Oscar Fernandes), which is scheduled to submit its report within two months.
2. UGC (Establishment of and Maintenance of Standards in Private universities) Regulations, 2003.
3. "Regulations for Entry and Operation of Foreign Universities/Institutions Imparting Technical Education in India," Notification by AICTE, May 16, 2005.
4. "Foreign Education Providers in India: Report on Collaborative Arrangements," May 2008, UK-India Education and Research Initiative.
5. "Report to the Nation: 2006-09," National Knowledge Commission, Govt of India, March 2009.
6. Lok Sabha Starred Question No 162, Answered on July, 15, 2009, Ministry of Overseas Indian Affairs.
7. "The Market in Higher Education: Concern for Equity and Quality," Saumen Chattopadhyay, Economic and Political Weekly, July 18, 2009; "Foreign univs Bill divides academics," Kavita Chowdhury, India Today, May 18, 2010; "Foreign Univs: Degrees of Debate," Shafi Rahman, India Today, May 1, 2010.
8. NKC Report: "Bringing Foreign Universities to India," Jane E. Schukoske, The Hindu, Nov 14, 2006; "Top educational institutions hail foreign varsity bill," Indian Express, March 16, 2010; "Let's get technical," Amitendu Palit, Financial Express, Dec 26, 2009.
9. Report of 'The Committee to Advise on Renovation and Rejuvenation of Higher Education,' Chairperson: Prof Yash Pal, 2009; "The Foreign Educational Institutions Bill: A Critique," Jandhyala B.G. Tilak, Economic and Political Weekly, May 8, 2010, 172nd Report of the Department related Standing Committee on Ministry of Human Resource Development, May 22, 2006; "Foreign Univs: Degrees of Debate," Shafi Rahman, India Today, May 1, 2010.
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11. "Course Correction," Pratap Bhanu Mehta, Indian Express, May 8, 2010; "Towards a Legitimate Role for Foreign Institutions," Rohan Mukherjee, Seminar, July 2008; "Growing an Ivy League at home," David Finegold, Indian Express, April 2, 2010; "India's Half Open Door May Not Entice Foreign Universities," Philip G. Altbach, Chronicle of Higher Education, June 10, 2010.
12. Lok Sabha Starred Question No 122, Answered on July 13, 2009, Ministry of Human Resource Development and 172nd Report on "University and Higher Education," Standing Committee on HRD, May 22, 2006.
13. List of Institutions approved by AICTE under Foreign University Regulations (see <http://www.aicte-india.org/misappforeigncoll.htm>), Accessed on June 20, 2010.
14. Times Higher Education-QS World University Rankings, 2009 (see <http://www.timeshighereducation.co.uk/hybrid.asp?typeCode=438>).
15. List of Unapproved Institutions Running Technical Programme with Foreign Collaboration without AICTE Approval (see <http://www.aicte-india.org/unoreigninstitutions.htm>), Accessed on June 20, 2010.
16. Report of 'The Committee to Advise on Renovation and Rejuvenation of Higher Education,' Chairperson: Prof Yash Pal.
17. "Year End Review: Ministry of Human Resource Development," Press Information Bureau, Jan 14, 2005 (see http://pib.nic.in/release/rel_print_page.asp?relid=6548).
18. "Dubai Knowledge Village" (see http://www.uaefreezones.com/fz_knowledge_village.html); "15 Foreign Universities Drawn to Incheon Free Zone," The Chosun Ilbo, July 16, 2009; "Malaysia's Incentive and Support Package for Higher Education Investment," Government of Malaysia; "Sowing Seeds," W. Underhill, Newsweek, Aug 21, 2006; "The International Branch Campus: Models and Trends," Line Verbik, Observatory on Borderless Higher Education, UK, Dec 2006.

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