

# Legislative Brief

## The Prohibition of Unfair Practice in Technical Educational Institutions, Medical Educational Institutions and University 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 prohibit specified unfair practices in technical and medical institutions and universities to protect the interest of students.
- ◆ Unfair practices include demanding or paying capitation fee; admitting students without specified merit criteria; not issuing receipt for any fee charged by the institution; publishing advertisement misleading students; and withholding degree to compel a student to pay a fee.
- ◆ The Bill makes it mandatory for every institution to maintain records of the selection process and publish a prospectus at least 60 days prior to admission. The prospectus should include information about fees, conditions of eligibility, process of admission and details of faculty.
- ◆ The Bill imposes penalties for offences such as taking of capitation fees, not adhering to the prospectus, publishing false advertisements, etc.

### Key Issues and Analysis

- ◆ Experts are divided over the issue of capitation fees. Some contend that prohibition of capitation fee is required to ensure equity. Others are of the view that steps to increase supply of educational institutions would automatically reduce capitation fees since it would address core issues such as shortage of seats and poor quality of education.
- ◆ Although demanding capitation fees is illegal under current regulations, it has not been curbed. Since the Bill does not change the enforcement mechanism for curbing capitation fees, it is not clear how the practice would be stopped.
- ◆ The Bill states that its provisions do not affect the right of minorities to establish and administer educational institutions. However, it is not clear what provisions the minority institutions are exempted from.
- ◆ The Bill prescribes a fine of upto Rs 50 lakh for offences such as charging capitation fees or publishing misleading advertisement. The amount is significantly higher than penalties for offences under some recent Acts such as the Food Safety and Standards Act, 2006; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

#### Related Briefs:

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

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

The Educational Tribunals Bill, 2010

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## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

Articles 19(1)(g) of the Constitution of India guarantees the right to practice any profession, or to carry any occupation, trade or business. In 2002, the Supreme Court recognised education as an “occupation” which includes the right to run educational institutions. However, the judgment stated that in establishing an educational institution, the object should not be profit.<sup>2</sup> While it permitted a reasonable surplus for furthering of education for private unaided educational institutions, it prohibited charging of capitation fee and profiteering.<sup>3</sup>

Presently, fees and the manner in which admission is granted in private unaided educational institutions are regulated by states. The University Grants Commission Act, 1956 allows UGC to regulate fees in universities if it is in the public interest to do so and prohibits such universities from taking any donations.<sup>4</sup> Although illegal, according to the Yash Pal Committee report, the charging of capitation fees, which range from Rs 1-12 lakh depending on the course, have not abated.<sup>5</sup>

### Key Features

#### Prohibition of Unfair Practices

- The Bill seeks to prohibit specified unfair practices in technical and medical educational institutions and universities. Unfair practices include demanding or paying capitation fee; admitting students without specified admission tests or merit criteria; not giving receipt for any fee charged by the institution; publishing advertisement misleading students; and withholding degree or diploma to compel a student to pay a fee.
- “Capitation fee” is defined as any amount demanded by an institution or paid by any person in order to admit a student in the institution, which is in excess of the fees and other charges declared in the prospectus of an institution. Any donation demanded or paid to an institution is also prohibited. The Bill also defines terms such as “advertisement”, “admission test” and “prospectus”.

#### Mandatory Obligations of the Institution

- Every institution has to maintain the entire process of selection of students (including answer sheets of the competitive admission test) for a year after completion of the test and publish it on the website.
- Each institution has to publish a prospectus 60 days before admission begins in a course or programme of study. It should include information about each component of fee, deposit and other charges; the percentage of tuition fee and other charges which is refundable if a student withdraws from the institution; number of seats approved by a statutory authority; conditions of eligibility; the process of admission; details of teaching faculty; minimum pay of teaching faculty and other employees; and facilities accessible by students.
- The institution shall fix a reasonable price for printed copies of the prospectus based on cost of publication and distribution. No profit can be made out of the publication and sale of the prospectus. It shall also be published on the website of the institution and shall be advertised through newspapers and other media.
- The Bill does not affect the right of minorities to establish and administer educational institutions.

#### Offences and Penalties

- Monetary penalties shall be imposed on institutions in case they violate the provisions of the law. For example, any institution that knowingly does anything contrary to information in the prospectus shall be liable to a penalty of upto Rs 50 lakh; any institution that demands or accepts capitation fee or publishes misleading advertisement shall be punishable with a fine of upto Rs 50 lakh. Penalties shall be adjudicated by the State and National Educational Tribunals.
- If any person contravenes provisions of this Bill, he shall be liable to imprisonment of upto three years or a fine or with both. If any person fails to pay the penalty imposed by State or National Educational Tribunals, he shall be liable to imprisonment for a minimum of one month and maximum of three years or a fine between Rs 50,000 and Rs 5 lakh or with both.
- The court shall not take cognizance of an offence unless the person authorised by the central or state government makes the complaint in writing. Only courts of a Metropolitan Magistrate or a Judicial Magistrate of the First Class (or higher) can try a case under this Act. Every offence shall be deemed to be non-cognizable except taking or giving capitation fees.
- When an institution is accused of committing the offence of publishing misleading or untrue advertisements, the burden of proof shall be on the institution.

## PART B: KEY ISSUES AND ANALYSIS

### Regulation of Private Colleges and Universities

#### Present regulations ban charging of capitation fees

Clause  
2(1)(d)

In India, private participation is allowed in the education sector if it is on a not-for-profit basis in order to ensure access and affordability.<sup>3</sup> Various Supreme Court judgements have sought to curb profiteering by ordering varying degree of control on private institutions. The 1993 Unni Krishnan case banned capitation fees. It also devised a scheme, which allotted 50% seats in an unaided professional institution as free seats (fees same as a government institution) and 50% as payment seats (fees higher than ‘free seats’ but have to be approved by a state-level committee).<sup>6</sup>

However, the Supreme Court in the 2002 T.M.A Pai judgement ruled that the fees charged by private unaided educational institutions could not be regulated. Also, while it banned capitation fees, it allowed institutes to charge a reasonable surplus.<sup>2</sup> This judgement was again overturned in 2003 when the Supreme Court in the Islamic Academy of Education case ruled that the fee structure in professional courses shall be approved by a committee in order to curb the charging of capitation fees and profiteering.<sup>7</sup> States such as Madhya Pradesh, Andhra Pradesh, Gujarat, Karnataka and Orissa enacted laws to set up such committees to approve the fee structure in professional educational institutions.<sup>8</sup> The 2005 P.A. Inamdar case upheld the 2003 verdict of the Supreme Court.<sup>8</sup>

Some experts however contend that allowing only non-profit entities to operate in the education sector does not ensure quality, nor does it increase supply, or curb charging of capitation fees.<sup>9</sup> Furthermore, the non-profit status may act as an incentive for unscrupulous players since such entities get tax exemptions, which makes it easier to launder money.<sup>10</sup> Also, there have been cases where the fees committees have determined the fee structure by only taking into account the affordability of the parents of the students without taking into account the financial viability of the institutes.<sup>8</sup> Committees such as the National Knowledge Commission (NKC), the Central Advisory Board of Education (CABE) Committee on Autonomy in Higher Education and the 11<sup>th</sup> Plan are in favour of allowing universities to determine their own fees while suggesting that the government should provide loans and scholarships to needy students.<sup>11</sup>

#### Efficacy of curbing capitation fees

Presently, charging of capitation fees is banned by a series of Supreme Court judgments.<sup>3</sup> The Yash Pal Committee Report stated that the practice has not abated mainly due to deficiencies in enforcement instruments and lack of political will.<sup>5</sup> Since the enforcement instruments remain the same (police and courts) in the Bill, it is not clear whether the provisions of the Bill shall curb the practice of capitation fees.

#### Exemption of Minority Institutions

Clause 26

Under the heading ‘Non Applicability of this Act to minority institutions in certain cases’, the Bill states that “Nothing contained in this Act or the rules made there under shall affect the right of the minorities to establish and administer educational institutions of their choice.”

This provision does not clearly state which provisions of this Act are minority institutions exempt from. For example, it is not clear whether minority institutions have to comply with provisions regarding capitation fees, false advertisements or publishing of prospectus.

#### Penalty

##### Amount of penalty

Clauses  
9, 10,  
12, 13

The Bill prescribes a fine of upto Rs 50 lakh for offences related to charging capitation fees, publishing misleading advertisement or not adhering to the prospectus. The amount is significantly higher than penalties for offences under some recent Acts such as the Food Safety and Standards Act, 2006; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; the Child Labour (Prohibition and Regulation) Act, 1986; and the Environment Protection Act, 1986.

**Table 1: Penalties prescribed in other Acts**

Food Safety and Standards Act, 2006	Penalty for food containing extraneous matter: Max of Rs 1 lakh Penalty for manufacturing or selling adulterants injurious to health: Max of Rs 10 lakh Penalty for misleading advertisement: Max of Rs 10 lakh
The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006	Penalty for offences committed by members of authorities and Committees under the Act: Max of Rs 1,000
The Child Labour (Prohibition and Regulation) Act, 1986	Penalty for employing a child or permitting any child to work in specified occupations: Imprisonment for 3 months to a year and a fine of Rs 10,000
Environment Protection Act, 1986	Penalty for failing to comply with any provisions of the Act: Imprisonment for max of five year or fine of upto Rs 1 lakh

Sources: The Food Safety and Standards Act, 2006; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; The Child Labour (Prohibition and Regulation) Act, 1986; and Environment Protection Act, 1986.

### Notes

1. This Brief has been written on the basis of the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities 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. T.M.A Pai Foundation and others vs State of Karnataka and others, Writ Petitions (C) No. 317 of 1993, Nov 25, 2002.
3. "Higher Education in India: The Need for Change," Pawan Agarwal, Working Paper no. 108, ICRIER, June 2006; Supreme Court cases such as 1993 Unni Krishnan case; 2002 TMA.Pai Foundation case; 2003 Islamic Academy of Education case; and 2005 P.A. Inamdar case.
4. Section 12A of the University Grants Commission Act, 1956.
5. Report of the Committee to Advise on Renovation and Rejuvenation of Higher Education, Prof Yash Pal, 2009.
6. Unni Krishnan, JP & Ors v. State of Andhra Pradesh & Ors (1993) 1 SCC 645.
7. Islamic Academy of Education & Anr. v. State of Karnataka, (2003) 6 SCC 697.
8. P.A. Inamdar & Ors vs State of Maharashtra & Ors, Appeal (civil) 5041 of 2005, Supreme Court, August 12, 2005.
9. Dissent Note of Prof Kaushik Basu in the Yash Pal Committee Report; "Regulating Higher Education," Pratap Bhanu Mehta, Indian Express, July 14, 2005; "Higher Education in India: Ducking the Answers," Bibek Debroy, ISAS Insights, Institute of South Asian Studies, National University of Singapore, May 16, 2008.
10. "Indian Higher Education Reform: From Half Baked Socialism to Half Baked Capitalism," Devesh Kapur and Pratap Bhanu Mehta, Centre for International Development, Harvard University Working Paper No. 108, Sept 2004.
11. "Report to the Nation 2006-2009," National Knowledge Commission; the 11<sup>th</sup> Five Year Plan, the Report of the CAGE Committee on Autonomy of Higher Education Institutions, Ministry of Human Resource Development, June 2005.

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