

# Legislative Brief

## The Higher Education and Research Bill, 2011

### Highlights of the Bill

The Bill was introduced in the Rajya Sabha on December 28, 2011 by the Minister of Human Resource Development, Shri Kapil Sibal. It was referred to the Department related Standing Committee on Human Resource Development (Chairperson: Shri Oscar Fernandes), which submitted its report on December 13, 2012.

- ◆ The Bill seeks to establish the National Commission for Higher Education and Research (NCHER), a General Council and a Collegium of Scholars. It repeals the UGC Act, 1956, the AICTE Act, 1987, and the National Council for Teacher Education Act, 1993.
- ◆ The NCHER shall take steps for the promotion and coordination of higher education and research.
- ◆ Every degree granting institution established after the enactment of this law has to be authorised by the NCHER to begin its first academic operation. The NCHER may revoke authorisation on certain grounds.
- ◆ The Collegium shall prepare a directory of academics eligible for appointment as Vice Chancellors of central educational institutions (except a college). The NCHER shall maintain this directory.
- ◆ The Higher Education Financial Services Corporation (HEFSC) shall disburse grants to institutions based on norms specified by NCHER.
- ◆ The performance of the NCHER shall be reviewed every five years by a committee appointed by the President.

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**December 28, 2012**

### Key Issues and Analysis

- ◆ The Bill aims to promote autonomy of higher educational institutions. However, certain provisions of the Bill impede such autonomy. For instance, requirement of permission from NCHER to enrol students.
- ◆ Some key recommendations of committees such as NKC and Yash Pal Committee have not been incorporated in the Bill. For example, allowing the regulator to give degree granting powers to an institution.
- ◆ The Bill separates the functions of grant disbursal and regulation of HEIs. However, the NCHER retains the function of specifying norms for disbursal of funds. Also, a member of NCHER is the non-executive Chairman of the HEFSC. This differs from NKC's recommendation.
- ◆ One of the functions of the General Council is to assess the performance of NCHER. The Council includes the Chairperson and all members of NCHER. This may hamper an objective assessment of the performance of NCHER.
- ◆ The National Commission for Human Resource for Health Bill, (NCHRH), pending in Parliament, proposes a regulator for health education. There is an overlap between the functions of NCHER and the NCHRH.

## PART A: HIGHLIGHTS OF THE BILL

### Context

Education is listed in the Concurrent List of the Constitution. Therefore, both the centre and the states can make laws on the subject. In addition, there are specific areas of education, which are listed in either the Union or the State List (only the centre or state can make laws in those areas). The centre can determine standards for higher educational institutions (HEIs) while the states can incorporate, regulate and wind up universities.<sup>1</sup>

Higher education is regulated by multiple authorities. The Central Advisory Board of Education co-ordinates and advises the centre and states on education related matters. The University Grants Commission (UGC) regulates universities and colleges teaching general subjects. It has the power to determine and maintain standards and disburse grants. The All India Council for Technical Education (AICTE) regulates technical education such as engineering, management, and architecture. Technical institutions can offer degree programmes if they are affiliated with a university (this condition is waived for institutes of national importance such as IITs and NITs). Affiliation is not required if the institution runs only diploma programmes. Institutions offering courses related to medical, legal, nursing or teacher education are regulated by 14 professional councils such as the Medical Council, the Bar Council and the Nursing Council.<sup>2</sup>

India's Gross Enrolment Ratio (GER) in higher education is at 15%<sup>3</sup>, lower than the world average of 24%.<sup>4</sup> It spends about 4% of its GDP on education (0.5% for higher and technical education).<sup>5</sup> Thus, India's spending on education as a percentage of its GDP is lower than countries such as US (5.7%), UK (5.3%), Malaysia (8.1%), and Thailand (5.2%).<sup>6</sup> Several committees<sup>7</sup> have suggested ways to reform the sector, which is hampered by problems of access, quality, funding and governance. Two recent reports submitted by the National Knowledge Commission (NKC) and the Yash Pal Committee made various suggestions for revamping the higher education sector. The mandate of both committees was to review the existing structure and suggest measures to build excellence in the educational system. Both committees recommended an independent regulator for the sector.

The Higher Education and Research Bill, 2011 (HER Bill), introduced in the Lok Sabha on December 28, 2011 incorporates some of the suggestions of each committee.

### Key Features

- The Bill seeks to establish a new regulatory structure for higher education in order to promote autonomy of HEIs and to provide for growth of the sector. It establishes the National Commission for Higher Education and Research (NCHER) to regulate higher education.
- "Higher education" is defined as any education provided through regular classes or distance education mode, after 12 years of schooling. It includes university, technical, vocational and medical education but excludes agricultural education. A "higher educational institution" includes a university, an institution deemed to be a university, a college, and an institution of national importance.
- The Bill repeals UGC Act, 1956, AICTE Act, 1987, and National Council for Teacher Education Act, 1993.

### Selection of NCHER members

- The process of appointing the Chairperson and members of the NCHER has two stages. First, the Collegium of Scholars shall suggest a panel of three names to a Selection Committee. Second, the Selection Committee shall recommend names from the panel to the President who shall appoint the Chairperson and members. The Selection Committee shall consist of the Prime Minister, Speaker of the Lok Sabha, Leader of the Opposition in the Lok Sabha and Ministers in charge of higher education and medical education.

### Performance of NCHER

- The performance of the NCHER shall be reviewed every five years by a committee appointed by the President from a panel of names submitted by the Collegium. The report shall be submitted to the President who shall lay it before both Houses of Parliament.

### Composition and role of each body in the regulatory structure

- In addition to the NCHER, the regulatory structure consists of a General Council, a Collegium, a Board for Research Promotion and Innovation, a Higher Education Financial Services Corporation (HEFSC) and such number of Qualifications Advisory Councils in Vocational Education as specified.

**Table 1: Composition and functions of bodies established under the Bill**

	<b>Composition</b>	<b>Functions</b>
NCHER	Chairperson, 3 whole-time members, 3 part-time members and Chairperson/member of the National Commission for Human Resources for Health (NCHRH). Chairperson and whole-time members need 25 years in academics with 10 years in leadership role. Part-time members need 20 years experience with 5 years in leadership role. Tenure: 5 years for all members (except NCHRH member) with age-limit of 70 years (except part time members).	Recommend ways to promote autonomy of HEIs, develop a curriculum framework; and coordinate between HEIs and industry (non-mandatory for HEIs, act as reference points). Specify standards of education and research for all HEIs including law and medicine (respective councils to specify standards for professional practice). Standards include norms for (a) award of degree/diploma, (b) academic quality for accreditation, (c) setting & winding up of HEIs.
General Council	Chairperson and 91 members, including all members of NCHER, representatives of states, IIT, IIM and National Law Universities, academics, professional councils, industry associations and civil society. Tenure: 2 years	Advise the NCHER on issues such as access, adequacy of funding and quality. Also assess the performance of NCHER and make recommendations.
Collegium of Scholars	30 Fellows who are citizens or overseas citizens of India, National Research Professors or recipients of the Noble Prize or Fields Medal. Tenure: 10 years	Assess the performance of NCHER based on the reports filed by it, prepare the directory of academics, and recommend a vision for emerging trends in different fields of knowledge.
Board for Research Promotion and Innovation	Chairperson and 12 members. Chairperson and 3 members to be person of eminence in academia. Others shall be representatives of states, research councils, NCHER and NCHRH. Tenure: 5 years for members from academia and 2 years for the rest.	Recommend measures to promote research to NCHER, which may provide for the promotion of global competitiveness, the facilitation of linkages with industry and the establishment of inter-university centres for providing research facilities. Recommend research proposals for funding to NCHER.
HEFSC	Chairperson and 10 members. Members shall be representatives of NCHER, General Council, nominees of central government and experts in finance, banking and management.	Disburse grants to HEIs based on norms to be specified by the NCHER.
Councils in Vocational Education	Each Council to have one Chairperson and 8 members. Chairperson shall be an academic with experience in vocational education or relevant profession. Other members shall represent state councils of vocational education, associations of industry and National Council of Vocational Training.	Advise on qualifications framework for students in vocational education, standards of academic quality, and norms for accreditation of HEIs. Prepare reports on industry requirements in various skill areas.

### Enrolment of students by HEIs

- Every degree awarding HEI which intends to enroll students for the first time shall inform NCHER along with its accreditation report (by agencies set up under the National Accreditation Regulatory Authority for Higher Educational Institution Bill, 2010). NCHER has to notify the institution within 120 days whether it can proceed with the enrolment (after 120 days, the permission is deemed to be given). The NCHER also has the power to revoke permission on specified grounds. An order of the NCHER can be appealed in the National Educational Tribunal (to be established under the Educational Tribunals Bill, 2011).
- All HEIs currently recognised by UGC and AICTE shall be deemed to be recognised under the new Bill.

### Directory of academics

- The Bill provides for a directory of academics eligible for appointment as Vice Chancellors or Head of a central educational institution (except a college). This directory shall be prepared by the Collegium. In addition to the Collegium, central and state governments, state higher education councils, universities and professional bodies may refer names of suitable persons to be included in the directory. The directory shall be maintained by NCHER. NCHER shall recommend a panel of three names from the directory when asked to do so by the central government or a central educational institution.

### Power to supersede

- The central government has the power to supersede the NCHER, General Council, Board or Corporation for a maximum period of six months if any of them is unable to discharge its functions or persistently defaults in complying with directions of the central government or is in public interest to do so.

## PART B: KEY ISSUES AND ANALYSIS

### Present vs proposed structure

The Bill seeks to replace the present regulatory bodies with NCHER. Some of the major changes relate to the powers of the NCHER, appointment of Vice Chancellors, and requirement of permission to enrol students. We compare the present and the proposed structure in Table 2.

**Table 2: Comparison of UGC, AICTE and NCHER**

Parameter	UGC	AICTE	NCHER
<b>Jurisdiction</b>	Universities and colleges for general subjects (including agriculture).	Courses and institutions of technical education (including foreign institutions).	HEIs of all subjects (except agriculture). Includes all foreign HEIs.
<b>Accreditation</b>	Voluntary. National Assessment and Accreditation Council (autonomous body of UGC) sets norms.	Voluntary. National Board of Accreditation (autonomous body of AICTE) sets norms.	Mandatory. NCHER to set norms. Accreditation by agencies registered with National Accreditation Regulatory Authority.
<b>Grants</b>	Sets norms & disburses grants.	Sets norms & disburses grants.	Sets norms. HEFSC disburses funds.
<b>Academic norms</b>	Specifies degrees that a university can award; minimum standards of instruction; minimum qualification for faculty and minimum norms for affiliation of a college to a university.	Specifies standards for curricula, evaluation, qualification of faculty, and admission of students. Also fixes norms for physical infrastructure and tuition fees that can be charged.	Specifies norms for degree/ diploma, academic quality for accreditation and affiliation of colleges, foreign HEIs and research productivity. Academic quality includes faculty, infrastructure, curriculum, admission and evaluation procedure.
<b>Establishment of HEIs</b>	Specify norms for setting up HEIs (including norms for affiliation with a university). Recommend granting 'deemed university' status to the central government.	Specify norms for setting up an institution. Approve new institutions.	Specify norms for establishing and winding up of HEIs and governance of HEIs.
<b>Appointment of Head of Institution</b>	No specification.	Qualification of Principal/Director specified.	Norms specified for VCs and heads of Central Educational Institutions.
<b>Enrolment of students</b>	No specification.	Specifies total intake of students in each course.	Degree granting HEIs need permission of NCHER to enrol students for the first time. Can revoke permission.
<b>Inspection</b>	May inspect university and make recommendations.	May inspect any technical institution and make recommendations.	May appoint any person to make inquiry about an HEI and issue directions.
<b>Penal powers</b>	Rs 1,000 fine may be imposed if an HEI confers degrees or calls itself a university without permission under UGC Act. No power to revoke permission.	No penalty specified. No power to revoke permission to enrol students.	No penalty specified. Permission to enrol students may be revoked on specified grounds.

Sources: UGC Act, 1956; AICTE Act, 1987; HER Bill, 2011; UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003; "Regulations for Entry and Operation of Foreign Universities/Institutions Imparting Technical Education in India," Notification by AICTE, May 16, 2005; and PRS.

### Autonomy of HEIs

The Preamble of the Bill states that it aims to "promote autonomy of higher educational institutions and universities." Also, one of the functions of NCHER is to promote autonomy. However, as Table 2 demonstrates, the NCHER combines the powers of UGC and AICTE which include laying down norms for (i) physical infrastructure; (ii) faculty qualification; (iii) course curriculum; (iv) admission procedure; (v) evaluation procedure and; (vi) governance structure of universities. The NCHER also has additional power to specify the norms for establishing and winding up of HEIs and standards for appointment as Vice Chancellors (including maintenance of Directory of Academics). Given that the NCHER shall perform the functions performed by UGC and AICTE as well as other functions, it is not clear how the Bill would promote autonomy of HEIs.

The Standing Committee on the HER Bill also expressed similar concerns and suggested that the provision related to regulation making power of NCHER be deleted. It also objected to the NCHER acting as an over-arching regulator of all disciplines. It recommended that NCHER's role should be that of a facilitator and coordinator giving directions in which higher education should be steered. The Committee recommended that the UGC, AICTE and NCTE should be allowed to function under the overall supervision of NCHER.<sup>8</sup>

## Recommendations of various committees

Statement  
of Objects  
and  
Reasons

NKC and the Yash Pal Committee had made recommendations for the reform of higher education. Some of the recommendations have not been included in the Bill. These are summarised in Table 3.

**Table 3: Some recommendations of NKC and Yash Pal Committee not incorporated in the HER Bill**

Parameters	NKC	Yash Pal Committee	HER Bill
Regulator	Independent regulator. Recommendation accepted.	Establish NCHER through a Constitutional Amendment. Replace UGC, AICTE, NCTE and Distance Education Council (DEC).	NCHER established through Act of Parliament by replacing UGC, AICTE and NCTE. DEC not replaced.
Professional bodies	Abolish all professional bodies except Medical and Bar Councils. Councils shall conduct qualifying examinations for entering the profession.	Professional bodies to conduct qualifying examinations. Recommendation accepted.	Professional councils to conduct qualifying examinations.
Setting up universities	Regulator can accord degree granting power to HEIs. It should set criteria for entry of HEIs.	No recommendation.	<ul style="list-style-type: none"> <li>▪ Universities can only be set up by Acts of Parliament or state legislature.</li> <li>▪ All degree granting HEIs need permission of NCHER to enrol students for the first time.</li> </ul>
Role of regulator	Give degree granting power after assessing academic credibility and financial viability of a HEI on the basis of information submitted on stipulated criteria.	Perform regulatory functions without interfering with institutional autonomy. Enable universities to become self regulatory bodies.	<ul style="list-style-type: none"> <li>▪ NCHER shall also specify norms for award of degree/diploma, physical infrastructure, faculty qualification, admission, and evaluation.</li> <li>▪ Maintain directory of academics.</li> </ul>
Disbursal of grants	Separate regulation from grant disbursal. UGC shall only disburse public funds.	No recommendation.	NCHER to set norms for disbursal of grants by HEFSC.
Fees and salary	<ul style="list-style-type: none"> <li>▪ Allow institutions to set their own fees if at least two banks are willing to give a loan without collateral.</li> <li>▪ Incentivise faculty (including differential salaries).</li> </ul>	Provide competitive remuneration and infrastructure.	Not specified.
Penal powers	No recommendation.	No recommendation.	NCHER can revoke permission to enrol students.

Sources: NKC<sup>9</sup>; Yash Pal Committee<sup>10</sup>; PRS.

## Separation of Roles

### Higher Education Financial Services Corporation and NCHER

Clause 46

The Bill separates regulation of HEIs and disbursal of grants in two different bodies. It establishes the HEFSC as a grant disbursal body while the role of NCHER is to set norms for grant disbursal. However, the HEFSC will have the Chairperson or a member of NCHER as its non-executive Chairperson. The NKC had recommended that these functions be separated where the regulator is responsible for setting standards of HEIs while the UGC is responsible for disbursing funds.<sup>9</sup> In the Cabinet Note on the Bill, the Ministry of Finance and the Planning Commission also pointed out that if the intention was to segregate regulation from financing then HEFSC should be entirely independent of NCHER.<sup>11</sup>

### General Council and NCHER

Clauses  
26 and  
Proviso  
to 21(6)

The Chairperson and all members of the NCHER are among the members of the General Council. The Chairperson of NCHER shall chair the meetings of the General Council. One of the functions of the Council is to assess the performance of NCHER. In the Cabinet Note on the Bill, the Planning Commission suggested that an eminent person (not NCHER Chairperson) should be the Chairperson of the Council. The separation of roles would enable the Council to assess the regulator more objectively.<sup>11</sup>

### NCHER and NCHRH

According to the Bill, the NCHER is responsible for regulating standards of higher education, including medical education. However, the National Commission for Human Resources for Health (NCHRH) Bill, 2011 (currently pending in Parliament) establishes the NCHRH to regulate medical education. Also, prior consent of NCHRH is necessary to revoke permission to enrol students in medical institutes. It is not clear why there is an overlap in the jurisdiction of the NCHER and NCHRH with regard to medical education and research. The Standing

Committee on the NCHRH Bill noted that both bodies have identical jurisdiction and functions on various aspects of medical education and research. It suggested that medical education and research should be brought under the jurisdiction of NCHRH.<sup>12</sup>

### Appointment of members of NCHER

Clauses 5  
and 7

The Selection Committee for recommending members of the NCHER consists of the Prime Minister, Speaker of the Lok Sabha, Leader of the Opposition in the Lok Sabha and the Ministers in charge of higher education and medical education. Other regulators such as the Telecom Regulatory Authority of India, the Insurance Regulatory and Development Authority, and the NCHRH do not have such a high level selection committee. These regulators are appointed by the central government, which may constitute a search committee to recommend candidates.<sup>13</sup> The NKC recommended that the Prime Minister appoint the members of the regulator based on the recommendation of a search committee.<sup>9</sup>

### Recommendations of the Standing Committee on HRD

The Standing Committee on HRD tabled its report on the HER Bill.<sup>8</sup> The key recommendations of the Committee are given below.

- State governments should be given representation and say in the formulation of any policy on higher education. Also, importance should be given to local specificities while formulating any policy.
- Provisions that affect the autonomy of HEIs should be reviewed and modified. Universities should continue to have the power to enrol students for a new course or programme.
- All members of NCHER should be full-time members.
- Medical education and research should be under the regulator established by the NCHRH Bill, 2011.
- The General Council should include a woman member, representatives from SC, ST and minorities and one member each from the Lok Sabha and Rajya Sabha. It should also include representatives of a private university and distance education.
- The Distance Education Council should continue to discharge its present functions (regulation of distance education) but under the overall supervision of NCHER.
- The central government's power of supersession should be deleted since such powers were too sweeping and would not promote autonomy of institutions.
- The HEFSC does not include any power to inspect or withhold grants unlike UGC which had such powers.

#### Notes

1. **Union List:** Entries 63, 64, 65 and 66. **State List:** Entry 32. **Concurrent List:** Entry 25.
2. The University Grants Commission Act, 1956 and the All India Council for Technical Education Act, 1987.
3. "Statistics of Higher & Technical Education: 2009-10 (Provisional)," Ministry of HRD, GOI, September 2009.
4. "Consolidated Working Group Report of the Dept of Higher Education for XII Five Year Plan on Higher Education, Technical Education and Private Sector Participation including PPP in Higher Education," Ministry of HRD, GOI.
5. "Report to the People on Education 2009-10," Ministry of HRD, GOI, July 2010.
6. Education Spending (% of GDP) by country, Nationmaster (see [http://www.nationmaster.com/graph/edu\\_edu\\_spe-education-spending-of-gdp](http://www.nationmaster.com/graph/edu_edu_spe-education-spending-of-gdp)).
7. Key committees include: Kothari Commission (1964-66); Punnayya Committee (1992-93); Report on 'A Policy Framework for Reforms in Education: Special subject group on policy framework for private investment in education, health and rural development,' Prime Minister's Council on Trade and Industry, Govt of India (2000); the Report of the CAFE Committee on Financing of Higher and Technical Education, June 2005; "Report to the Nation: 2006-2009," NKC; and the Yash Pal Committee Report (2009).
8. 247<sup>th</sup> Report on the HER Bill, Department related Standing Committee on HRD, December 13, 2012.
9. The "Report to the Nation: 2006-2009," National Knowledge Commission, Govt of India, March 2009.
10. Report of 'The Committee to Advise on Renovation and Rejuvenation of Higher Education,' Prof Yash Pal, 2009.
11. Cabinet Note on the Higher Education and Research Bill, 2011 (accessed through RTI on Aug 7, 2012).
12. 60<sup>th</sup> Report on the NCHRH Bill, Department related Standing Committee on Health and Family Welfare, Oct 30, 2012.
13. TRAI Act, 1997 [Section 3(c)]; IRDA Act, 1999 (Section 4); NCHRH Bill, 2011 [Clauses 3(3), 5].

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