

Legislative Brief

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

Highlights of the Bill

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.

- ◆ The Bill makes it mandatory for every higher educational institution (other than agricultural institutions) and every programme conducted by it to get accredited by an accreditation agency in order to certify academic quality.
- ◆ Assessment of such accreditation has to be made before the institution starts the process of admission to such programmes. Existing educational institutions have to get their accreditation within three years (five years for medical institutions).
- ◆ The Bill establishes a National Accreditation Regulatory Authority for Higher Education, which shall register and monitor accreditation agencies. These accreditation agencies shall accredit every higher educational institution based on a specified procedure and fees.
- ◆ An accreditation agency has to be a non-profit organization, which is controlled by the central or state government.

Related Briefs:

The Foreign Educational Institutions (Regulation of Entry and Operations) 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

- ◆ The Bill, which allows only government controlled agencies to accredit educational institutions, may dilute the objective of creating a healthy competitive environment for quality rating of educational institutions. Countries such as the US, UK and Germany allow both public and private entities to accredit institutions.
- ◆ Regulatory bodies are required when the private sector is allowed to provide certain goods and services. Under the Bill, private players cannot register as accreditation agencies. So a regulatory authority for registering agencies may be redundant.
- ◆ The Bill allows an institution to appeal to NARA for modification of a rating given by an accreditation agency. This implies that NARA would have to perform the role of an accreditation agency; it may not have the competence to do so.
- ◆ Accreditation agencies are required to help institutes to improve their quality and may be penalized for not performing this duty. This may result in conflict of interest. Downgrading of an institution may be seen as admission of failure to improve quality by an agency. As this may invite penalty, agencies may be wary of downgrading institutions.

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PART A: HIGHLIGHTS OF THE BILL¹

Context

Presently, higher educational institutions are accredited by National Assessment and Accreditation Council and the National Board of Accreditation. These are autonomous bodies set up by the University Grants Commission (UGC) and the All India Council of Technical Education (AICTE), respectively.² Accreditation is voluntary. Currently, about one-fifth of the colleges and less than one-third of all universities are accredited.³ Two recent committees on higher education namely the National Knowledge Commission (NKC)⁴ and the Yash Pal Committee⁵ recommended a system of accreditation.

The Bill seeks to (a) make accreditation mandatory; (b) ensure that both institutions and programmes get accredited; and (c) provide accreditation by licensed accreditation agencies, which shall be overseen by the National Accreditation Regulatory Authority for Higher Education.

Key Features

- “Accreditation” is defined as the process of benchmarking of academic quality of a higher education institution by an accreditation agency. The benchmarks of quality shall be determined by a statutory authority such as UGC or AICTE. “Academic quality” means the quality of teaching, learning and research. It includes infrastructure, human resources, curricula, admission procedure and governance structure.
- Every higher educational institution (except agricultural education which is a State subject) and every programme conducted by it has to be accredited by an accreditation agency. The accreditation has to be obtained before the institution starts the process of admission to such programmes. Existing educational institutions have to get their accreditation within three years (five years for medical institutions).
- The central government may exempt any class of higher educational institution from the provisions of this law.
- The Bill establishes a National Accreditation Regulatory Authority for Higher Education, which shall register and monitor accreditation agencies. These accreditation agencies shall accredit every higher educational institution based on a specified procedure and fees.

Powers and Functions of the National Accreditation Regulatory Authority (NARA)

- The NARA shall consist of a Chairperson and four members, appointed by the central government on the recommendation of a Selection Committee. All members shall be at least 55 years old with at least 25 years experience in higher education. The Chairperson shall either be a Vice Chancellor or the Head of an institution of national importance. Each member shall be one of the following: professor of medical education; professor of science and technology; professor of social sciences; person with experience in legal matters.
- The functions of NARA include laying down norms for assessment of academic quality, undertaking audit on matters of conflict of interest, disclosure of information, levy of fees, advising central and state government.

Accrediting Agencies

- An accreditation agency has to meet two conditions: (a) it should be a non-profit organization registered as a company under Section 25 of the Companies Act, a society or trust; and (b) it should be controlled by the central or state government.
- Every accreditation agency has to be registered with NARA. Every institution has to apply to an agency to be accredited after paying a prescribed fee. Each agency shall publish the accreditation on its website.
- A registration certificate shall be valid for ten years and can be renewed for a prescribed time. Any change in the accreditation agency’s ownership, governing body, or board of trustee needs prior approval of NARA.
- NARA may direct any person (to be called Accreditation Audit Committee) to audit any accreditation agency or any educational institution. It also has the power to revoke the registration of an accreditation agency.

Appeal

- Any person aggrieved by the decision of an accreditation agency can apply to NARA for withdrawal or modification of such accreditation. NARA has to decide within 90 days. Any person aggrieved by the decision of NARA may appeal to the National Educational Tribunal within 60 days from the date of the order.

Offences and Penalties

- Any accreditation agency that contravenes any provisions shall be punishable with a fine of upto Rs 5 lakh. If any person resists or obstructs any officer of NARA without reasonable cause he shall be penalised with imprisonment upto three months or fine of upto Rs 5 lakh or with both.

PART B: KEY ISSUES AND ANALYSIS

Purpose of the Bill

The proposed mechanism of accreditation raises two major issues: (a) whether it will create a healthy regulatory environment; (b) whether a regulator is required.

Regulatory Mechanism

Allowing only government controlled agencies to accredit educational institutions may dilute the objective of creating a healthy competitive environment for quality rating of educational institutions. In countries such as the US, UK and Germany, both public and private agencies are allowed to accredit educational institutions (See Table 1). Recent committee reports on higher education have also recommended that private accreditation agencies be allowed to operate. NKC suggested that both public and private accreditation agencies should be allowed.⁴ The Yashpal Committee stated that accreditation agencies should be independent of the government.⁵

Furthermore, the Preamble of the Bill states that it is a “Bill to make provisions for assessment of academic quality of higher educational institutions, programmes conducted therein and their infrastructure through mandatory accreditation by *independent accreditation agencies* and to establish a statutory Authority for the said purpose and to provide for matters connected therewith or incidental.” However, the Bill allows only government owned or controlled non-profit entities to register. Since an independent body implies no government control, the Preamble seems to be contradicting the eligibility criteria of an accreditation agency.

Preamble and Clause 21

| Country | System of Accreditation |
|-----------|---|
| US | Both public and private accreditation agencies recognised by the Federal Secretary of Education are allowed to accredit institutions or programmes. |
| UK | Both public and private bodies can be accrediting agencies. Universities receiving public funding or having degree giving powers are accredited by public bodies. Private institution can be accredited by private bodies such as the British Accreditation Council and the Accreditation Service for International Colleges. |
| Germany | Accreditation agencies are private non-profit entities monitored by the Accreditation Council (under Foundation for the Accreditation of Study Programmes). |
| Australia | Self accrediting institutions such as universities are authorised to accredit their own courses. Non self accrediting institutions are accredited by a government agency. |
| Canada | Membership to the Association of Universities and Colleges of Canada is accepted as quality assurance. There are some province specific public or private accrediting agencies to accredit institutions. Some professional programmes (engineering and nursing) are also accredited by professional bodies. |

Sources: **U.S.:** Department of Higher Education, **UK:** UK Border Office: Home Office, **Germany:** Foundation for the Accreditation of Study Programmes in Germany, **Australia:** “Inquiry into the desirability of national higher education accreditation body, Joint Committee on Higher Education, June 2008; **Canada:** The Association of Universities and Colleges of Canada.

Lack of Clarity

Regulatory bodies are required when the private sector is allowed to participate in providing goods and services.⁶ For example, when telecom and insurance had only government players, there were no regulators. The Telecom Regulatory Authority of India and the Insurance Regulatory and Development Authority were set up when private companies were allowed in the sector. The Bill does not allow private players to register as accreditation agencies. This appears to make NARA redundant. The Yashpal Committee⁵ and the NKC⁴ had recommended that accreditation agencies should be under the independent regulatory authority for higher education.

Clause 5 and 21

Comparison of Bill and NKC and Yashpal Committee’s accreditation structure

| Bill | NKC | Yash Pal |
|--|---|---|
| Statutory authority (UGC, AICTE, MCI etc) to benchmark academic quality. | An Independent Regulatory Authority for Higher Education (statutory authority) to set standards of accreditation. | National Commission for Higher Education and Research (statutory authority) shall create norms for accreditation. |
| Regulatory body (NARA) to register accreditation agencies. | IRAHE to license multiple accreditation agencies | NCHER shall licence multiple accreditation agencies. |
| Agencies to be government controlled non-profit bodies. | Agencies can be both public and private bodies with stringent disclosure norms for all educational institutions. | Agencies should be independent of the government. |

Sources: NARA Bill, 2010; the National Knowledge Commission Report; Yash Pal Committee Report

Issues with Accreditation

Appeal to NARA

Clause 31(1) The Bill states that “any person, aggrieved by the accreditation decided by an accreditation agency...may apply to the Authority for withdrawal of such accreditation or its modification.” This raises the issue of whether NARA should have the power to modify a rating given by an accreditation agency. Also, it may not have the competence to perform the function of an accreditation agency. For example when TRAI adjudicates a dispute, it does not perform the functions of a telecom company.

Discretion of institution

It is not clear whether it is mandatory for an educational institution to accept the accreditation given by an accreditation agency. If it is not mandatory, there is scope for an educational institution to apply to multiple agencies and accept only the ones that give the highest rating.

Conflict of Interest

Clause 29(1) The Bill states that accreditation agencies shall follow certain principles while discharging their duties: (a) advancement of academic quality, (b) assisting higher educational institutions in managing and enhancing their academic quality working towards the development of explicit intended learning outcomes. The agency shall be penalized if it fails to perform its duties. Accreditation agencies give a quality rating based on certain parameters at a point of time. Requiring them to help institutes to improve their quality brings in an element of conflict of interest: the accreditation agency will find it difficult to downgrade any institution as that would admit failure on the part of the agency in enhancing the academic quality of the institution.

Delegated Legislation

Clause 49 The Bill states that the central government may exempt any class of higher educational institution from the provisions of this law. It is not clear for what reason prospective students should not get information on quality ratings of a certain class of institutions.

Clause 10(1) (i) The central government may remove the Chairperson and members of NARA on disqualifications to be prescribed in the Rules. It is not clear why such discretion has been allowed since it is not available to other authorities such as the Food Safety and Standards Authority, the Telecom Regulatory Authority of India and the Insurance Regulatory and Development Authority of India.⁷

Time frame to get accredited

Clause 4 The Bill makes it mandatory for every educational institution and every programme to get accredited by a registered accreditation agency within 3 years (5 years for medical institutes). Given that there are over 300 universities and over 2000 private institutions with many offering multiple programmes, it would be necessary to have sufficient number of agencies to implement this requirement.

Notes

1. This Brief has been written on the basis of the National Accreditation Regulatory Authority for Higher Educational Institutions 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. National Assessment and Accreditation Council and National Board of Accreditation.
3. Statement of Objects and Reasons of the Bill.
4. “Report to the Nation: 2006-2009,” National Knowledge Commission, Govt of India.
5. Report of ‘The Committee to Advise on Renovation and Rejuvenation of Higher Education,’ Chairperson: Prof Yash Pal.
6. “Approach to Regulation: Issues and Options,” Consultation Paper, Planning Commission, Govt of India, Aug 18, 2006.
7. Food Safety and Standards Act, 2006; Telecom Regulatory Authority of India Act, 1997; and Insurance Regulatory and Development Authority Act, 1999.

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