

TO BE INTRODUCED IN THE RAJYA SABHA

Bill No. XXX of 2007

THE FOREIGN EDUCATIONAL INSTITUTIONS (REGULATION OF
ENTRY AND OPERATION, MAINTENANCE OF QUALITY AND
PREVENTION OF COMMERCIALISATION) BILL, 2007

A

BILL

to provide for regulation of entry and operation, maintenance of quality and prevention of commercialisation of education by Foreign Educational Institutions imparting higher education in India and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Foreign Educational Institutions (Regulation of Entry and Operation, Maintenance of Quality and Prevention of Commercialisation) Act, 2007. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

definitions.

2. In this Act, unless the context otherwise requires,—

(a) "accrediting agency", in respect of a course of study offered in India by the Foreign Educational Institution, means an agency or body approved, recognised or authorised by the Council for Higher Education Accreditation or University Quality Agency or the Quality Assurance Authority by whatever name called, established or incorporated under a valid law in the country of origin of the Foreign Educational Institution or any other statutory authority in that country for the purpose of assessing, accrediting or assuring quality and standards of educational institutions;

(b) "Advisory Board" means the Advisory Board constituted under sub-section (2) of section 9;

(c) "Commission" means the University Grants Commission established under section 4 of the University Grants Commission Act, 1956;

(d) "fee" means all fees including tuition fee and development charges by whatever name called, levied from the students enrolled for pursuing courses or programmes of study;

(e) "Foreign Educational Institution" means an institution established or incorporated outside the territory of India which has been offering educational services in India or proposes to offer courses leading to award of degrees or diplomas through conventional method in the territory of India independently or in collaboration, partnership or in a twinning arrangement with any educational institution situated in India;

(f) "Foreign Education Provider" for the purposes of this Act means a Foreign Educational Institution notified by the Central Government as an institution deemed to be University under section 3 of the University Grants Commission Act, 1956;

(g) "National Research Professor", means an academic of high distinction, declared as such by the Central Government;

(h) "notification" means a notification published in the Official Gazette;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "profession" means the profession of law, medicine, accountancy and such other profession as may be notified by the Central Government from time to time;

(k) "Registrar" means the Secretary appointed under section 10 of the University Grants Commission Act, 1956;

(l) "regulations" means regulations made by the Commission;

(m) "statutory authority" means an authority established or incorporated under a Central Act to regulate standards of higher education, technical education or practice of any profession;

Provided that the statutory authority in respect of the medical education shall be the authority established under the following Acts, namely:—

(i) the Indian Medical Council Act, 1956;

(ii) the Homoeopathy Central Council Act, 1973;

(iii) the Indian Medicine Central Council Act, 1970;

(iv) the Dentists Act, 1948;

(v) the Pharmacy Act, 1948; and

(vi) the Indian Nursing Council Act, 1947;

25 of 1961. 12 Provided further that the statutory authority in respect of the legal education shall be the Bar Council of India constituted under section 4 of the Advocates Act, 1961;

52 of 1987. 5 (n) "technical education" means the technical education as defined in the All India Council of Technical Education Act, 1987; and

(o) "twinning programme" means a programme whereby students enrolled with the Foreign Educational Institution complete their study partly in India and partly in any other educational institution situated outside India.

CHAPTER II

FOREIGN EDUCATIONAL INSTITUTIONS

3 of 1956. 15 3. (1) No Foreign Educational Institution shall admit students, levy or collect any fee from a student in the territory of India for any course of study leading to the award of a degree or a diploma, by whatever name called, unless such institution has been notified by the Central Government as an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956.

Prohibition on admission, collection of fees, etc.

20 (2) Nothing contained in this Act, shall apply to a course leading to the award of a degree or a diploma through conventional method of teaching in collaboration, partnership or in a twinning arrangement by a Central University, a State University, institution of national importance, or any other institution of higher education recognised in accordance with law, with a Foreign Educational Institution.

3 of 1956. 25 4. (1) A Foreign Educational Institution shall submit to the Registrar an application, duly endorsed by the respective Embassy or High Commission in India of the country where such Foreign Educational Institution is situated and registered, for being notified as an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956.

Foreign Educational Institutions to apply for being notified as deemed University.

(2) The form and manner in which the application under sub-section (1) shall be made and other particulars, including payment of fee, shall be such as may be prescribed.

30 (3) A Foreign Educational Institution providing educational services in India before the commencement of this Act, shall apply under sub-section (1) within a period of six months from the date of commencement of this Act.

(4) Every application under sub-section (1) shall be accompanied with—

(a) the documents to the effect that such Foreign Educational Institution—

35 (i) has been duly established or incorporated under a law of the country where such Foreign Educational Institution is situated and registered along with the status of its accreditation from the accrediting agency, wherever applicable;

(ii) has adequate financial and other arrangements to conduct the course of study in India; and

40 (b) an undertaking to maintain a corpus fund of not less than ten crores of rupees or of such sums as may be notified, from time to time, by the Central Government.

(5) The Registrar shall, on receipt of an application under sub-section (1), forward a copy thereof to the concerned statutory authority in India for obtaining its recommendation as to the fitness of such institution to provide quality education in India:

45 Provided that the concerned statutory authority shall make available its recommendation to the Registrar within a period of three months from the date of receipt of copy of the application under sub-section (1).

(6) The Registrar shall make enquiries in such manner as may be specified by regulations, to ensure that the Foreign Educational Institution applying under sub-section (1) meets with the requirements to provide quality education in India.

(7) The Registrar shall, as early as possible, and preferably within a period of six months of receipt of an application under sub-section (1), submit his report along with such recommendations as may be made by the statutory authority, to the Commission.

(8) The Commission shall consider the report of the Registrar and recommendations of statutory authority, and tender advice to the Central Government, as to the fitness of such institution to be notified as an institution deemed to be a University.

(9) The Central Government may, on the advice of the Commission, notify such institution as deemed to be a University under section 3 of the University Grants Commission Act, 1956 and immediately after such notification, the provisions of the University Grants Commission Act, 1956 shall apply to such institution as they apply to any University or a deemed University.

Quality of programmes offered in India and use of income from corpus fund.

5. (1) A Foreign Education Provider shall ensure that the programmes offered and delivered by it in India are of quality comparable, as to the curriculum, methods of imparting education and the faculty employed or engaged to impart education, to those offered and delivered by it to students enrolled in its campus in the country of its origin.

(2) A Foreign Education Provider shall ensure that it takes into account the cultural and linguistic sensitivities of the people of India and shall not offer a course of study which has a content adversely affecting the sovereignty and integrity of India.

(3) A Foreign Education Provider shall, out of the income received from the corpus fund, utilise not more than seventy-five per cent. for the purposes of development of its institution in India and the remaining twenty-five per cent. shall be deposited into the corpus fund.

Inspection by Commission.

6. The Commission may, cause an inspection of the Foreign Education Provider at any time after notification under section 4, in such manner as may be specified by regulations, to ensure the maintenance of quality and standards of education by such Foreign Education Provider.

Withdrawal of status of deemed University.

7. (1) If the Commission is satisfied that the Foreign Education Provider has violated any provisions of this Act or of the University Grants Commission Act, 1956 or any other Act in force in India having bearing on the maintenance of standards of higher education, it may, after giving an opportunity of being heard to the Foreign Education Provider, recommend to the Central Government to withdraw the status of deemed University of the Foreign Education Provider.

(2) Where the Central Government is satisfied that the status of deemed University should be withdrawn from the Foreign Education Provider, it shall require the Commission to inform—

(i) the management of the Foreign Education Provider;

(ii) the teachers employed by the Foreign Education Provider; and

(iii) the student council or any other body by whatever name called, and the parents of the students enrolled by the Foreign Education Provider,

by a notice, in such manner as may be prescribed, the grounds for withdrawal of the status of deemed University of the Foreign Education Provider.

(3) If after the expiration of three months from the date of the notice issued under sub-section (2) and after consideration of any representation made to the Central Government, by the management, teachers, students or parents, as the case may be, the

Central Government is of the opinion that the status of deemed University is to be withdrawn, it may,—

3 of 1956.

(i) withdraw the status of deemed University and rescind the notification issued under section 3 of the University Grants Commission Act, 1956; and

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(ii) such withdrawal of the status of deemed University shall be effective on and from the last date of the academic session following the previous academic session in which the notice was addressed to the management, teachers, students, or parents, as the case may be.

(4) It shall be the duty of the Central Government in respect of a Foreign Education Provider from which the status of deemed University has been withdrawn, to make as soon as may be, alternative and appropriate educational facilities available for those students who were enrolled by such Foreign Education Provider on the date of withdrawal of the status of deemed University.

(5) The Central Government may attach the corpus fund and such other properties of the Foreign Education Provider as it deems fit to make payments to any person employed by the Foreign Education Provider in India.

CHAPTER III

PENALTIES

3 of 1956.

8. (1) Notwithstanding anything contained in the University Grants Commission Act, 1956, any person who, being associated with an educational institution or a Foreign Educational Institution not being a Foreign Education Provider,—

Penalties.

(a) offers or gives admission to students, awards any degree or diploma or solicits, levies or collects fee in violation of the provisions of section 3; or

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(b) releases misleading advertisements or gives wrongful information in the print, electronic or any other media or fails to publish disclosures as required by the Commission, shall be liable to—

(i) refund the fee so solicited, levied or collected;

(ii) confiscation of any illegal gains made; and

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(iii) a penalty which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees.

3 of 1956.

(2) Any Foreign Education Provider who contravenes the provisions of the University Grants Commission Act, 1956, or sub-section (1) or sub-section (2) of section 5 of this Act, shall be liable to a penalty of forfeiture of the corpus fund referred to in clause (b) of sub-section (4) of section 4 in whole or in part thereof, and shall also be liable to penalty referred to in sub-section (1).

(3) The Commission may impose penalty under sub-section (1) or sub-section (2) only after giving a reasonable opportunity of being heard to the Foreign Educational Institution, Foreign Education Provider or any other person, as the case may be.

3 of 1956.

(4) The penalty shall be deposited into, and form part of, the Fund of the Commission established under section 16 of the University Grants Commission Act, 1956.

CHAPTER IV

MISCELLANEOUS

9. (1) Notwithstanding anything contained in this Act, the Central Government may, by notification, on the advice of Advisory Board constituted under sub-section (2), having regard to the reputation and standing of the Foreign Educational Institution and such other criteria as may be prescribed, exempt such Institution from any provisions of this Act:

Power of Central Government to exempt.

Provided that such Foreign Educational Institution shall invest not less than fifty-one per cent. of the total capital investment required for establishing the institution in the territory of India:

Provided further that no part of the surplus in revenue generated in India by such Foreign Educational Institution, after meeting all expenditure in regard to its operations, shall be invested for any purpose other than for the growth and development of the educational institutions established in India.

(2) The Advisory Board shall consist of—

(i) three distinguished persons from the field of academics, who are, or may have been at any time, declared as a National Research Professor; one of whom shall be designated as the Chairperson of the Board;

(ii) Chairman, University Grants Commission, *ex officio*;

(iii) Chairman, All India Council for Technical Education, *ex officio*;

(iv) President, Medical Council of India, *ex officio*; and

(v) Chairman of one of the statutory authorities, other than the statutory authorities mentioned at (ii), (iii) and (iv), by rotation.

(3) The Advisory Board shall conduct its business in the manner as may be prescribed.

Power of Central Government to issue directions.

10. (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it, from time to time.

Provided that the Commission 'shall', as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power to remove difficulties.

11. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary, for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Appeal.

12. An appeal against the decision of the Commission under section 8 may be filed before the Central Government within a period of thirty days from the passing of the order by the Commission:

Provided that the Central Government may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

Application of other laws not barred.

13. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to make rules.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner, form and the fee for application to be filed by the Foreign Educational Institution before the Registrar under sub-section (2) of section 4;

(b) the manner in which notice shall be given by the Commission under sub-section (2) of section 7;

(c) the criteria for granting exemption to Foreign Educational Institution under sub-section (1) of section 9;

5 (d) the manner in which the Advisory Board shall conduct its business under sub-section 9; and

(e) any other matter which is to be, or may be, prescribed.

15. (1) The Commission may, by notification, make regulations, consistent with this Act and the rules made thereunder.

Power to
make
regulations.

10 (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the manner in which the application made by the Foreign Educational Institution shall be dealt with by the Registrar under sub-section (6) of section 4; and

15 (b) the manner in which an inspection may be conducted under section 6.

20 16. Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made or issued, the rule, regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification.

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Laying
of rules,
regulations and
notifications.

STATEMENT OF OBJECTS AND REASONS

A number of Foreign Educational Institutions have been operating in the country. Some of them may be resorting to various mal-practices to allure and attract students, particularly in smaller cities and towns. There is as yet no centralised policy, nor regulatory regime for Foreign Educational Institutions in the country. The hands-off approach of the Government has not helped in any meaningful assessment of their operations and more importantly it has given rise to chances of fraud and cheating of gullible students and its crash commercialisation. In the absence of appropriate regulatory framework, or even a registering arrangement, no authentic statistics are available in respect of the number of Foreign Educational Institutions in India.

2. At present, only the All India Council for Technical Education has notified the "Regulations for Entry and Operation of Foreign Universities/Institutions Imparting Technical Education in India", in the year, 2005. However, these Regulations apply only to such institutions which are providing technical education under the ambit of All India Council for Technical Education Act, 1987.

3. The regulation on entry and operation of Foreign Educational Institutions is in the public interest to maintain the standards of higher education within the country as well as to protect the interests of the students' community. An ideal regulatory framework could be one in which reputed institutions are able to enter and operate in terms of India's national policy, while at the same time sub-standard or 'fly by night' operators are checked and controlled.

4. This Bill seeks to achieve the above objective.

NEW DELHI;

The 21st March, 2007.

ARJUN SINGH.