

STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT**Higher Education And Research Bill, 2011****TWO HUNDRED AND FORTY SEVENTH REPORT****CHAPTER I: INTRODUCTION**

The Higher Education and Research Bill, 2011 seeks to provide for comprehensive and integrated growth of higher education and research keeping in view the global standards of educational and research practices and for that purpose to establish the National Commission for Higher Education and Research to facilitate determination, coordination, maintenance and continued enhancement of standards of higher education and research including university education, vocational, technical, professional and medical education other than agricultural education and for matters connected therewith or incidental thereto.

The expansion of the higher educational system resulted in the setting up of several Councils for promoting/regulating higher/technical/professional/medical education. This has focused areas of attention on specialised areas of education but also resulted in the fragmentation of knowledge with different regulatory agencies with different views on standards and promotion of higher education.

The bill intends to establish a **National Commission for Higher Education and Research (NCHER) as a single regulatory body for higher education institutions to regulate all the higher educational aspects of the country except the agricultural education and matters incidental to it.**

CHAPTER II: CONSULTATION PROCESS

Through consultations with stakeholders, it was evident that many concerns of the State Government regarding the proposed bill remained unaddressed.

Concerns were expressed on the lack of consultation process with the State Government and it was stated that the proposed bill shall not affect the federal structure of the country.

It was opined that an over-arching body like National Commission for Higher Education & Research (NCHER) would not be able to regulate the higher education system of the entire country without the active participation of the State Governments considering the diverse facts and circumstances prevailing in the country. Also, it was stated that due importance should be given to regional/local specificities and sensibilities while formulating any policy.

The promotion of autonomy of the higher educational institutes and universities was stated as the cornerstone of the proposed bill and that remained the weakest area according to all the stakeholders consulted by the department.

The UGC needed to reform itself due to the expansion of the higher education system and the growing demands of a diversified system of higher education. UGC Chairman highlighted that there was a need to have a national perspective of higher education with a reasonable amount of uniformity in so far as regulatory roles are concerned.

AICTE gave attention to the **lack of quality infrastructure, poor industry interface in technical institutions and stated that the proposed legislation is a conscious effort to bring different educational groups together and create a synergy for overall better and quality education.**

The National Council for Teacher Education (NCTE) gave an affirmation to the bill but also highlighted a few concerns such as teacher education was not adequately reflected in the Bill.

The bill was only for higher education and preparation of teachers for elementary education and for early childhood did not fall under the domain of higher education. NCTE deals with all the sectors of teacher education and if it was to be dissolved, all functions of the NCTE should be reflected in the Bill. Also, it was suggested for the formation of an expert group of teacher education at par with other expert groups of other disciplines.

The Bar Council of India (BCI) stated that with regard to legal education and profession, the BCI and the State Bar Councils were fully authorised by the Advocates Act, 1961, to prescribe the norms, curriculum of legal education, recognition of Universities etc. It was suggested by BCI to keep legal education out of the purview of the Bill.

III: AREAS OF CONCERN

Viability of having an overarching and centralised body like NCHER vis-à-vis separate central bodies:

Concern No. 1 : Need of an apex regulatory body

Multiple regulatory bodies may require an educational institute to interact with separate agencies for different courses but this does not necessarily create obstacles for flow of ideas across disciplines or creation of institutional provisions for cross-disciplinary pursuit. Instead the present infrastructure of the present bodies and their fundings should be geared to enhance flexibility for the same. **A single body with sweeping and overriding process may provide an easy entry to private players.**

Additionally, the bill does not incorporate the ways by which the proposed single body would be rectifying and overcoming the shortcomings afflicted in the existing Councils/Commission.

Concern No. 2 : Attempt to demarcate education and profession

Another concern pointed out was the attempt to demarcate education and profession and entrust two separate regulatory bodies for a single discipline.

The representative of the Council of Architecture submitted that it was illogical as well as unnecessary to have two bodies for education and profession as the polarisation of functions and powers between the two bodies would be detrimental to the growth and governance of the discipline.

It was stressed that a body dealing with both the education and practice of the profession could only identify the requirements and demands of the specialised field.

Concern No. 3 : Lack of representation of experts

Specialised fields regulated by various statutory bodies under the respective central statutes are managed and run by specialists and experts from respective fields. It was noted that the proposed Bill does not have such experts and mere representation in the Central Council to the heads of statutory bodies will not serve the purpose.

Considering the geographical area of India with a large number of institutions at different levels and in different states, it would be virtually impossible for a single body like NCHER to undertake the function of regulating all the specialised fields and subfields thereof.

Concern No. 4 : Concentration of both the advisory and executive functions

It was observed that the Expert Advisory Committees/Groups as envisaged in the Bill may help the Commission but their role is advisory. It was opined by the committee that concentration of the executive and advisory functions in a single body may not be desirable as it would result in NCHER planning, implementing as well as monitoring itself.

It was observed that a single overarching body to centrally manage and regulate all the disciplines in education would not be feasible.

The role of NCHER shall be envisaged more like a facilitator and coordinator giving directions in which the higher education system is to be steered.

Rational for subsuming UGC, AICTE & NCTE

The bill heavily relied on the suggestion of Yashpal Committee's report of 2009 where it had recommended the creation of an all-encompassing National Commission for Higher Education and Research to replace the existing bodies like UGC, AICTE and NCTE. It was opined by the Department of Higher Education that the creation of these bodies did help in focusing attention on specialised areas of education but it has at the same time fragmented various fields of knowledge from a policy perspective. It sometimes led to situations in which two regulatory agencies were in legal confrontation with each other; for instance, DEC giving recognition to Ph.D courses in the distance mode which as per UGC regulations were not eligible for recognition.

The committee observed that the three statutory bodies perform vital roles for specialised fields of education and have been performing more or less satisfactorily in spite of their own constraints and limitations. Subsuming the three bodies by an overarching body like NCHER which would again appoint expert groups for specialised disciplines makes no sense.

The committee recommended that instead the three existing bodies should not be subsumed but be allowed to function under the overall supervision and coordination of NCHER.

Status of Distance Education

The Distance Education Council (DEC) declared an authority of IGNOU under section 16 of the IGNOU Act has the mandate to take necessary steps for the promotion of the distance education systems and for the coordination and determination of standards of teaching, evaluation and research in such systems. It was observed that there is no mention about the DEC in the proposed bill.

IGNOU had been doing pioneering work in its field and there was no reason to encroach upon its territory. Therefore, it was recommended that relevant provisions of the Bill may be reviewed so that the DEC continues to maintain its distinct identity.

Issue of Autonomy of Higher Educational Institutions/Universities

The Higher Education and Research Bill, 2011 aims to promote the autonomy of higher educational institutions and universities for the free pursuit of knowledge and innovation.

The Bill includes provisions (Clause 16(2)(k) and Clause 24(2)(d)) to encourage institutions to innovate and evolve into universities, but critics believe it may lead to fragmentation and compromise quality standards. Financial autonomy may also impact course offerings based on immediate market possibilities rather than long-term educational goals. It grants significant powers to the Commission, such as determining degree requirements, establishment and closure of institutions, academic quality norms, and research program evaluation. These provisions diminish the autonomy of universities and place them under the control of the Commission.

Universities have traditionally been the sole authority for reviewing and deciding on various aspects of higher education, including providing instructions, granting degrees, establishing colleges, and setting admission standards. **The universities should retain their independent self-regulatory status and should be held accountable for their performance.**

The teaching faculty plays a vital role in the higher education system, and their representation and input should be considered in policy formulation, implementation, and review. Their involvement would foster democratic decision-making and enhance institutional and university autonomy.

The Academic Council, as the principal academic body, should have the authority to coordinate and supervise academic policies and provisions that affect institutional autonomy should be excluded from the Bill.

Concerns of the State Governments about their role and autonomy

Centralization of Powers:

State governments expressed concerns about the proposed legislation centralising decision-making authority in a seven-member body, the NCHER, instead of allowing states to govern higher education based on local sensibilities and problems. They argued that centralization of power went against the principles of federal polity and could lead to an authoritarian body with unchecked control.

Lack of State Representation:

State governments felt that they were not given a chance to represent or play a role in formulating policies on higher education and research. They raised concerns about the absence of state representation in the NCHER, where only the General Council had limited powers without a say on important issues. The proposed legislation would erode the autonomy of state universities, preventing them from promoting regional, cultural, and linguistic policies that are their moral responsibility.

Concerns were raised about the centralization of the appointment process for Vice-Chancellors through a collegium, and the need for a transparent mode of appointment that involves state universities and senior teachers/faculty. Arguments were made that Parliament did not have legislative competence for matters of universities, as the Constitution of India explicitly assigned such authority to state legislatures.

The Department of Higher Education should re-examine problematic provisions and consult with state governments to arrive at a consensus, ensuring proper representation, decentralisation of powers, and consideration of local sensibilities and problem.

Important functions UGC, AICTE & NCTE not reflected in the Bill

The important functions of UGC, AICTE, and NCTE have not been adequately mentioned in the proposed Bill.

Department's response:

The Department responsible for the Bill claimed that the powers granted to NCHER covered all aspects of higher education, and any powers not explicitly mentioned in the Bill would be covered by NCHER's authority to make regulations.

Burden on universities:

The proposed legislation assigns universities the responsibility for approving and monitoring both academic and professional courses. However, many universities are already burdened, particularly those with numerous affiliated colleges. It is challenging for them to monitor their departments and colleges due to a lack of manpower, expertise, and infrastructure.

Strong objection of the BCI over inclusion of legal education within the ambit of the Bill

Bar Council of India strongly objected to legal education being included in the HER Bill, the Bill encroached upon the autonomy of the Bar Council of India and State Bar Councils in respect to control and regulatory powers over legal education. Amendments were agreed upon to exclude legal education from the scope of the Bill.

However, concerns were expressed about possible demands for exclusions from other disciplines as well, undermining the purpose of an overarching regulatory body.

Inclusion of Medical Research in the Bill

It was recommended that medical research be integrated with medical education under the NCHRH Bill, as it aligns with the goals of infrastructure support and human resource development in medical colleges. The inclusion of medical research within the NCHRH Bill was supported, considering it a specialised field that should be kept together with medical education. It was also strongly advocated for bringing medical research under the NCHRH Bill. Allocating medical research its rightful place under the NCHRH Bill is considered appropriate and in line with the overall objectives.

Fate of staffs/employees of UGC, NCTE and AICTE

The dissolution of UGC, AICTE, and NCTE raises uncertainty regarding the fate of their staff/employees. The Ministry of Home Affairs also expressed this concern, emphasising the need for a detailed scheme to address issues like inter-se seniority and potential litigation.

The Committee shared concerns about the fate of staff/employees and strongly recommends safeguarding their interests during the dissolution. It calls for clarity on the organisational structure of NCHER and the accommodation of employees with requisite expertise in their respective departments. It suggests extending pecuniary benefits and service conditions from their previous organisations to the new one.

IV: COVERAGE OF HIGHER EDUCATION, TECHNICAL EDUCATION, TEACHER EDUCATION AND DISTANCE EDUCATION UNDER THE BILL

Bodies like UGC, AICTE, NCTE, and DEC were established at different times to facilitate the growth of higher education. They were created when the number of educational institutions and universities was limited, and the sector had less diversification. The massive Expansion of the Education Sector and the existing regulatory bodies have struggled to keep up with the fast-changing scenario.

There is a need for coordination and inter-linking among the regulatory bodies to avoid overlap and unnecessary situations. The spirit behind establishing an overarching Commission is commendable. The success of such a structure depends on well-structured bodies with specific domains supporting it.

V: CLAUSE 3: DEFINITIONS

The term ‘Higher Education’ is defined in clause 3 of the Bill which states that Higher education refers to education beyond twelve years of schooling, conducted through regular classes or distance education systems. It leads to the award of degrees or diplomas and includes associated research.

Additional Definitions Recommended by the Committee:

Technical Education: Programs of education, research, and training in engineering technology, architecture, town planning, management, pharmacy, applied arts and crafts, and other designated areas or areas as the Central Government, in consultation with the Council, may declare through official Gazette notification.

Teacher Education: Programs of education, research, or training to equip individuals for teaching at pre-primary, primary, secondary, and senior secondary stages in schools. Includes non-formal education, part-time education, adult education, and correspondence education.

Modification of Existing Definitions:

Diploma: An award granted by a higher educational institution (excluding polytechnics) to signify successful completion of a course lasting at least nine months.

Distance Education Systems: Refers to the system of imparting education through various means of communication, such as broadcasting, telecasting, correspondence courses, seminars, contact programs, or their combinations.

University: A university established or incorporated by a Central Act. Includes institutions deemed to be universities.

VI: COMPOSITION OF COMMISSION

Clause 5 states that the Commission will consist of seven members, including a Chairperson, three whole-time members, and three part-time members. It would be more appropriate for all members of the Commission to be full-time members. The recommendation is to modify Clause 5 accordingly, eliminating the provision for part-time members.

VII: CLAUSE 17: COMMISSION TO DETERMINE, COORDINATE, MAINTAIN AND SPECIFY STANDARDS OF HIGHER EDUCATION AND RESEARCH

Clause 17 grants the Commission the authority to create regulations on various matters, including specifying requirements for degree or diploma awards, setting equivalence parameters for academic qualifications, establishing academic quality standards for accreditation and benchmarking of institutions, defining norms for enrolling students in courses, regulating the affiliation of colleges with universities, and governing the entry and operation of foreign educational institutions.

These regulation-making powers could potentially compromise the autonomy of universities. Additionally, there is a risk of overlapping between the Commission's authority and proposed laws governing foreign universities and accrediting authorities. Clause 17 should be reviewed and modified to address these concerns.

VIII: CLAUSE 26: ESTABLISHMENT OF GENERAL COUNCIL

The General Council is a large body representing various professions, councils, bodies, and experts in higher education. However, stakeholders highlighted certain crucial areas that are not adequately represented.

It was recommended to add the following members to the General Council: representative from a private university (region-wise rotation), representative from teachers (universities region-wise rotation), representative from distance education, woman member, representatives from SC, ST, and minorities, and two members from the Lok Sabha and Rajya Sabha. The category of NGO representatives from the General Council was suggested to be removed.

Frequency of Meetings:

Clause 26(2) states that the General Council meetings should be held at least once every six months, with additional meetings as deemed necessary by the Chairperson. Given the extensive functions of the General Council, it should convene more frequently.

IX: CLAUSE 27: POWERS AND FUNCTIONS OF THE GENERAL COUNCIL

Sub-clause (3) of Clause 27 states that the General Council can establish Expert Advisory Groups for various fields of education, such as legal education, health and medical education, general sciences, humanities, social sciences, engineering or technology, vocational education, and distance education systems.

The Committee believes that since regulatory bodies already exist for these fields, there is no need to establish Expert Advisory Groups and the deletion sub clauses (3) and (4) is recommended.

X: CLAUSE 30: FUNCTIONS OF COLLEGIUM

According to clause 30, it appears that the Collegium would have more powers than the Commission. **It was recommended reviewing and aligning the powers and functions of the Collegium with the mandate of the Commission to avoid any potential issues when the law is implemented.**

XI: CLAUSE 52: JOINT MECHANISM

Clause 52 suggests the establishment of a Joint Committee comprising the National Commission for Higher Education and Research and the National Commission for Human Resources for Health. The purpose of this Joint Committee is to address any issues arising from differences of opinion.

The Committee, however, believes that since the National Commission for Human Resources for Health already covers health education and research, the proposed joint mechanism is unnecessary.

XII: CLAUSE 63: POWER OF COMMISSION TO MAKE REGULATIONS

Clause 63 deals with the power of Commission to make regulations. Clause 63 is the repetition of Clause 17 and recommended the deletion of clause 17.

XIII: CHAPTER VI (OF THE BILL): ENROLLMENT OF STUDENTS

This chapter focuses on the enrolment of students in courses or programs of study by universities or institutions, based on an assessment report prepared according to the National Accreditation Regulatory Authority for Higher Educational Institutions Act, 2010. The Committee expressed concern regarding the provision to strip universities of their power to enrol students for new courses or programs.

The responsibility for processing student enrollment for new courses, recognition of new technical institutions, and the increase in intake capacity should remain with the AICTE, NCTE, and universities.

Consequently, the Committee suggested deleting Chapter VI.

XIV: CHAPTER VII (OF THE BILL): BOARD FOR RESEARCH PROMOTION AND RESERVATION

This chapter proposes the establishment of a Board for Research Promotion and Innovation. The Board's role is to recommend measures to the Commission for promoting and facilitating research in higher educational institutions, including recognized health educational institutions.

The proposed Board for Research Promotion and Innovation is seen as a welcome step to enhance research in higher educational institutions.

However, caution must be exercised to preserve the independence of universities and to consider the unique nature of medical research, as emphasised by the Health and Family Welfare Committee's recommendations.

XV: CLAUSE 65: POWER OF CENTRAL GOVERNMENT TO SUPERSEDE COMMISSION, GENERAL COUNCIL ETC.

Clause 65, which grants extensive powers to the Central Government was strongly opposed. The Committee disagreed with the argument that Clause 65 would be exercised only in rare and extreme cases, and the inclusion of similar provisions in other Acts, such as the NCTE Act, is not justified. Therefore, the Committee recommended deleting Clause 65.

XVI: FINAL DELIBERATION WITH THE DEPARTMENT OF HIGHER EDUCATION

Apprehensions were raised about the proposed legislation and its potential encroachment on the powers and functions of the existing bodies. The importance of coordination among these bodies and their well-defined mandates was emphasised. The efficacy of replacing specialised regulatory bodies with an overarching Commission was raised, stating that it would not be a viable proposition. They argued that the existing bodies, with their established structures and mandates, are better suited for regulation and quality control in the higher education sector.

Concerns were raised about the proposed powers and functions of the Commission, comparing them to those of the UGC. The additional powers assigned to the proposed Commission, could encroach upon the domain of state governments and individual universities. The committee found it unnecessary to have two separate authorities with similar powers, referring to the proposed National Accreditation Regulatory Authority for Higher Education and Research. Concerns were raised about the regulation-making power of the Commission regarding the establishment and winding up of higher educational institutions and universities.

Another area of concern was the status of the Distance Education Council (DEC) in the context of the proposed legislation. A decision had been made to repeal the statute creating DEC and transfer its powers and functions to the UGC (now the successor body of DEC under the proposed Commission). However, the committee expressed reservations about this decision, emphasising the specialised and dedicated work done by DEC and the Indira Gandhi National Open University (IGNOU) in the field of open and distance education.

Lastly, the importance of autonomy for higher educational institutions was highlighted. While the Department assured that universities and institutions would retain autonomy in academic matters, the committee pointed out that certain powers, such as enrolling students for the first time and revoking enrollment, directly affect the independence of these institutions.

Overall, significant concerns were raised about the proposed legislation and its potential impact on existing regulatory bodies, autonomy of institutions, and specialised areas such as distance education. They emphasised the need for a well-coordinated and effective regulatory mechanism for the higher education sector

XVII: CONCLUSION

The objectives of the Higher Education and Research Bill 2011, which aim to promote autonomy, growth, and the establishment of a national commission for higher education and research were supported. However, a centralised body for higher education regulation would face difficulties in a diverse country like India, and instead should be restructured to improve existing regulatory bodies. There is a need for a balanced approach between autonomy and supervision, with specialised bodies supporting the proposed commission.

The Department's concerns about clashes of authority were not supported, a joint mechanism can resolve disputes between regulatory bodies and it was recommended that existing bodies like UGC, AICTE, and NCTE should be continued.

There was a need for a well-structured regulatory mechanism but the proposed commission should focus on policy-making, coordination, guidance, and supervision, while existing bodies handle implementation, regulation, and monitoring. Closer collaboration with state governments, universities, and regional bodies to protect the federal structure and autonomy of universities.

Lastly, the importance of consulting all stakeholders, including state governments, higher education institutions, vice-chancellors, and teachers, for an objective assessment of the proposed legislation was emphasised.