

AS INTRODUCED IN THE RAJYA SABHA
ON THE 18TH DECEMBER, 2015

Bill No. LVII of 2015

THE SELF-FINANCING PROFESSIONAL EDUCATIONAL
INSTITUTIONS (CONTROL AND REGULATION)
BILL, 2015

A

BILL

to provide for proper planning and co-ordinated development of Self-financing professional educational institutions throughout the country by regulating the admission of students and prescribing fee structure in such Self-financing Institution including prevention of commercialisation of professional education and prohibition of Capitation fees and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

Whereas it is necessary to provide for proper planning and co-ordinated development of Self-financing Institutions throughout the country by prohibiting collection of capitation
5 fees, preventing commercialisation of professional education, regulating admission procedure and prescribing fees structure and other matters incidental thereto;

CHAPTER I

PRELIMINARY

Short title, extent, commencement and Application.	1. (1) This Act may be called the Self Financing Professional Educational Institutions, (Control and Regulation) Act, 2015.	
	(2) It extends to the whole of India except the state of Jammu and Kashmir.	5
	(3) It shall come into force at once.	
	(4) It shall apply to all Self-financing Institutions.	
Definitions.	2. In this Act, unless the context otherwise requires,—	
	(a) "advisory body" means a body consisting of parents and teacher's representatives, student representatives, elected Member of Parliament and Member of Legislative Assembly from the area, President of District Panchayat and two representatives of the Management;	10
	(b) "capitation fees" means any amount by whatever name called whether in cash or in kind, paid or collected or received directly or indirectly by the Management or Governing Body or any member of the Management or Governing Body or staff of any Self Financing Professional Educational Institution, including his/their relative or any person associated in any manner whatsoever in the management of the said institution, in addition to the fees prescribed or determined under section 5 from or in relation to any candidates or student in consideration of his admission or continuance of any course of study or his promotion to a higher class in such college or institution under such management;	15 20
	(c) "common entrance examination" means the entrance examination conducted either by the Government or any other agency wholly controlled by the Government for admission to the professional educational institution;	
	(d) "free seat" means any seat in a Self Financing Professional Educational Institution against which the fee collected shall be the same as that prevailing for the corresponding course in Government colleges;	25
	(e) "government" means the Central Government or the State Government or both as the case may be;	
	(f) "management" means any trust, co-operative society, Company registered under the Companies Act, 2013 and such other similar association of persons, under whose control or administration any self financing professional educational institution is functioning;	30 18 of 2013.
	(g) 'minority' means a community belonging to religions or minority as may be notified by the Government;	35
	(h) 'minority institutions' means private professional educational institute established and administered by minority and being conferred minority status by the National Commission for Minority Educational Institutions;	
	(i) "parents representative" means, a legal guardian of any student elected by the parent-teachers association of the respective college;	40
	(j) "payment seat" means any seat against which the management is permitted to collect the fees prescribed under Section 5(1)(b);	
	(k) "prescribed" means prescribed by this Act or rule made under the Act;	
	(l) "self-financing institution" includes any College, University, Deemed University, institution established, administered or maintained by any trust, Co-operative Society, company registered under the Companies Act, 2013 and such	45

other similar association of persons, affiliated to or recognized by a University or Government Agency and not receiving any financial assistance from Government and conducting course in any of the disciplines like Engineering and Technology, Medicine, Dentistry, Pharmacy, Ayurveda, Homoeopathy, Siddha, Nursing, Law etc.;

5 (m) "statutory auditors" a group of auditors appointed by the Government to audit Self-financing Institution collectively as item of not less than three auditors;

(n) "student representative" means a student elected by the students of a Self Financing Professional Educational Institution through direct election.

CHAPTER II

10 ADMISSION AND FEES IN SELF FINANCING INSTITUTION

3. The provisions of this Chapter shall not apply to self financing institution established or administered by the minority communities. Applicability.

4. (1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court or any other authority or in any agreement, the admission of students to a Self Financing Institution shall be made only on the basis of the merit list prepared though a common entrance examination. Procedure for admission.

(2) In every self-financing institution seventy five per cent of the total seats shall be free seats and the remaining twenty five percent shall be payment seats.

(3) Free seats shall be filled up on the basis of the rank in the common entrance examination following the principles of reservation as determined by the Government from time to time, to ensure freeships and scholarship to the candidates hailing from backward areas and weaker section of society.

(4) Payment seats shall be filled up from the list prepared on the basis of common entrance examination from among those students, who indicate their preference for being allotted such seats:

Provided that the management shall ensure *inter-se* merit among the students opting for a particular insitution, and lower rank holders will be eligible for the seat, only if the higher rank holder relinquishes his or her claim through a written communication.

(5) Educational qualification for admission in the self-financing institution shall be such as may be notified by the Government from time to time.

5. (1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court or any other authority or any committee or any agreement,— Fee Structure.

(a) the fees charged by any self financing institution for free seats shall be the same as that charged by Government professional institutions for the corresponding course.

(b) the fees charged for payment seats shall be prescribed by the Government on the basis of the recommendation of an expert Committee constituted in this behalf by the Government;

6. (1) The Government shall constitute an Expert Committee to determine the free structure for payment seats in the self financing professional institutions. Expert Committee.

(2) the Expert Committee shall consist of:—

(i) a retired judge of the Supreme Court or the High Court, who shall be the Chairman of the Committee;

(ii) two experts in the relevant field of professional education;

(iii) two representatives of the Government;

(iv) three representatives of the management;

(v) two experts in the field of accountancy, cost audit or management.

(3) (a) The salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and members of the Expert Committee, shall be such, as may be prescribed by the Government.

(b) the allowances payable to the Chairperson and members of the Expert Committee for attending the meetings of the Committee shall be such, as may be prescribed by the Government. 5

(4) The fee structure determined by the expert committee shall be revised every five year.

Auditing. 7. The statutory auditors shall audit all the self financing institutes at least once in every year and submit their report to the Government. 10

Advisory Body. 8. (1) There shall be an Advisory body in every self financing institution.

(2) The advisory body shall meet at least once in three months and shall have powers to verify any record and shall advise on policies for ensuring quality of education.

The powers of the Government to take over. 9. (1) If any management contravenes any of the provisions of this Act, the Government may temporarily take over the management of the Self Financing Professional Educational Institution and administer the same in larger public interest: 15

provided that such take over and administration shall not exceed five years.

CHAPTER III

SPECIAL PROVISIONS RELATING TO MINORITY SELF FINANCING INSTITUTION

Applicability. 10. The provisions of this Chapter shall apply only to self financing institution established or administered by the minority communities; 20

Procedure for Admission. 11. (1) The admission of students to a self financing institution shall be made only on the basis of merit.

(2) In every self financing institution sixty percent of the total seats shall be free seats and the remaining forty per cent shall be payment seats. 25

(3) Free seats be filled up on the basis of the rank obtained in the Common Entrance Examination following the principles of reservation as determined by the Government from time to time; and also reserve freeships and scholarships to the candidates hailing from backward areas and weaker sections.

(4) payment seats shall be filled up from the merit list prepared on the basis of Common Entrance Examination from among those students who indicate their preference for being allotted such seats: 30

Provided that a fixed percentage of the payment seats may be reserved for the community which establishes or administers the institution as may be prescribed.

Fee Structure in Minority Self Financing Institution. 12. Notwithstanding anything contained in any law for the time being in force or in any judgement, decree or order of any court or any other authority or any other authority or any committee or any agreement,— 35

(a) The fees charged by any minority self financing Institution for free seats shall be the same as that charged by Government professional institution for free seats shall be the same as that charged by Government Professional Institution for the corresponding course. 40

(b) the fees charged for payments seats shall be prescribed by the management on the basis of recommendation of an expert committee constituted in this behalf by the Government.

Expert Committee. 13. (1) The Government shall constitute an expert committee to recommend the fees structure for payment seats in the minority self financing institutions. 45

(2) The expert committee shall consist of

(i) a retired Judge of the Supreme Court or the High Court who shall be the Chairman of the Committee;

(ii) two experts in the relevant field of professional education, of which one may be the nominee of the management;

(iii) one representative of the Government;

(iv) three representatives of the management;

5 (v) two experts in the field of Accountancy/Cost Audit/Management;

(3) (a) The salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and members of the Expert Committee, shall be such, as may be prescribed, by the Government.

10 (b) The allowances payable to the Chairperson and members of the Expert Committee for attending the meetings of the Committee shall be such, as may be prescribed by the Central Government.

(4) The fee structure determined by the expert committee shall be revised every five year.

CHAPTER IV

OFFENCES AND PENALTIES

15 **14.** (1) No capitation fee shall be collected by or on behalf of any self financing professional college or by any person who is incharge of the affairs of the institution from any candidate in considering his admission to or continuance in any course of study under the management. Prohibition of capitation fee.

20 **15.** No self financing institution shall collect fees for more than the current semester at a time. Collection of Fees.

16. (1) Whoever entravenes the provisions of this Act or the rules made thereunder shall, be punishable with simple imprisonment upto six month or with fine which may extend upto fifty lakh rupees but not less than twenty lakh rupees or with both; Penalties.

25 (2) A penalty under this sections may be imposed without prejudice to the penalty specified in any other law for the time being in force.

17. No Court shall take cognizance of any offence punishable under this Act except upon a written complaint, made by the person or student from whom the capitation fee is alleged to have been demanded. Cognizance of offence.

30 **18.** No suit prosecution or other legal proceedings shall lie against any member of the advisory body or any officer of the Government for anything which is in good faith done or intended to be done under this Act. Protection of action taken in good faith.

19. The Central Government may, in public interest, exempt any self-financing institution from the applicability of this Act. Exemption to self fianning Institutions.

CHAPTER V

35 MISCELLANEOUS

20. (1) the appropriate Government may by notification in the Gazette, make rules not inconsistent with the provisions of this Act for the purpose of carrying out the provisions of this Act within three months from the date of commencement of the Act. Power to make rules.

40 (2) Without prejudice to the generality of the foregoing rule making power, such rules may provide for all or any of the following matters viz:—

(i) fixation of fee structure;

(ii) procedure to be followed by the expert committee for determining and fixing fees;

(iii) the matters to be taken into account while fixing fees;

(iv) ensuring that no profiteering is carried on and to reserve freeships and scholarship to the candidates hailing from backward areas and weaker sections of the society.

Act to be in addition to any other Law.

21. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any self financing institution from any proceeding which might, apart from this Act, have been instituted against it. 5

STATEMENT OF OBJECTS AND REASONS

Article 39 of the Constitution of India mandates that the State shall direct its policy towards securing the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The opening up of the professional education sector and establishment of Self-financing Institutions have resulted in the need for a comprehensive law regulating various aspects of the establishment and conduct of such institutions including right to establish and administer educational institutions of their choice by minorities in the light of principles enunciated and directions issued by the Supreme Court of India in various decisions especially in the areas of admission of students and the fee-structure etc. The Supreme Court had issued the directions invoking its plenary powers under Article 142 which are to remain in force till appropriate legislation is enacted by the Parliament. The Bill seeks to achieve the object of regulating the admission of students and fees structure etc. of Self-financing Institutions, in the light of the principles enshrined in the Constitution of India especially, Article 39 thereof.

Hence this Bill

K.K. RAGESH

FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the constitution of an Expert Committee to determine and fix fee structure in the Self Financing Professional Institutions. Similarly, Clause 13 also deals with constitution of an Expert Committee to determine and fix fee structure in the Self Financing Professional Institutions with reference to the minority-run educational institutions. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. The recurring and non-recurring expenditure on this count cannot be estimated at this stage, but has to be worked out at later stage by the appropriate authority while implementing the provisions of the Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of Bill gives power to the appropriate Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

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to provide for proper planning and co-ordinated development of Self-financing professional educational institutions throughout the country by regulating the admission of students and prescribing fee structure in such Self-financing Institutions including prevention of commercialisation of professional education and prohibition of Capitation fees and for matters connected therewith or incidental thereto.

(Shri K.K. Ragesh, M.P.)