

Legislative Brief

The Draft Higher Education Commission of India (Repeal of University Grants Commission Act, 1956) Bill, 2018

The draft Bill was released by the Ministry of Human Resource Development on June 27, 2018. It seeks to replace the University Grants Commission Act, 1956.

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Highlights of the Bill

- ◆ The Bill repeals the University Grants Commission Act, 1956 and establishes the Higher Education Commission of India (HECI).
- ◆ The HECI will maintain academic standards in higher education by specifying learning outcomes for courses, specifying eligibility criteria for Vice Chancellors, and ordering closure of higher educational institutions which fail to adhere to minimum standards.
- ◆ Every higher educational institution empowered to award degrees or diplomas will have to apply to the HECI to commence its first academic operations. The HECI also has the power to revoke permission on specified grounds.
- ◆ The Bill sets up an Advisory Council chaired by the Union Minister of Human Resource Development. The Council will advise on coordination and determination of standards in higher education between the centre and states.

Key Issues and Analysis

- ◆ The Bill aims to promote autonomy of higher educational institutions. However, certain provisions of the Bill do not meet this stated objective. It may be argued that instead of granting higher educational institutions increased autonomy, the Bill provides HECI with extensive regulatory control.
- ◆ Currently, institutions offering professional courses are regulated by 14 professional councils. Of these, the Bill seeks to bring legal and architecture education within the purview of HECI. It is unclear why only these two areas are included within the regulatory ambit of the HECI and not the other fields of professional education.
- ◆ At present, the UGC has the power to allocate and disburse grants to universities and colleges. While the Bill replaces the UGC, it does not include any provisions regarding disbursement of grants. This raises a question whether HECI will have any role in the disbursement of grants to higher educational institutions.
- ◆ Presently, the Central Advisory Board of Higher Education (CABE) co-ordinates and advises the centre and states on education related matters. The Bill creates an Advisory Council and requires HECI to implement its recommendations. This may restrict HECI from functioning as an independent regulator.

PART A: HIGHLIGHTS OF THE BILL

Context

In India, education is included in the concurrent list which implies that both the centre and states can enact laws on it.¹ In addition, the centre can determine standards for higher educational institutions while states can incorporate, regulate, and wind up universities.¹

Higher education is regulated by multiple authorities. The University Grants Commission (UGC) regulates universities and colleges teaching general subjects.² 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.³ Further, 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.

Over the years, several expert bodies such as the National Knowledge Commission (2009), the Yashpal Committee (2010), and the Committee for Evolution of the New Education Policy (2016) have suggested measures to reform higher education to address issues related to access, quality, funding and governance.^{4,5,6} Noting that the current system is overregulated but under governed, they recommended consolidating all existing regulators under an independent regulator. This body was envisaged to perform its regulatory functions without interfering with the academic and institutional autonomy of higher educational institutions.⁴

In 2011, the Higher Education and Research Bill, 2011 was introduced in Parliament which sought to consolidate the regulators of all higher education under a single regulator. However, the Bill was withdrawn in 2014.

In the recent past, the government has undertaken various measures to promote autonomy in the sector, for instance: (i) passage of the Indian Institutes of Management Act, 2017 which reduced government representation on IIM Boards, and allowed the Board to appoint the Director, (ii) UGC regulations on granting graded autonomy to universities, and autonomous status to colleges, and (iii) government declaring six Institutions of Eminence which will have greater autonomy in admitting foreign students, fixing fees, and recruiting foreign faculty.^{7,8,9} The draft Higher Education Commission of India (Repeal of the University Grants Commission Act, 1956) was released on June 27, 2018. The Bill repeals the University Grants Commission Act, 1956.

Table 1: Types of higher educational institutions

Type of institutions	Number	Structure of regulation
Central universities	48	Set up by Act of Parliament.
State universities	394	Set up by Act of State Legislatures.
Private universities	325	Set up by Act of State Legislatures.
Deemed to be universities	125	Central government grants status on recommendation from UGC. Have autonomy to set their own syllabus, admission criteria, and fees.
Institutions of national importance	91	Status granted by an Act of Parliament. Can award degrees without affiliating with a university.
Colleges	39,050	Affiliation to a public university is mandatory. Can be aided, unaided or autonomous.

Sources: The University Grants Commission; All India Survey on Higher Education 2017-18; PRS.

Key Features

The Bill seeks to establish the Higher Education Commission of India (HECI). It repeals the University Grants Commission Act, 1956.

- **Coverage:** The Bill will apply to ‘higher educational institutions’ which include universities set up by Acts of Parliament or state legislatures, institutions deemed to be a university, and colleges. It excludes institutions of national importance.
- In addition to general subjects, the HECI will determine and maintain standards of legal and architecture education, while the Bar Council and the Council of Architecture will limit their role to specifying standards of professional practice.

Functions of the HECI

- The HECI will recommend ways to promote autonomy of higher educational institutions and ensure maintenance of academic standards in higher education. It will specify norms for: (i) learning outcomes for courses, (ii) standards of teaching and research, (iii) evaluation procedure to measure yearly academic performance of institutions, (iv) accreditation of institutions, and (v) ordering closure of institutions.
- Further, the HECI may specify norms for: (i) granting authorisation to institutions to commence academic operations, (ii) award of degree or diploma, (iii) affiliation of institutions with universities, (iv) grant of autonomy, (v) graded autonomy, (vi) eligibility criteria for appointment of Vice Chancellors, (vii) setting & winding up of institutions, and (viii) fee regulation.

Composition of the HECI

- The HECI will consist of 14 members. A Search Committee will recommend names to the central government for the post of Chairperson, and members of the HECI. The Search Committee will consist of five members including the Cabinet Secretary (Chairperson), Higher Education Secretary, and three eminent academicians. For the appointment of the Vice Chairperson and the members of the HECI, the Search Committee will include the Chairperson of the HECI as well.
- For the post of the Chairperson and the Vice Chairperson, the Search Committee will recommend names of persons who are citizens of India and those who have been: (i) professors for at least ten years, or (ii) eminent administrators with proven capacity for institution building.
- Members of the HECI include: (i) the Chairperson, (ii) the Vice Chairperson, (iii) three Secretaries of the central government, (iv) two chairpersons of All India Council of Technical Education and National Council of Teacher Education, (v) two chairpersons of accreditation bodies, (vi) two Vice Chancellors of universities of academic excellence, (vii) two serving professors of universities, and (viii) an experienced person from the industry.

Authorisation to higher educational institutions to grant degrees or diplomas

- Every higher educational institution empowered to award degrees or diplomas will have to apply to the HECI to commence its first academic operations. To grant permission, the HECI has to ensure that the application complies with the specified norms of academic quality. The HECI will notify the institution within a specified time period whether it can proceed with its operations. All higher educational institutions currently in existence, will have authorisation to grant degrees for a period of three years.
- The HECI also has the power to revoke permission in cases where the higher educational institution: (i) has continuously or wilfully defaulted in complying with rules and regulations, (ii) has failed to efficiently discharge its duties and obligations, or (iii) has ceased to exist.

Advisory Council

- The Bill sets up an Advisory Council chaired by the Union Minister of Human Resource Development. The Council will render advice on issues concerning: (i) coordination between the central government and state governments, and (ii) determination of standards in higher education. The HECI will take steps to implement the advice rendered by the Advisory Council.
- The Council will include members of the Commission, and Chairpersons or Vice Chairpersons of all existing State Councils for Higher Education.

Penalties

- If any university (i) grants affiliation to any higher educational institution in contravention to the regulations laid down by the HECI, or (ii) violates any norm or standard set by the HECI, the HECI may impose a fine, or revoke permission to grant degrees.
- If such university does not comply with the penalty, the management of such institutions may be punished with imprisonment for a maximum period of three years.

PART B: KEY ISSUES AND ANALYSIS

Autonomy of higher educational institutions

The Bill seeks to replace the existing University Grants Commission (UGC) with the Higher Education Commission of India (HECI). The Ministry states that the HECI will take measures to promote autonomy of higher education institutions, reduce the scope of regulation, and eliminate interference in the management of higher educational institutions.¹⁰ Also, one of the functions of the HECI is to specify norms for granting autonomy and academic freedom to higher educational institutions. However, certain provisions of the Bill do not meet this stated objective of providing greater autonomy to institutions. It may be argued that instead of granting higher educational institutions increased autonomy, the Bill provides the HECI with extensive control on academic, administrative, and financial matters of higher educational institutions.

Bill: For example, as Table 2 on the next page demonstrates, the HECI will perform several functions of the current UGC
 Clause 15 such as laying down norms for: (i) setting up of higher education institutions, (ii) governance structure, (iii) faculty qualification, (iv) fee regulation, and (v) accreditation. In addition, the Bill increases control of the HECI as a regulator by providing it with certain additional powers. These include:

Bill:
Clause 15,
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- **Permission to grant degrees:** Under the current framework, degrees can be awarded only by a university set up by an Act of Parliament or state legislatures, deemed to be a university and an institution specially empowered by Parliament. They do not need further approval from the UGC. However, the Bill states that *all* higher educational institutions will require permission from the HECI to begin academic operations. Further, all *existing* higher educational institutions have to get permission from the HECI within three years.
- **Shutting down of institutions:** Currently, if any higher educational institution fails to comply with specified norms, the UGC may stop providing grants to it. However, the UGC cannot order closure of institutions. The Bill empowers the HECI to order the closure of institutions which fail to adhere to the minimum standards or fail to get accreditation within specified time period. Further, the Bill does not specify any appeal mechanism for such a decision of the HECI.

Given that the HECI will perform functions currently done by the UGC as well as certain additional functions, it is unclear how the Bill would promote autonomy of these higher educational institutions. Examining the current system, the National Knowledge Commission (2009) noted that the UGC seeks to regulate almost every aspect of an institution from fee to curriculum which neither preserves autonomy nor promotes accountability.⁵ Further, the Yashpal Committee (2010) suggested the need for an overarching regulatory body which would perform its regulatory functions without interfering in the academic and institutional autonomy of universities⁴

Note that, in 2017, the UGC released regulations for granting autonomy to universities and colleges under various aspects such as: (i) starting a new course, (ii) prescribing its own courses of study and syllabi, (iii) evolving methods of assessment of students' performance, (iv) fixing fees of the courses at their own level, and (v) hiring foreign faculty.^{7,8} This Bill reinstates these powers with the HECI.

Comparison between current regulatory framework and proposed Bill

The National Knowledge Commission (NKC) (2009) and the Yashpal Committee (2010) have made recommendations for the reform of higher education. However, most of their recommendations have not been included in the Bill. In the table below, we compare the 2018 Bill with the UGC Act, 1956 and recommendations made by the expert committees.

Table 2: Comparison of the proposed Bill with UGC and recommendations of expert committees

	University Grants Commission Act, 1956	Recommendations of NKC and Yashpal Committee	Draft Higher Education Commission Bill, 2018
Jurisdiction	<ul style="list-style-type: none"> ▪ Universities and colleges for general subjects (other than 14 fields which have their own regulatory bodies). 	<ul style="list-style-type: none"> ▪ Higher educational institutions of all subjects. ▪ Abolish all professional councils except Medical and Bar Councils. Professional councils shall conduct qualifying examinations. (NKC) ▪ All professional councils to conduct qualifying examination (Yashpal) 	<ul style="list-style-type: none"> ▪ Higher educational institutions for general subjects (including law and architecture). ▪ Professional councils such as the Bar Council and the Council of Architecture to conduct qualifying examinations for entering the profession.
Grants	<ul style="list-style-type: none"> ▪ Sets norms & disburses grants. 	<ul style="list-style-type: none"> ▪ Separate regulation from grant disbursal. UGC shall only disburse public funds. 	<ul style="list-style-type: none"> ▪ No specification.
Role of regulator	<ul style="list-style-type: none"> ▪ Specify degrees that a university can award; minimum standards of instruction; minimum qualification for faculty, minimum norms for affiliation of a college to a university. 	<ul style="list-style-type: none"> ▪ Specify norms for degrees; perform regulatory functions without interfering with institutional autonomy. Enable universities to become self-regulatory bodies. (Yashpal) ▪ Give degree granting power after assessing academic credibility and financial viability of an institution. (NKC) 	<ul style="list-style-type: none"> ▪ Specify norms for degrees/ diplomas; learning outcomes for courses; standards for teaching; evaluate yearly performance of universities, minimum qualification for faculty, minimum norms for affiliation of a college to a university. ▪ Lay down standards for grant of autonomy for institutions, and granting graded autonomy.
Fees	<ul style="list-style-type: none"> ▪ Specify norms for fixing fees chargeable by higher educational institutes. 	<ul style="list-style-type: none"> ▪ Allow institutions to set their own fees if at least two banks are willing to give a loan without collateral. 	<ul style="list-style-type: none"> ▪ Specify norms for fixing fees chargeable by higher educational institutes.
Authorisation to grant degrees	<ul style="list-style-type: none"> ▪ A university may grant degrees if it is established under an Act of Parliament, state legislatures or is a deemed university. 	<ul style="list-style-type: none"> ▪ Regulator can accord degree granting power to institutions. It should set criteria for entry. 	<ul style="list-style-type: none"> ▪ Higher educational institutions require permission from HECI to grant degrees.
Accreditation	<ul style="list-style-type: none"> ▪ Voluntary; National Assessment and Accreditation Council (autonomous body of UGC) sets norms. 	<ul style="list-style-type: none"> ▪ Create norms for accreditation and certify accrediting agencies, independent of the government. 	<ul style="list-style-type: none"> ▪ Mandatory; HECI to put in place an accreditation system.

	University Grants Commission Act, 1956	Recommendations of NKC and Yashpal Committee	Draft Higher Education Commission Bill, 2018
Appointment of Head of Institution	<ul style="list-style-type: none"> No specification. 	<ul style="list-style-type: none"> Appointment of Vice Chancellors and Directors should be made by an independent search committee and based on peer judgement only. 	<ul style="list-style-type: none"> Specify norms for: (i) Vice Chancellors, (ii) Pro Vice Chancellors, (iii) Directors, and (iv) Deans.
Closure of institutions	<ul style="list-style-type: none"> No specification. 	<ul style="list-style-type: none"> No recommendation. 	<ul style="list-style-type: none"> May shut down institutions if: (i) they do not adhere to minimum standards of higher education or (ii) fail to get accreditation within specified time period.
Penal powers	<ul style="list-style-type: none"> Rs 1,000 fine may be imposed if a higher educational institute confers degrees or calls itself a university without permission under UGC Act. No power to revoke permission. If an institute does not comply with recommendations of UGC, it may stop providing grants to it. 	<ul style="list-style-type: none"> No recommendation. 	<ul style="list-style-type: none"> If a higher educational institute confers degrees without permission or violates any norm, the Commission may: (i) impose a fine, or (ii) revoke permission to grant degrees. If the management of such institutions do not comply with the penalty, they may be punished with imprisonment for a maximum period of three years.

Sources: The University Grants Commission Act, 1956; The Draft Higher Education Commission (Repeal of the University Grants Commission Act, 1956) Bill, 2018; The National Knowledge Commission (2006-09); The Yashpal Committee (2010); PRS.

Regulation of professional education

Bill:
Clause 31

Currently, higher educational institutions offering professional courses related to medical, legal, nursing or architecture education are regulated by 14 professional councils such as the Medical Council, the Bar Council, the Indian Nursing Council, and the Council for Architecture. These councils have the power to: (i) conduct qualifying examinations for entering the profession, and (ii) specify standards for professional practice. The Bill seeks to bring legal and architecture education within the purview of the HECI and limit the role of the Bar Council and the Council of Architecture to regulating professional practice. It is unclear why only legal and architecture education are included within the regulatory ambit of the HECI and not the other fields of professional education.

Note that, the National Knowledge Commission (2009) and the Yashpal Committee (2010) recommended subsuming the academic functions of all professional councils under an independent regulator for higher education.^{5,4} They stated that the role of the professional councils should only be limited to conducting qualifying examinations and all academic decisions should be left to universities. The Bill is a departure in this regard as it provides the HECI with the power to determine academic standards for legal and architecture education.

Lack of clarity regarding disbursal of grants to institutions

UGC Act:
Section 12

Currently, the UGC has the power to allocate and disburse grants to universities and colleges. While the Bill replaces the UGC, it does not include any provisions regarding disbursal of grants. Therefore, this raises a question whether HECI will have any role in the disbursal of grants to higher educational institutions. The Ministry of Human Resource Development stated that there will be a separate grant disbursal body that will follow a merit-based approach.¹¹ However, the Bill does not include any provisions regarding the same.

The National Knowledge Commission (2009) had recommended that these functions be separated where an independent regulator is responsible for setting standards of higher educational institutions while the UGC is responsible for disbursing funds.⁵ Also, the Higher Education and Research Bill, 2011 which was later withdrawn proposed to set up a separate grant disbursal body while the role of regulator was to set norms for grant disbursal.

Role of Advisory Council

Bill:
Clause 24

The Bill sets up an Advisory Council chaired by the Union Minister of Human Resource Development. The Council will render advice on issues concerning: (i) coordination between the central government and state governments, and (ii) determination of standards in higher education.

Presently, the Central Advisory Board of Higher Education (CABE) co-ordinates and advises the centre and states on education related matters. However, the regulatory bodies such as the UGC and AICTE are not legally bound to follow the recommendations of the CABE. The Bill makes it mandatory for the HECI to take steps to implement the advice rendered by the Advisory Council. This may restrict HECI from functioning as an independent regulator.

1. Union List: Entries 63, 64, 65 and 66. State List: Entry 32. Concurrent List: Entry 25.
2. The University Grants Commission Act, 1956.
3. The All India Council for Technical Education Act, 1987.
4. “ Report of the Committee to Advise on Renovation and Rejuvenation of Higher Education”, 2009, http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/YPC-Report.pdf.
5. “Report to the Nation: 2006-2009”, National Knowledge Commission, March 2009, <http://www.aicte-india.org/downloads/nkc.pdf>.
6. Report of the Committee on the Evolution of the New Education Policy, Ministry of Human Resource Development, March 30, 2016, <http://www.prsindia.org/uploads/media/Report%20Summaries/Committee%20Report%20for%20Evolution%20of%20the%20New%20Education%20Policy.pdf>.
7. The University Grants Commission (Categorization of Universities (only) for Grant of Graded Autonomy) Regulations, 2018, University Grants Commission, February 12, 2018, https://www.ugc.ac.in/pdfnews/1435338_182728.pdf.
8. University Grants Commission (Conferment of Autonomous Status Upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2018, University Grants Commission, February 12, 2018, https://www.ugc.ac.in/pdfnews/2838506_182734.pdf.
9. ‘Government declares 6 educational ‘Institutions of Eminence’ ; 3 Institutions from Public Sector and 3 from Private Sector shortlisted’, Ministry of Human Resource Development, July 11, 2018, http://mhrd.gov.in/sites/upload_files/mhrd/files/ToE_PR.pdf.
10. ‘Government approves draft Act for setting up of Higher Education Commission of India by repealing UGC Act’, Ministry of Human Resource Development, June 27, 2018, http://mhrd.gov.in/sites/upload_files/mhrd/files/PR%20on%20HECI%20.pdf.
11. ‘The grant disbursement function to Universities and Colleges will be located in an independent entity which works in a transparent, merit-based approach through an ICT enabled platform’, Press Information Bureau, Ministry of Human Resource Development, July 23, 2018.

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