

DRAFT

**The Private Professional Educational Institutions
(Regulation of Admission and Fixation of Fee) Bill, 2005**

[ACT NO. __ OF 2005]

An Act to provide for the regulation of Admission and fixation of Fee in Private Professional Educational Institutions and, the matters connected therewith and, incidental thereto.

Be it enacted by Parliament in the Fifty Sixth year of the Republic of India as follows:-

CHAPTER-I

PRELIMINARY

**Short title, extent
and commencement**

1. [i] This Act may be called “The Private Professional Educational Institutions [Regulation of Admission and Fixation of Fee] Act”, 2005.

[ii] It extends to the whole of India, except the State of Jammu & Kashmir.

[iii] It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Applicability

2. This Act applies to :-

(a) Institutions deemed to be Universities, or constituent units thereto, other than those promoted and maintained by the Central Government; and, imparting professional education.

(b) Private aided or unaided professional educational institutions affiliated to a university established under Section 2(f) of the University Grants Commission Act, 1956 (Act 3 of 1956).

Definitions

3. In this Act, unless the context otherwise requires:-

(a) “Admission and Fee Regulatory Committee” means the Committee established and constituted by the Appropriate Authority for the allotment of seats for admission and for the fixation of fee to be charged from candidates seeking admission in a professional institution.

(b) “Aided Institution” means a private professional educational institution, receiving recurring financial aid or assistance in whole or in part from the Central Government or the State Government or from any body, under the control of Central or State Government disbursing grants-in-aid or financial assistance and shall include a minority institution.

(c) “Appropriate Authority” means, the University Grants Commission in the case of an institution deemed to be a University, the affiliating Central University in the case of a private aided or unaided minority professional educational institution affiliated to it and the State Government or the Union Territory Administration, as the case may be, in respect of Private aided or unaided professional education institution affiliated to a State University.

(d) “Central University” means a University established or incorporated by an Act of Parliament and, includes an Institution of National Importance, so declared by the Parliament.

(e) “Common Entrance Test” means an Entrance Test, conducted by the Appropriate Authority or an agency authorized by it for the purpose, for admission to a professional course.

(f) “deemed to be University” means an institution so defined under section 3 of the University Grants Commission Act, 1956; and includes a constituent unit of such institution.

(g) “Fee” means all fees including tuition fee and development charges.

(h) “Foreign Candidate” means a person holding a foreign passport seeking admission, in a deemed to be University imparting professional education or, in a Private aided or unaided professional educational institution in India.

(i) “Foreign Education Provider” shall mean and imply a university or an institution duly accredited and, established under a foreign law outside the territory of India and, notified as an institution deemed to be university by the Central Government under section 3 of the University Grants Commission Act, 1956.

(j) “Foreign Institution” shall mean and imply an Institution established outside the territory of India.

(k) “General Category” shall mean and imply seats from out of the sanctioned intake of an institution; not being seats in the management category, allocated to be filled by the Appropriate Authority in the manner prescribed.

(l) “Management Category” shall mean and imply seats from out of the sanctioned intake allotted to the management of the institution for being filled by it in a fair and transparent manner, on the basis of the inter-se merit determined by a Common Entrance Test.

(m) “Management” means any person or body, by whatever name called, managing and controlling the private professional educational institution.

(n) “Minority” means a minority notified under section 2(f) of the National Commission for Minority Educational Institutions Act, 2004 (Act No. 2 of 2005).

(o) “Minority Institution” means an institution imparting professional education, established and administered by a minority.

(p) “Person of Indian Origin” means a person of Indian origin as defined under the Indian Citizenship Act, 1955 (Act No. 57 of 1955).

(q) “Private Professional Institution” means a professional institution not established or maintained by the Central Government; State Government or Union Territory Administration or any public body.

(r) “Professional Institution” means, a College or a School or an Institute by whatever name called, imparting professional education approved or recognized by the competent statutory body and affiliated to a University and, includes a constituent unit of a deemed to be University imparting professional education.

(s) “Professional Course” means a course of study notified as a “professional course” by the Appropriate Authority and shall include a course offered by a Foreign Institution leading to the award of a Degree, Diploma or Certificate by whatever name called.

(t) “Sanctioned intake” shall mean and imply the total number of seats sanctioned by an authority notified by the Central Government for admitting students in each course of study in a professional institution.

(u) “State University” means a university established or incorporated by an Act of the State Legislature.

(v) “Unaided Institution” means a private professional educational institution, not being an “aided Institution”.

(v) “University Grants Commission” means the University Grants Commission established under the University Grants Commission Act, 1956.

CHAPTER-II

ADMISSION AND FEE REGULATORY COMMITTEE

Composition, Disqualification and functions

4. (1) The Admission and Fee Regulatory Committee shall be presided by a person who has been a Vice Chancellor of a Central University or a State University or an institution deemed to be University; and shall include two other Members having experience in matters of finance or administration.

(2) The term of the Committee shall be three years from the date of its notification; and, in case of any vacancy arising earlier, for any reason, the Appropriate Authority shall fill such vacancy for the remainder of the term.

(3) No act or proceedings of the Committee shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of the Committee.

(4) No person who is associated with a private aided or unaided institution shall be eligible for being a member of the Admission and Fee Regulatory Committee.

(5) A member of the Admission and Fee Regulatory Committee shall cease to be so, if he performs any act, which in the opinion of the Appropriate Authority is, unbecoming of a member of the Committee.

Provided that, no such member shall be removed from the Committee, without giving him an opportunity of being heard.

(6) The Committee may frame its own procedure in accordance with the Regulations notified by the Appropriate Authority in this regard.

(7) The Committee may require a Private aided or unaided professional educational institution or, a deemed to be University to furnish, by a prescribed date, information as may be necessary for enabling the Committee to determine the fee that may be fixed by the Institution in respect of each professional course, and the fee so determined shall be valid for such period as notified by the Appropriate Authority.

(8) The Committee may, if it is satisfied that an Institution has violated any provisions of this Act, recommend to the appropriate statutory body for the withdrawal of the affiliation or recognition of such institution.

(9) The Committee shall ensure that the admission under the Management Category in an institution is done in a fair and transparent manner.

CHAPTER-III

ADMISSIONS

Eligibility

5. The eligibility for admission to a Private aided or unaided professional educational institution or a deemed to be University shall be as notified by the Appropriate Authority.

Allocation of seats

6. (1) In an Aided Minority Institution, the minority community establishing and administering such institution of its choice may reserve for itself, up to fifty percent of the sanctioned intake under the Management Category.

(2) In an Aided Professional Educational Institution, other than a minority institution, the management of such institution may reserve upto fifteen percent of the sanctioned intake under the Management Category.

(3) In an Unaided Minority Institution, the minority community establishing and administering such institution of its choice shall reserve for itself, not less than fifty percent of the sanctioned intake under the Management Category.

(4) In an Unaided Professional Educational Institution other than a minority institution, the management of such institution may reserve upto fifty percent of the sanctioned intake under the Management Category.

(5) The management of a Private aided or unaided professional educational institution shall declare, by the prescribed date, the extent of the Management Category from out of the sanctioned intake for each course of study; and any seat remaining thereafter, shall be treated as a seat in the General Category.

(6) Fifteen percent of the seats from out of the General Category in a private professional institution may be filled on an All India basis in such manner as may be notified by the Central Government.

(7) Nothing in this section shall apply to institutes which are deemed to be Universities.

Manner of admission 7 (1) A Private aided or unaided professional institution:

(a) shall, subject to the provisions of sub-section (6) of Section (6) of this Act, make admission to a seat under the General Category, on the basis of one or more qualifying examinations to be notified by the Appropriate Authority or an agency designated by it, in a manner prescribed by such Authority.

(b) shall make admission to a seat under the Management Category in a fair and transparent manner through a Common Entrance Test, conducted in the State by an Association of Private aided or unaided professional educational institutions, recognized and notified by the Appropriate Authority for the purpose.

Provided that, in case the institution fails to fill a seat under the Management Category, through such Common Entrance Test, all or any of such seats shall be filled as seats under the General Category.

(c) may admit foreign students against seats, not exceeding fifteen percent, over and above the sanctioned intake in a fair and transparent manner.

(d) shall notify, on or before a date to be appointed by the Appropriate Authority, the Common Entrance Test adopted by the Institution for admission to seats under the Management Category, and the manner of admission to each category of seats.

(2) An Institution which is deemed to be a University shall make admission in a fair and transparent manner on the basis of inter-se merit to be determined through a Common Entrance Test to be conducted on an all India basis by the deemed to be University itself or, failing which by any other Agency to be notified by the Appropriate Authority.

Provided that, the Common Entrance Test conducted by the deemed to be University shall have at least one examination centre located in each of the metropolitan cities Delhi, Chennai, Kolkata and Mumbai.

(3) The Appropriate Authority shall notify the appointed day by which a deemed to be University shall notify the schedule of the all India examination to be conducted by it.

Reservation of seats

8 (1) A Private aided or unaided professional educational institution shall reserve seats for candidates belonging to the Scheduled Castes, the Scheduled Tribes and, wherever applicable, to the socially and educationally backward classes and other economically weaker sections from out of seats in the General Category, to such extent as may be notified by the Appropriate Authority in accordance with the Regulations to be prescribed by it.

(2) A deemed to be University shall:

(a) reserve, fifty percent of the sanctioned intake of each constituent unit for students from the state in which such constituent unit is located.

(b) reserve, seats out of its sanctioned intake for candidates belonging to the Scheduled Castes, Scheduled Tribes and, wherever applicable to the socially and educationally backward classes and other economically weaker sections of the society, to such extent as shall be notified by the Appropriate Authority from time to time.

CHAPTER-IV

FIXATION OF FEE

Factors

- 9 (1) Having regard to:
- (i) the location of the professional institution,
 - (ii) the nature of the professional course,
 - (iii) the cost of land and building,
 - (iv) the available infrastructure,
 - (v) the expenditure on administration and maintenance,
 - (vi) a reasonable surplus required for growth and development of the professional institution,
 - (vii) the revenues foregone on account of waiver of fee, if any, in respect of students belonging to the Scheduled Castes, Scheduled Tribes and, wherever applicable to the socially and educationally backward classes and other economically weaker sections of the society, to such extent as shall be notified by the Appropriate Authority from time to time and,
 - (viii) any other relevant factor;
- (a) The Admission and Fee Regulatory Committee at the Centre shall determine, in the manner prescribed, the fee or fees to be charged by a Private aided or unaided professional educational Institution affiliated to a Central University, and by a deemed to be University.
- (b) The Admission and Fee Regulatory Committee in a State or Union Territory shall determine, in the manner prescribed, the fee or fees to be charged by a Private aided or unaided professional educational institution affiliated to a State University.
- (2) The Admission and Fee Regulatory Committee shall give the Institution an opportunity of being heard before fixing any fee or fees.

Provided that, no such fee or fees, as may be fixed by and Admission and Fee Regulatory Committee, shall amount to profiteering or commercialization of education.

CHAPTER V

FOREIGN EDUCATION PROVIDER

10. (1) No Foreign Institution, which is not a Foreign Education Provider under this Act, shall effect admission of any person in the territory of India or charge any fee or fees, from such person in respect of a Professional Course.
- (2) Notwithstanding anything contained in the University Grants Commission Act, 1956, a Foreign Institution may seek, in the manner prescribed, to be declared as an institution deemed to be University for the purposes of the said Act; and, specifically for being notified as a Foreign Education Provider for granting admission to its proposed programmes of study leading to the award of Degrees, Diplomas or Certificates, by whatever name called.
- (3) No Foreign Education Provider shall effect admission to any category of seats unless permitted, in writing, to do so by the University Grants Commission.
- (4) Notwithstanding anything contained in the University Grants Commission Act, 1956, the Commission may make such regulations, as it may deem fit, specifically in regard to Foreign Education Providers, with the prior approval of the Central Government and such regulations may provide, inter-alia, for:
- (i) the incorporation of the Foreign Education Provider under a Central or State law as may be applicable;
 - (ii) the creation of a Corpus Fund of such sums of money, and in such form, as may be prescribed by way of security;
 - (iii) the period for which such permission is granted, subject to its renewal;
 - (iv) the eligibility of candidates for admission to any or all categories of seats;
 - (v) the manner in which fee or fees is to be charged by the Foreign Education Provider and determined by the Admission and Fee Regulatory Committee at the centre.

Provided that the University Grants Commission shall not permit admission to any category of seats, or the charging of fee or fees by the Foreign Education Provider in respect of a Professional Course without the consent of the appropriate statutory authority, if any, for such Professional Course.

(5) (i) whoever, being associated with a Foreign Institution, other than a Foreign Education Provider, effects admission or charges fee or fees in contravention of the provisions of the foregoing sub-sections of this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years; and, in addition, shall be liable to a fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees.

Provided that nothing in this clause shall apply, in the case of a Foreign Institution operating in the territory of India on the date of commencement of this Act, for a period of six months from such date.

(ii) whoever being a Foreign Education Provider, contravenes the provisions of sub-sections (2), (3) or (4) of this section shall be punishable with forfeiture of the Corpus Fund referred to in sub-section (4), in whole or in part thereof; and, in addition, shall be liable for action by the Admission and Fee Regulatory Committee under sub-section (8) of section 4.

CHAPTER VI

MISCELLANEOUS

Appeals

11 (1) The Central Government shall appoint an Appellate Authority, consisting of a person who has been a judge of the Supreme Court, before which a person or a professional institution aggrieved by an order of the Admission and Fee Regulatory Committee at the Centre may file an appeal, within a period of 30 days of passing of such order.

(2) The State Government shall appoint an Appellate Authority, consisting of a person who has been a judge of the High Court, before which a person or a professional institution aggrieved by an order of the Admission and Fee Regulatory Committee in the State may file an appeal, within a period of 30 days of passing of such an order.

Act to have overriding effect

12. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Power to make Rules

13. The Central Government may, by notification in the Official Gazette, make Rules for carrying out the purposes of this Act.

Power to make Regulations

14. (1) The Appropriate Authority may, by notification in the Official Gazette, make Regulations consistent with this Act and the Rules made thereunder.

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

- (a) Regulating the constitution and working and, terms and conditions of the Admission & Fee Regulatory Committee.
- (b) Regulating the eligibility of admission, manner of admission and, allocation of seats in a Professional Institution; including the reservation of seats referred to in sub-section (1) of Section 8 of this Act.
- (c) Regulating the manner or criteria of determination of fee or fees to be charged by a Professional Institution from the candidates.
- (d) Regulating the fees to be charged by the Professional Educational Institution from the candidates.
- (e) Any other matter which has to be, or may be, prescribed with the prior approval of the Central Government.

Rules to be laid before Parliament

15. Every Rule made under this Act shall be laid, as soon as may be after it is made, 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 of the successive sessions aforesaid, both Houses agree in making any modification in the Rule or both Houses agree that the Rule should not be made; the Rule 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.

Direction by the Central Government

16. (1) In the discharge of its functions under this Act, the Appropriate Authority shall be guided by such direction on question of policy relating to national purposes, as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Appropriate Authority, as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

Power to remove difficulties

17. (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 appears to it to be necessary or expedient, for removing the difficulty.

Provided that, no such order shall be made after the expiry of a period of two years, from the date of commencement of this Act.

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

Protection of action taken in good faith

18. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Appropriate Authority or any officer of the Appropriate Authority or the Appellate Authority, for anything, which is in good faith done or intended to be done under this Act.

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