

The REVISED draft Bill for NCHER

By Vijender Sharma

Towards Complete Control over Higher Education

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THE draft of National Commission for Higher Education and Research (NCHER) Bill, 2010 uploaded by the ministry of human resource development, in February, on its website (<http://www.education.nic.in/>) received strong criticism and opposition from students, academia, people's representatives and several states including West Bengal and Kerala. This draft bill, therefore, has been revised and certain vital changes have been made. This revised bill, re-titled as Higher Education and Research (HER), Bill, 2010, is now being circulated selectively for seeking opinion while the original draft bill still continues to be on its website.

Two main issues, apart from several others, (1) over centralisation of higher education and (2) attack on the federal structure affecting centre-state relations remain crucial. The HER bill includes cleverly drafted formulations but creating confusion by the choice of alternative words (with similar meaning as in the first draft) and creation of new bodies, the general council, inferior in its mandate compared to collegium of scholars, as well as Higher Education Financial Services Corporation.

The states will continue to be marginalised. They cannot start a university unless permitted to do so by the commission (NCHER). The states may appoint their own vice chancellors but subject to the Regulations to be made under the proposed law. The corporate culture will decide which institution, university (both central and state) and college, etc., should be funded and on what basis.

In this article, the provisions of two draft bills, the NCHER bill and HER bill, are being compared section by section.

The preamble of NCHER bill included "university education, technical and professional education other than agricultural and medical education". However, the preamble of HER bill includes all education except agricultural education. The definition of 'higher education' [Section 3] excludes agricultural education 'in institutions other than universities'. This means that agricultural education being imparted in universities is within the scope of the NCHER.

All provisions of the NCHER bill were to be implemented simultaneously. But under HER bill, different provisions can be implemented from different dates [Section 1(3)]. Thus implementation of any of the provisions can be deferred by the central government at its will.

COMMISSION OF UNEQUALS

The commission continues to be of seven members who will be appointed by a selection committee consisting of the prime minister, speaker of Lok Sabha, the leader of the opposition in Lok Sabha and two ministers in charge of higher education and medical education [section 5(5)]. The chairperson, three whole-time members and three other members of the commission will hold office for a term of five years. The status of chairperson and all members of the commission, section 12(4) of NCHER bill, was to be same as that of the chief election commissioner or election commissioners respectively. This provision has been changed in HER bill [section 10(2)] and non-whole-time members will not have the status of election commissioners.

In NCHER bill, the distinction between members was on two counts: (1) Qualification: While the chairperson and the whole-time members were to be persons "possessing leadership abilities and proven capacity for institution building", other members were to be with "proven contribution to economic and social development and experience of engagement with institutions

of higher learning and research”. (2) The chairperson and whole-time members were to be salaried employees and other members only allowance holders.

In HER bill, another distinction has been added regarding status of the members: those having status of election commissioners and those without that status. With these three distinctions, the commission itself will not be a cohesive body and will be composed of unequals. Thus, practically four members will control the commission.

GENERAL COUNCIL

Under NCHER bill, there was a provision for establishing a “collegium” consisting of “core fellows and co-opted fellows, being persons of eminence and integrity in academia in higher education and research.” Core fellow was to be a national research professor, or a recipient of the Nobel Prize or field medal or Jnanpith award, or a member of an academy of international standing. The numbers of core fellows and their appointing authority was not provided in the bill. There was no provision under which states could recommend persons as core fellows. The co-opted fellows were to be chosen by core fellows to represent each state and union territory from a panel of five persons recommended by the respective governments. The representatives of states and UTs were given second class status as they were to depend on the support of core fellows. The states and UTs were treated with contempt. The term of core fellows and co-opted fellows was to be life time and five years respectively. Lifetime appointments generate vested interests and akin to breeding corruption.

The institution of collegiums was strongly criticized. It was an institution to undermine the role of states in higher education despite the fact the states spend more money on higher education than the central government. In order to deflect from this, but still centralising all powers in the field of higher education, a new chapter on the establishment of general council, as an advisory body, has been added in the HER bill [sections 15 and 16]. It appears that the general council has been created to take care of the criticism by state governments. These sections are deceptive, nothing concrete has been provided. The HER bill with creation of deliberate confusion is also, by and large, against the federal structure.

The general council will consist of 79 members including one representative of each state and union territory such as vice chairman of state higher education council or vice chancellor of a state university, all heads of professional bodies and research councils, and one central university vice chancellor, one IIT director, one IIM director (in rotation) and ten academics from such fields like agriculture, medicine, environment, economics, Indian languages, etc. The general council will meet once in six months.

The general council will advise the commission on enhancing access, inclusion and equity; connecting higher education and research to the practice of professions; measures to remove imbalances (including those relating to regions, academic disciplines, gender and other socio-economic factors); adequacy of funding of higher education; statement and report prepared by the commission; and on the course of reforms to rejuvenate higher education and research. It can amend every measure or regulation proposed by the commission by two-thirds majority of its members present and voting. Such amendments will be binding on the commission.

COLLEGIUM OF SCHOLARS

In HER bill, the ‘collegium’ has been redefined as ‘collegium of scholars’ with 30-fellows which will be constituted by the central government with persons of integrity and eminence in higher education and research [sections 17(2)]. Distinction between core fellows and co-opted fellows of collegium provided in the NCHER bill has been done away with.

The first fellows will be persons who are or have been national research professors or recipients of Nobel prize and Fields medal. Their membership will be for life. If no such person is willing to be a fellow, the selection committee headed by the prime minister will nominate ten persons of integrity and eminence in higher education and research who will be the first fellows of the collegium. Their term will be for a period of ten years. These fellows will propose the rest of the fellows for a ten year term.

The distinction between first fellows, in the category of national research professors and recipients of Nobel prize and fields medal, and other fellows is similar to two types of membership as it existed earlier among core fellows and co-opted fellows.

The collegium will aid and advise the commission, [sections 19, HER bill], for the determination, co-ordination, maintenance of standards in higher education and research and recommend a vision on the emerging trends in different fields of knowledge. It will propose the names of three persons for the appointments of chairperson and other members of the commission. It will assess the performance of the commission and also make recommendations in respect of the statements and reports of the commission. It will also propose a set of names to the President of India for constituting a committee to review the performance of the commission. From the functions of general council and collegium, it is seen that some of the powers of the two bodies are overlapping. But the functions of collegium are wider than those of general council.

DECEPTIVE CHANGE

The NCHER bill had provided for the preparation, by the collegium, of national registry of persons eligible and qualified to be the vice chancellors of universities or the heads of the institutions of national importance. The names of suitable persons eligible and qualified for appointment as vice chancellors of universities for inclusion in the national registry proposed to the commission by the central government, state governments, or universities were to be referred to the collegium for assessing their suitability and competence [section 20(2)].

The power of the states to appoint vice chancellors of their state universities was taken away. They were to depend first on the recommendation of the collegium, heavily dominated by core fellows appointed for lifetime, for inclusion of persons in the national registry and then on the list of five persons provided by the commission. No person could be appointed as the vice chancellor if his/her name was not included in the national registry.

This provision has been changed and national registry has been renamed as directory of academics for leadership positions in the HER bill [section 20]. The collegium will recommend names for inclusion in the directory. The central government, state governments, universities, professional bodies and research councils and state higher education councils can also recommend the names for inclusion in the directory. However, such names will be forwarded to collegiums, as earlier, and will be included only if they satisfy the standards to be set out under its section 25.

The commission will recommend a panel of five names to the central government for the appointment of vice chancellor for a central university. State governments can appoint their vice chancellors without reference to this directory of academics [section 29(3), HER bill]. But such vice chancellors must satisfy the standards which will be set out in regulations [section 25] about which at present nothing is known. Thus the freedom of the states to appoint their vice chancellors has been restricted to this extent.

The 5-member executive council of the collegium has been dropped. But its functions will be performed by the chair or co-chair selected by majority from amongst fellows of the collegium for a term of two years [Section 22].

SECTION 24 of the NCHER bill has been split into four sections in HER bill. Almost all powers and functions have been rearranged in these sections. The commission will “take measures to spearhead transformative change in higher education.” For this purpose [section 24, HER bill], the commission will promote autonomy for the free pursuit of knowledge and innovation, facilitate access, inclusion and opportunities for all, and promote culture of quality, rational inquiry and reform. It will also promote accountability and curriculum frameworks, and code of good practices in leadership, governance and management. It will also develop norms for financing higher education institutions.

Interestingly, the measures taken by the commission under section 24, HER bill, will not be obligatory for higher education institutions to adopt but will act as reference for them to advance quality, access and inclusion [section 24(4)]. This provision appears to have been made to thwart the criticism that the central government was trying to over centralise higher education and taking away the powers of the states.

This is clear from section 25 of HER bill. According to its section 25(1), the commission will frame regulations to determine, coordinate and maintain standards of higher education and research. Without prejudice to the generality of the foregoing provisions, section 25(2), the commission will have the power to regulate almost everything related to higher education institution – requirements for the award of any degree, norms and standards of academic quality and accreditation, norms and process of a university to award any degree, standards of leadership positions for appointments as vice chancellors, the entry and operation of foreign educational institutions, norms for allocation of grants, etc. However, the commission, section 25(3), will create an “enabling environment for universities to emerge as autonomous and self-regulatory bodies.”

The provisions of section 24(4), 25(2) and 25(3) are self contradictory. Once the regulations are made under the section 25(2), the provision of section 24(4) will not hold good. If the universities have to “emerge as autonomous and self regulatory bodies”, then there is no need to vest the commission with so much power. In fact, given the provisions in sections 24(4) and 25(3), if they are really meant for implementation, the national commission of higher education and research is not required at all. What is actually required is a set of guidelines for helping the universities in becoming autonomous and self regulatory.

MARGINALISATION OF STATES

Section 27 of the NCHER bill remains by and large same but renumbered as section 30 in HER bill. The commission will prepare, every five years, a report on the state of higher education and research in every state and its relation to national trends. The governor of every state will get such report laid before the legislative assembly along with an explanatory memorandum on the action taken, or proposed to be taken, thereon in respect of each recommendation made by the commission. Thus the state governments will be forced to implement the agenda set by the commission and the powers of the state legislatures will be restricted.

The central government will prepare, from time to time, in consultation with state governments and commission, a national policy for the development of higher education and research. This policy will guide the commission. The central government will also inform the commission of all decisions taken by it on matters of policy concerning higher education and research [section 32]. However, the state governments have not been given any power under which it can inform the

commission about its decision regarding higher education in their states. These provisions will continue to marginalise state governments in the field of higher education.

ALL POWERFUL COMMISSION

Under Sections 32 to 36 of the NCHER bill, process of starting a new university was provided and no university could be started unless it got “authorisation” from the commission to do so. These sections have been drastically changed. In HER bill, sections 33 to 35 provide such process. Every university empowered by or under any law intending to commence its operation has to intimate such intention to the commission, in accordance with the regulations which have yet to be framed, along with an assessment report from a registered accreditation agency [section 33]. As per section 33(3), “the commission shall not refuse commencement of academic operations in a university” established by law if it “fulfils the norms” provided in the regulations which have yet to be made. The commission will either ‘declare’ or ‘reject’ such request within 120 days. Thus, instead of “authorisation”, the university can start its operation only after getting “declaration” from the commission. The meaning is same: the states cannot start universities unless permitted by the commission to do so.

Thus, the word ‘authorisation’ from the commission to operate a degree/ diploma granting university has been changed to ‘declaration’ by the commission. Only language of the provisions has been changed. Condition still remains that a ‘declaration’ has to be obtained from the commission to start and operate a university. It has been further made clear in section 39 that no university or institution can start functioning unless it has been “declared” to do so by the commission. By making use of deceptive language, the central government is trying to present that it has given the state legislatures freedom to start new universities. The central government and ministry of human resource development think that people are gullible and can be misled!

The commission remains all powerful. Once it comes into being, the powers of the state legislatures to start new universities will be seriously eroded. They have to be established in accordance with the norms and processes to be specified by the commission later. And, in order to start functioning they have to get “declaration” from the commission to award any degree or diploma.

The powers of the civil court which were vested in the commission have been dropped in the HER bill.

CORPORATE CULTURE IN HIGHER EDUCATION

A new chapter VIII has been added in the HER bill for the creation of higher education financial services corporation under section 25(1) of the companies act. This corporation will have an 11-member board of directors [section 44]. The chairperson or a member of the commission will be the non-executive chairperson of the corporation. It will include only two representatives in rotation from amongst the representatives of the states in general council. It will also include two nominees of the central government, and two persons as expert in finance, banking and management and a managing director to be appointed as whole-time officers of the corporation.

The corporation will notify its memorandum and articles of association, and its authorised and paid-up capital. It will disburse grants to higher education institutions in accordance with the regulations yet to be made [section 45]. It will also give proposals of grants to be allocated to each higher education institutions. It will be guided by the commission and the managing director will be responsible for the disbursal of grants. Thus corporate culture in funding of institutions of higher education is being developed.

REJECT EVEN THE REVISED BILL

The draft HER bill, which is the revised version of the draft NCHER bill, does not respond to any of the concerns of the stakeholders. It undermines the autonomy of higher educational institutions and creates an all powerful commission for the centralisation of all aspects related to higher education. It negates the role of state governments and academia in strengthening the higher education system in their respective areas, states and country. It undermines the powers of the parliament, state legislatures and representatives of the people at large to opine and decide the education policy and administration of institutions of higher education in India.

The commission or NCHER cannot be most competent for “renovation and rejuvenation” of higher education and best and only brains to shape the future of higher education in the country. Corporate culture has been proposed for funding of institutions of higher education. If this all powerful commission or the corporation directs the universities to look towards market for its general funds, then what would happen to our higher education system?

The need is to make the bodies like the UGC, AICTE, MCI, etc., which are proposed to be subsumed in the NCHER, function democratically and efficiently, eradicate corruption prevalent in them, make them accountable to the people and serve the cause of education. The proposal to establish NCHER reflects the tendency of the central government towards centralisation of higher education and marginalisation of states. It will prove to be retrograde for the development of higher education and research in India. Therefore, even the revised higher education and research bill should be rejected.