

Fourteenth Kerala Legislative Assembly

Bill No. 58

**THE KERALA MEDICAL EDUCATION (REGULATION AND CONTROL
OF ADMISSION TO PRIVATE MEDICAL EDUCATION
INSTITUTIONS) BILL, 2017**

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2017

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[Translation in English of “2017-ലെ കേരള മെഡിക്കൽ വിദ്യാഭ്യാസം (സ്വകാര്യ മെഡിക്കൽ വിദ്യാഭ്യാസ സ്ഥാപനങ്ങളിലെ പ്രവേശനം ക്രമപ്പെടുത്തലും നിയന്ത്രിക്കലും) ബിൽ” published under the authority of the Governor]

**THE KERALA MEDICAL EDUCATION (REGULATION AND
CONTROL OF ADMISSION TO PRIVATE MEDICAL
EDUCATIONAL INSTITUTIONS)
BILL, 2017**

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BILL

to provide for the regulation of admission and fixation of fee in private medical educational institutions in the State of Kerala and to provide for reservation of seats to persons belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes in medical educational institutions.

Preamble.—WHEREAS, it is expedient to provide for the regulation of admission and fixation of fee in private medical educational institutions in the State of Kerala and to provide for reservation of seats to persons belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes in medical educational institutions and for matters connected therewith or incidental thereto;

BE it enacted in the Sixty-eighth year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may by notification in the Gazette appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "appropriate authority" means a Central or State authority established by the Central or the State Government for laying down norms and conditions for ensuring standards of medical education;

(b) "capitation fees" means any amount by whatever name called whether in cash or in kind, paid or collected or received directly or indirectly in addition to the fees determined under this Act;

(c) "centralized counselling" means a common counselling and allotment of seats in colleges through a single window procedure by the Government or by any agency authorized by it for persons who have qualified in the common entrance test for the purpose of merit based admission to medical colleges or institutions;

(d) "Committee" means the Admission and Fee Regulatory Committee constituted under section 3;

(e) "common entrance test" means an entrance test, conducted by the Central Board of Secondary Education, New Delhi or any agency authorized by Government of India for determination of merit of the candidates;

(f) "fee" means all fee including tuition fee and development charges;

(g) "Government" means the Government of Kerala;

(h) "institution" means any private aided or unaided medical educational institution;

(i) "management" means any person or body, by whatever name called, managing and controlling the private aided or unaided medical educational institutions;

(j) "medical course" means a course of study notified as a medical or paramedical course by the appropriate authority, such as a degree, diploma or certificate by whatever name called ;

(k) "medical educational institution" means a college or a school or a department or an institution by whatever name called, imparting medical education approved or recognized by an appropriate authority and which is affiliated to or is a constituent unit of a University established or incorporated by an Act of the State Legislature or deemed to be a University under section 3 of the University Grants Commission Act, 1956 (Central Act 3 of 1956) and includes institutions imparting medical education in Ayurveda, Homeopathy, Unani, Sidha and such other disciplines;

(l) "minority" means a community defined as minority under clause (f) of section 2 of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005);

(m) "minority institution" means an institution imparting medical education, established and administered by a minority;

(n) "non-resident Indian" shall have the same meaning as assigned to it in clause (e) of section 114C of the Income Tax Act, 1961 (Central Act 43 of 1961);

(o) "Other Backward Classes" means the other Backward Classes notified as such by the State Government as amended from time to time;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "private unaided medical educational institution" means a medical educational institution which is not receiving recurring financial aid or grant-in-aid from any State or Central Government and which is not established or maintained by the Central Government, the State Government or any public body;

(r) "reserved seats" means the seats reserved in favour of persons belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes notified by the State Government;

(s) "rules" means rules made under this Act;

(t) "sanctioned intake" means the total number of seats sanctioned by an appropriate authority and notified by the State Government for admitting students in each course of study in a medical educational institution;

(u) "Scheduled Castes" means any caste, race or tribe or part of, or group within caste, race or tribe specified as Scheduled Castes with respect to the State of Kerala under Article 341 of the Constitution of India;

(v) "Scheduled Tribes" means any tribe or tribal community or part of, or group within such tribe or tribal community specified as Scheduled Tribes with respect to the State of Kerala under Article 342 of the Constitution of India;

(w) "State" means State of Kerala;

(x) "University" means a University established under any law made by the Legislature of the State.

3. *Constitution of the Admission and Fee Regulatory Committee.*—(1) The Government shall, by notification in the Gazette, constitute a Committee to be called the Admission and Fee Regulatory Committee, for the supervision and guidance of admission process and for the fixation of fee to be charged from candidates seeking admission in institutions deemed to be universities, or its constituent units thereto, imparting medical education, other than those promoted and maintained by the Central or State Government and the private aided or unaided medical educational institutions affiliated to a University established under the Central Act or incorporated by an Act of State Legislature and their constituent institutions.

(2) The Committee shall consist of the following members, namely:—

- (a) a retired judge of the Supreme Court or High Court - Chairperson
- (b) Secretary, Higher Education Department (ex-officio) - Member Secretary
- (c) Secretary, Health & Family Welfare Department. (ex-officio) - Member
- (d) Director, Directorate of Medical Education (ex-officio) - Member
- (e) Secretary, Law Department (ex-officio) - Member
- (f) Commissioner for Entrance Examinations (ex-officio) - Member
- (g) a representative from the Medical Council of India nominated by the Government - Member
- (h) an educational expert nominated by the Government in consultation with the Chairperson - Member
- (i) an educational expert who belongs to the Scheduled Caste or Scheduled Tribe community nominated by the Government in consultation with the Chairperson - Member
- (j) Chartered Accountant nominated by the Government in consultation with the Chairperson - Member

4. Term of the Committee and conditions of services of the members.—(1)

The term of the members of the Committee other than ex-officio members shall be three years from the date of its notification.

(2) The members of the Committee shall continue to hold office until a new Committee is constituted, subject to the provisions of this Act and rules made thereunder.

(3) The nominated members shall hold office during the pleasure of the Government which shall not exceed three years at a time and shall be eligible for reappointment:

Provided that a person shall not be appointed as member for more than two terms.

(4) A member nominated to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated.

(5) A nominated member may resign his office by writing under his hand addressed to the Government but he shall continue his office until his resignation is accepted by the Government.

(6) No act or proceedings of the Committee shall be deemed to be invalid by reason of any defect or irregularity in its constitution or on the ground of existence of any vacancy in the office of any member.

(7) The Committee shall regulate its own procedure for the conduct of its business.

(8) The salary and allowances and the other conditions of service of, the Chairperson and members shall be such as may be prescribed.

5. Meeting of the Committee.—(1) The Committee shall meet at time and place as and when required as decided by the Chairperson.

(2) The Chairperson or in his absence, a member of the Committee to be elected from among the members present at the meeting shall preside over the meeting.

6. Disqualification.—(1) No person who is associated with a private aided or unaided educational institution shall be eligible to be a member of the Committee.

(2) Government may remove any member, other than ex-officio member, if he,—

(a) is declared as undischarged insolvent;

(b) becomes incapable of continuing as such, due to physical or mental disability;

(c) becomes unsound mind and stands so declared by a court of competent jurisdiction;

(d) has been convicted for an offence, which in the opinion of the Government involves moral turpitude or financial irregularities;

(e) has, in the opinion of the Government, abused his official position so as to render his continuance in office prejudicial to public interest:

Provided that the person may be given reasonable opportunity of being heard, in the matter.

7. Officers and other employees of the Committee.—(1) The Government shall provide the Committee with such officers and employees as may be necessary for the efficient performance of the functions of the Committee.

(2) The salaries and allowances and the other conditions of service of, the officers and other employees appointed for the purpose of the Committee shall be such as may be prescribed.

8. Powers and Functions of the Committee.—(1) The Committee shall exercise and discharge the following powers and functions, namely:—

(a) require a private aided or unaided medical educational institution or, a deemed University to furnish, by a specified date, information, documents or records as may be necessary for enabling the Committee to determine the fee that may be charged by the institution in respect of each medical course, and the fee so determined by the Committee shall be valid for such period as notified by the Government;

(b) The fee determined by the Committee shall be applicable to a candidate who is admitted to a private aided or unaided medical educational institution in that academic year and shall not be revised till the completion of his course in the said institution or University. No private aided or unaided medical educational institution shall collect a fee amounting to more than one year's fee from a candidate in an academic year. Collection of more than one year's fee in an academic year shall be construed as collecting of capitation fee and shall be liable to be proceeded against;

(c) hear complaints with regard to admission in contravention of the provisions of Act or rules made thereunder either on receipt of a complaint or suo motu shall,—

(i) enquire into admission made in contravention of the provisions contained hereunder or collection of fee in excess of the fee determined under the provisions of the Act, or realization of capitation fee or profiteering by any private medical educational institution;

(ii) cause inspection of the institution for the purpose of making enquiry under sub-clause (i):

Provided that the Committee may proceed under sub-section (3), after conducting an enquiry under sub-clause (i), on any inspection report prepared by the concerned department on the direction of the Government or the concerned University or the appropriate authority.

(2) The Committee shall, for the purpose of making any enquiry under this Act, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any witness and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) issuing commissions for the examination of witnesses and for local inspections.

(3) The Committee may if satisfied that there has been any violation by such institution of the provisions of the Act or rules made thereunder regarding admission or fees, it may recommend to the Government to take the following actions against such institution, namely:-

(a) impose monetary fine upto ten lakh rupees on the institution together with interest thereon at the rate of 12 per cent per annum which shall be recovered as if it were an arrear of public revenue due on land;

(b) declare admission made in respect of any or all seats in a particular institution made in contravention of the provisions of the Act invalid, whereupon the institution shall forthwith cancel the admission of such candidate and the concerned University shall cancel the enrolment of such student and cancel his results of any examination in which the candidate has already appeared;

(c) order the institution to refund to the student within such time as specified in the order, any amount received by it in excess of the fees fixed by the Committee or any amount received by way of capitation fee or any amount received for profiteering;

Provided that if the institution fails to refund the amount within the specified time to the student, the same shall be recoverable along with interest thereon at the rate of 12 per cent per annum as if it were an arrear of public revenue due on land and paid to the student.

(d) order the institution to stop admission or reduce the sanctioned intake in any medical course for such period as it may deem fit;

(e) recommend to the University or the appropriate authority to withdraw the recognition of the institution;

(f) any other course of action, as it deems fit.

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

9. *Eligibility for admission.*—(1) The eligibility for admission to a private aided or unaided medical educational institution shall be such as may be notified by the appropriate authority.

(2) In such institution, admission to the sanctioned intake of students shall be strictly on the basis of interse merit obtained in the common entrance test in such manner as may be prescribed by the Government.

(3) Every admission to private aided or unaided medical educational institution shall be made in accordance with the provisions of this Act or the rules made thereunder and every admission made in contravention thereof shall be void.

10. *Reservation of Seats.*—In admission to private aided or unaided medical educational institutions, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, there shall be reservation at the stage of admission for the persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens as may be prescribed by the Government.

11. *Factors for Determination of Fee.*—(1) The Committee shall determine the fee to be charged by a private aided or unaided medical educational institution in the manner as may be prescribed, considering the following factors, namely:—

(a) the location of the private aided or unaided medical educational institution;

(b) the nature of the medical course;

(c) the cost of land and building;

(d) the available infrastructure, teaching, non-teaching staff and other equipments;

(e) the expenditure on administration and maintenance of the medical educational institution;

(f) a reasonable surplus required for growth and development of the medical educational institution; or

(g) any other relevant factor.

(2) The Committee shall give the institution an opportunity of being heard before fixing any fee:

Provided that no such fee as may be fixed by the Committee shall amount to profiteering or commercialization of education.

12. *Appeal*.—Any person aggrieved by an order of the Committee may prefer an appeal, within 30 days from the date of such order before the High Court.

13. *Protection of action taken in good faith*.—No suit, prosecution or other legal proceeding shall lie against the Government or Chairperson or members of the Committee for anything which is done or intended to be done in good faith under this Act.

14. *Power to remove difficulties*.—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the purpose of removing the difficulty:

Provided that, no such order shall be issued after two years from the commencement of this Act.

15. *Overriding effect of the Act*.—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law for the time being in force or in any instrument having effect by virtue of any law.

16. *Power to make Rules*.—(1) The State Government may, by notification make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances and other conditions of service of the Chairperson and the members of the Committee under sub-section (8) of section 4;

(b) the salary and allowances and other conditions of service of the staff and employees appointed for the purpose of the Committee under sub-section (2) of section 7;

(c) the eligibility of admission, manner of admission and allocation of seats in private aided or unaided medical educational institutions under sub-section (2) of section 9;

(d) the manner of determination of fee to be charged by a private aided or unaided medical educational institution from the candidates under sub-section (1) of section 11;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides 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.

(4) Every order issued under this section shall be laid before the Legislative Assembly as soon as may be after it is issued.

17. *Agreement between Government and Medical Educational Institutions.*—Notwithstanding anything contained in the foregoing provisions or any other law the Government may enter into any agreement with one or more medical educational institutions regarding, fee or any such other matter.

18. *Repeal and Saving.*—(1) The Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Ordinance, 2017 (6 of 2017) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance, shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The Government of India made it mandatory that all admission to medical, dental seats in all Government colleges deemed universities and private medical colleges should be made only through NEET list strictly on merit. The Kerala High Court in Writ Petition No. 17873/2006 delivered its judgment dated 4-1-2007 which nullified relevant provisions contained in the Kerala Professional Colleges or institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non Exploitative Fee and other measures to ensure Equity and Excellence in Professional Education) Act, 2006 (19 of 2006) which was intended to regulate the admission and fixation of fee in professional colleges. But as there were reports of malpractice conducted by various management to tide over the admission procedures the Government decided to make a legislation for the regulation of admission and fixation of fee in private medical educational institutions in the State of Kerala and to provide for reservation of seats to persons belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes in Medical Education.

2. As the Legislative Assembly was not in session and the above proposal had to be given effect to immediately, the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Ordinance, 2017 (6 of 2017) was promulgated by the Kerala Governor on the 10th April, 2017 and the same was published in the Kerala Gazette Extraordinary No. 704 dated 10th April, 2017.

3. The Bill is intended to replace Ordinance No. 6 of 2017 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure out of the consolidated fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Sub-clause (3) of clause 1 of the Bill seeks to empower the Government to fix the date of commencement of the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act by notification in the Gazette.

2. Clause 3 of the Bill seeks to empower the Government to constitute by notification in the Gazette, a Committee called Admission and Fee Regulatory Committee.

3. Sub clause (2) of clause 3 of the Bill seeks to empower the Government to nominate a representative of the Medical Council of India, an educational expert, an educational expert who belongs to the Scheduled Caste or Scheduled Tribe community and a Chartered Accountant as members of the Committee.

4. Item (a) sub-clause (2) clause 3 empower the Government to appoint a Retired Judge of the Supreme Court or High Court as Chairperson of the Committee.

5. Sub-clause (5) of clause 4 of the Bill empower the Government to accept the resignation of the nominated member of the Committee.

6. Sub-clause (8) of clause 4 of the Bill seeks to empower the Government to prescribe salary, allowances and other conditions of service of Chairperson and members of the Committee.

7. Sub-clause (2) of clause 6 of the Bill seeks to empower the Government to remove any member other than ex-officio member from the Committee.

8. Sub-clause (1) of clause 7 of the Bill seeks to empower the Government to provide officers and employees to the Committee for efficient performance of the functions of the Committee.

9. Sub-clause (2) of clause 7 of the Bill seeks to empower the Government to prescribe salary, allowances and other conditions of service of officers and other employees appointed to the Committee.

10. The proviso to sub-item (ii) of item (c) of sub-clause (1) of clause 8 of the Bill seeks to empower the Government to give direction to the concerned department to prepare inspection report.

11. Item (a) of sub-clause (3) of clause 8 of the Bill seeks to empower the Government to impose monetary fine on the institution for violation of any of the provisions of the Act or rules made under this Act on the recommendation of the Committee.

12. Item (b) of sub-clause (3) of clause 8 of the Bill seeks to empower the Government to declare admission made in contravention of the provisions of the Act invalid on the recommendation of the Committee.

13. Item (c) of sub-clause (3) of clause 8 of the Bill seeks to empower the Government to order the institution to refund the amount received by the institution in excess of the fee determined by the Committee or any amount as capitation fee or any amount for profiteering on the recommendation of the Committee.

14. Item (d) of sub-clause (3) of clause 8 of the Bill seeks to empower the Government to order the institution to stop admission or reduce the sanctioned intake of student in the institution, on the recommendation of the Committee.

15. Item (e) of sub-clause (3) of clause 8 of the Bill seeks to empower the Government to recommend to the University or appropriate authority to withdraw the recognition of institution on the recommendation of the Committee.

16. Item (f) of sub-clause (3) of clause 8 of the Bill seeks to empower the Government to take any other action as it deems fit.

17. Sub-clause (2) of clause 9 of the Bill seeks to empower the Government to prescribe the manner of conducting common entrance test for determining interse merit of the candidates seeking admission.

18. Clause 10 of the Bill seeks to empower the Government to prescribe manner of reservation to the persons belonging to scheduled castes, scheduled tribes and other backward classes in admission to the institutions.

19. Clause 14 of the Bill seeks to empower the Government to issue order not inconsistent with the provisions of this Act, to remove any difficulties arised while giving effect to the provisions of this Act.

20. Sub-clause (1) clause 16 of the Bill seeks to empower the Government to make rules by notification in the Gazette required for the implementation of the provisions of this Act.

21. The matters in respect of which notifications or orders may be issued or rules may be made, are matters of procedure and are of routine and administrative in nature. Further, the rules are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is therefore of a normal character.

K. K. SHYLAJA TEACHER.