

Fourteenth Kerala legislative Assembly

Bill No. 192

**THE KERALA MEDICAL EDUCATION (REGULATION AND CONTROL
OF ADMISSION TO PRIVATE MEDICAL EDUCATIONAL
INSTITUTIONS) AMENDMENT BILL, 2019**

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THE KERALA MEDICAL EDUCATION (REGULATION AND CONTROL OF ADMISSION TO PRIVATE MEDICAL EDUCATIONAL INSTITUTIONS) AMENDMENT BILL, 2019

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BILL

to amend the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017.

Preamble.—WHEREAS, it is expedient to amend the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 (15 of 2017);

BE it enacted in the Seventieth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Amendment Act, 2019.

(2) It shall come into force at once.

2. *Amendment of section 2.*—In section 2 of the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 (15 of 2017) (hereinafter referred to as the principal Act),—

(a) the existing clause (a) shall be relettered as clause (aa) and before the clause (aa) so relettered, the following clause shall be inserted, namely:—

“(a) “Admission Supervisory Committee” means the Admission Supervisory Committee constituted as per section 3;”;

(b) for the existing clause (d) the following clause shall be substituted, namely:—

“(d) “Committees” mean the Admission Supervisory Committee constituted as per section 3 and the Fee Regulatory Committee constituted as per section 3A;”;

(c) after the existing clause (f) the following clause shall be inserted, namely:—

“(fa) “Fee Regulatory Committee” means the Fee Regulatory Committee constituted as per section 3A;”.

3. *Substitution of new sections for section 3.*—In the principal Act, for section 3, following sections shall be substituted, namely:—

“3. *Constitution of Admission Supervisory Committee.*—The Government shall, by notification in the Gazette, constitute an Admission Supervisory Committee consisting of the following members for the purpose of supervision and issuing guidelines of admission process in the private medical educational institutions, namely:—

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|--|--------------------|
| (a) A retired Judge of High Court | - Chairperson |
| (b) Secretary, Health and Family Welfare Department (ex-officio) | - Member Secretary |
| (c) Law Secretary (ex-officio) | - Member |
| (d) A representative of Medical Council of India nominated by the Government | - Member |
| (e) Commissioner of Entrance Examinations (ex-officio) | - Member |
| (f) An educational expert belonging to Scheduled Caste or Scheduled Tribe nominated by the Government in consultation with the Chairperson | - Member |

3A. *Constitution of Fee Regulatory Committee.*—The Government shall, by notification in the Gazette, constitute a Fee Regulatory Committee for fixing the fee that may be charged from the students who get admission in private medical educational institutions, consisting of the following members, namely:—

- (a) A retired Judge of High Court - Chairperson
- (b) Secretary, Health and Family Welfare Department (*ex-officio*) - Member Secretary
- (c) A representative of Medical Council of India nominated by the Government - Member
- (d) One Chartered Accountant nominated by the Government - Member
- (e) An independent person elected by the Committee - Member.

4. *Amendment of section 4.*—In section 4 of the principal Act,—

(a) in the marginal heading for the word “Committee” the word “Committees” shall be substituted;

(b) in sub-section (1) for the word “Committee” the word “Committees” shall be substituted;

(c) in sub-section (2) for the words “the Committee” the words “the Committees” and for the words “a new Committee is” the words “new Committees are” shall be substituted;

(d) in sub-section (6) for the word “Committee” the word “Committees” shall be substituted;

(e) in sub-section (7) for the word “Committee” the word “Committees” shall be substituted.

5. *Amendment of section 5.*—In section 5 of the principal Act,—

(a) in the marginal heading for the word “Committee” the word “Committees” shall be substituted;

(b) in sub-section (1) for the word “Committee” the word “Committees” shall be substituted;

(c) in sub-section (2) for the word “the Committee” the words “the Committees concerned” shall be substituted;

(d) sub-section (3) shall be omitted.

6. *Amendment of section 6.*—In sub-section (1) of section 6 of the principal Act, for the word “Committee” the word “Committees” shall be substituted.

7. *Amendment of section 7.*—In section 7 of the principal Act,—

(a) in the marginal heading for the word “Committee” the word “Committees” shall be substituted;

(b) in sub-section (1) for the word “Committee” wherever it occurs shall be substituted with the word “Committees”;

(c) in sub-section (2) for the word “Committee” the word “Committees” shall be substituted.

8. *Insertion of new section.*—Section 8 of the principal Act shall be renumbered as section 8A and before the section 8A so renumbered, the following section shall be inserted, namely:—

“8. *Powers and functions of the Admission Supervisory Committee.*—(1) The Admission Supervisory Committee shall exercise following powers and perform the following functions, namely:—

(a) on receipt of a complaint regarding the admission made in contravention of the provisions of this Act or the rules thereunder, to inquire into the admission made by any private medical educational institutions in contravention of such provisions or the collection of fee exceeding the fee determined as per the provisions of this Act or the realisation of capitation fee or the profiteering and cause inspection of the institution for the purpose of making inquiry, on the basis of the said complaint or suomoto;

(b) to take appropriate action, after conducting an inquiry under clause (a), on an inspection report prepared by the concerned department on the direction of the Government or the concerned University or the appropriate authority;

(c) if satisfied that there has been any violation by such institutions of the provisions of this Act or the rules made thereunder regarding admission, recommend to the Government to take the following actions against such institutions, namely:—

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

(ii) declare admission made in respect of any or all the seats in an institution, in contravention of the provisions of this Act or the rules made thereunder invalid, and thereupon take necessary action causing the institution to forthwith cancel the admission of such students and the concerned University to cancel the enrolment of such student and cancel his results of concerned examination in which the student has already appeared;

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

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

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

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

(3) The Admission Supervisory 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 discovery and production of any document;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses and for local inspections.”.

9. *Amendment of section 8A.*—In section 8A of the principal Act so renumbered,—

(a) in the marginal heading for the word “Committee”, the words “Fee Regulatory Committee” shall be substituted;

(b) in sub-section (1),—

(i) for the word “Committee”, the words “Fee Regulatory Committee” shall be substituted;

(ii) in clause (a) for the word “Committee” the words “Fee Regulatory Committee” shall be substituted and the words and symbol “, and the fee so determined by the Committee shall be valid for such period as may be notified by the Government” shall be omitted;

(iii) clause (b) shall be omitted;

(iv) clause (c), its items and proviso shall be omitted;

(c) in sub-section (2) for the word “Committee” the words “Fee Regulatory Committee” shall be substituted;

(d) in sub-section (3) for the word “Committee” the words “Fee Regulatory Committee” shall be substituted;

(e) in sub-section (4),—

(i) for the word “Committee” the words “Fee Regulatory Committee” shall be substituted and the words “admission or” shall be omitted;

(ii) clause (b) shall be omitted;

(iii) clause (c) shall be relettered as clause (b) and in the clause (b), so relettered, for the word “Committee” the words “Fee Regulatory Committee” shall be substituted;

(iv) clause (d) shall be omitted and clause (e) and clause (f) shall be relettered as clause (c) and clause (d) respectively;

(f) for the existing sub-section (5), the following sub-section shall be substituted, namely,—

“(5) Before recommending to the Government to initiate actions under sub-section (4) the institutions shall be given a reasonable opportunity of being heard.”

10. *Amendment of section 11.*—In section 11 of the principal Act,—

(a) in sub-section (1) for the word “Committee”, the words “Fee Regulatory Committee” shall be substituted;

(b) in sub-section (2) and in its proviso for the word “Committee” the words “Fee Regulatory Committee” shall be substituted.

11. *Amendment of section 12.*—In section 12 of the principal Act, for the word “Committee” the word “Committees” shall be substituted.

12. *Amendment of section 13.*—In section 13 of the principal Act, for the word “Committee” the word “Committees” shall be substituted.

13. *Amendment of section 16.*—In sub-section (2) of section 16 of the principal Act,—

(i) in clause (a) for the word “Committee” the word “Committees” shall be substituted;

(ii) in clause (b) for the word “Committee” the word “Committees” shall be substituted.

14. *Amendment of section 17.*—Section 17 of the principal Act shall be omitted.

15. *Amendment of section 19.*—Section 19 of the principal Act shall be omitted.

STATEMENT OF OBJECTS AND REASONS

On the basis of the decision of the Government for regulation of admission and fixation of fee to private medical educational institutions in the State of Kerala and to provide for reservation of seats to students belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes in medical educational institutions, the Kerala Legislative Assembly had passed the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 (15 of 2017). In the judgment dated 2nd November, 2017 pronounced by the Hon'ble High Court of Kerala in WP(C)No.30032/2017(D) and connected cases, wherein the private medical educational institutions challenged the provisions of the said Act, the Court struck down certain provisions of the Act, such as quorum for Committee meeting, power to fixing of provisional fee, provision for validating the provisional fee fixed, provision for entering agreement with private medical educational institutions etc. Since the regulation of admission and fixation of fee are two entirely distinct matters, the Court observed that separate committees are appropriate for each of these and also directed to reconsider the structure of the existing ten member committee.

The Bill is intended to amend the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 in tune with the said judgment of the Hon'ble High Court.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

(1) Clause 3 of the Bill empowers the Government to issue Gazette notification for constituting each committees in the name of Admission Supervisory Committee and Fee Regulatory Committee.

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

K. K. SHAILAJA TEACHER.

EXTRACT FROM THE RELEVANT PORTIONS OF THE KERALA
MEDICAL EDUCATION (REGULATION AND CONTROL
OF ADMISSION TO PRIVATE MEDICAL
EDUCATIONAL INSTITUTIONS)
ACT, 2017 (15 OF 2017)

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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;

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

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

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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 purpose of supervision and guidance of admission process and for the fixation of fee that may be charged from students who get admission in medical courses in private medical educational institutions.

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

- (a) a retired judge of the Supreme Court or - Chairperson
High Court
- (b) Secretary, Higher Education Department - Member
(*ex-officio*) Secretary

- (c) Secretary, Health and Family Welfare - Member
Department (*ex-officio*)
- (d) Secretary, Law Department (*ex-officio*) - Member
- (e) Director, Directorate of Medical - Member
Education (*ex-officio*)
- (f) Commissioner for Entrance - Member
Examinations (*ex-officio*)
- (g) a representative from the Medical - Member
Council of India nominated by the
Government
- (h) an educational expert nominated by the - Member
Government
- (i) an educational expert belonging to the - Member
Scheduled Caste or Scheduled Tribe
community, nominated by the
Government
- (j) one Chartered Accountant, nominated - Member
by the Government

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 publication of the notification constituting the Committee.

(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 the rules made thereunder.

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(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.

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

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

(3) The quorum for a meeting of the Committee shall be four.

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

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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 the following powers and perform the following functions, namely:—

(a) require a private medical educational institution to furnish, within 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 may be notified by the Government;

(b) If the committee is of the belief that for any reason delay will occur in the determination of final fee, it may fix a provisional fee and publish and

within ninety days from the date of publication of order fixing such fee final fee shall be fixed and the same shall be notified as specified in clause (a);

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

(i) enquire into admission made in contravention of the provisions contained herein or collection of fee in excess of the fee determined under the provisions of this 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 (4), 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 fee determined by the Committee shall be applicable to a student who is admitted to a private 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 medical educational institution shall collect a fee amounting to more than one year's fee from a student 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.

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

(a) impose a monetary fine upto ten lakh rupees on the institution together with interest thereon at the rate of twelve 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 this Act or the rules made thereunder 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 the institution 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 twelve 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.

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

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

- (a) the location of the private medical educational institution;
- (b) the nature of the medical course;
- (c) the cost of land and building;
- (d) the available infrastructure, teaching and 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;
- (g) any other relevant factor.

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

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 thirty 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 the officers or employees, or the Chairperson or members of the Committee for anything which is done or intended to be done in good faith under this Act.

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16. *Power to make rules.*—(1) The Government may, by notification in the Gazette, 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;

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

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19. *Validation.*—Notwithstanding anything contained in the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Ordinance, 2017 (14 of 2017) or in any rules made thereunder or in any judgment, decree or order of any court, the proceedings of the Admission and Fee Regulatory Committee fixing the fee provisionally and the fee so fixed as per order numbers AFRC 50/17/BDS/SFMC, AFRC 50/17/MBBS/SFMC dated the 13th day of July, 2017, shall be deemed to be valid till the fee is fixed finally subject to the provisions of this Act and the same shall not be called in question before any court of law for the reason that there was no provision in this behalf in the said Ordinance or there was defect in the procedure fixing the fee.