

RGICS

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RGICS LEGISLATIVE BRIEF

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The Indian Institute of Management Bill, 2017

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KEY MESSAGES

- **A missed chance for creating an -inclusive curriculum, policies, faculty and corporate environment in the country:** IIMs have traditionally been the hunting ground for large sections of Corporate India, which anecdotally at least has had poor representation from both women and traditionally marginalized communities at all levels, and especially the senior and board level. While the private sector has used the ‘lack of qualified talent’ as the excuse for this poor representation in the past, the absence of a strict policy for reservation in faculty recruitment means that the government misses a chance to correct this imbalance by creating socially and economically inclusive learning spaces.

At this point it is essential to consider the Companies Act 2013 and SEBI guidelines that made it mandatory for all listed companies to have at least one woman on their boards before April 1, 2015. As per the 57th Report of Standing Committee on Finance (2011-12) this provision was introduced to give ‘salience to the female gender in the realm of corporate governance’ and to ‘encourage women’s participation in decision making at every level in the society.’ⁱ In current times the relevance of this amendment is extremely significant as recent studies in the United States demonstrate that boardroom diversity results in increased profitability; growing diversity in thought and perspective leads to good decision making.ⁱⁱ But can India profit from boardroom diversity if the pipeline for talent in India Inc. - of which the IIMs make a significant share – is being guided and honed by a non-inclusive, non-diverse faculty and administrative body? As IIMs ready tomorrow’s corporate leaders, will their now supreme governing Body and the faculty, have the sensitivity to anticipate the concerns as well as create a conducive environment for students - from these traditionally marginalized communities - to succeed? It is not hard to speculate that there will be not much change in how well these communities are presently represented in IIMs and corporate spaces. The Board of Governors will have greater autonomy if this Bill is passed but they are unlikely to achieve inclusivity in the corporate workspaces and corporate Boards when their guiding authorities themselves do not prioritize these values. Despite the present government’s inclination to favor economic growth, its reluctance to ensure diversity among the Board of Governors contradicts international best practice of encouraging the same for better corporate governance and profitability.

Without a suitable amendment, the passing of this Bill in its present form would defeat our Constitutional principles of achieving social justice and our workplaces and society at large will be the poorer for it.

- **Claim to achieve ‘global excellence standards’ is erroneous:** This Bill’s claim to achieve ‘global excellence standards’ is erroneous as the focus is not on improving management education as it is taught in India, since private management institutes are not covered under the IIM Bill, 2017.
- **Autonomy will not ensure academic excellence:** Academic rigor and quality of education are overlooked as the emphasis is on creating conducive environment for commercial expansion of the IIMs.

PART I. INTRODUCTION

The Indian Institute Management (IIM) Bill, 2017 aims to grant “complete autonomy” to the elite B-schools and was cleared by the Union Cabinet on January 24, 2017.ⁱⁱⁱ As per the statement of objects and reasons the purpose of this Bill is – ‘to declare certain Institutes of management to be institutions of national importance with a view to empower these institutions to attain standards of global excellence in management, management research and allied areas of knowledge and to provide for certain other matters connected therewith or incidental thereto.’ Being societies, IIMs are not authorized to award degrees and, hence, they award Post Graduate Diploma and Fellow Programme in Management since they are separate autonomous bodies registered under the Societies Act, 1860. The IIM Bill, 2017 will declare each of the 20 IIMs as Institutions of National Importance after which they will be able to award degrees instead of diplomas to the students like the IITs, NITs and AIIMS.^{iv}

Background

The IIMs were concerned about government overreach in their management of the Institutes. Despite the earlier draft of the IIM Bill having various enabling provisions the IIMs insisted on having greater autonomy in deciding the structure of the Institute and envisaged accountability only with respect to legal compliance, financial stability and growth of the institutes.^v By approving the redrafted IIM Bill, 2017, the Cabinet has laid to rest the concerns regarding excessive control of the Ministry of Human Resource Development in the functioning of the IIMs. Academic N.R. Madhava Menon, who headed a committee on the autonomy of the central universities in 2011, had recommended that the President be relieved of the responsibilities of ‘Visitor’ at educational institutions. His report had said that nowhere else in the world is a constitutional authority given such a role in university matters.^{vi} While his point is well taken, if fee structures and administrative policy are to remain completely under the control of the Board and the Bill does not address the social objectives mentioned earlier then it may have long term ramifications.

At what cost are IIMs being made autonomous?

A very important question the government needs to answer before this Bill is passed is why an exception has been carved out among the Institutes of National Importance to give greater autonomy to only to the IIMs? And further what cost will have to be borne for IIMs to have their autonomy? The failure to achieve the social justice goals enshrined in the Constitution and the failure to introduce diversity in the higher management levels of the corporate sector by refraining from implementing reservation in the faculty appointments is the most obvious and important cost. Even more so as it is the faculty that will decide administration policies, which in turn would impact the inclusivity in the future graduating classes and consequently also a large section of our future corporate workforce.

CHANGES IN BILL

The differences between Smriti Irani's IIM bill and the revised bill

Earlier bill

- President to be Visitor
- Directors to be appointed with Visitor's approval; chairpersons to be appointed by the board of governors of each institute
- The proposed coordination forum of the institutes, which will discuss common issues, to be chaired by the HRD minister
- No explicit provision for reservations in faculty recruitment
- Board of each institute to decide fee hikes, expansion

Revised bill

- Visitor's post abolished
- Directors and chairpersons to be appointed by the board of governors of each institute
- Coordination forum to be headed by an eminent person
- The institutes must follow government policy directives (hint at implementing reservations in faculty recruitment)
- Board of each institute to decide fee hikes, expansion (no change)

Source: https://www.telegraphindia.com/1161008/jsp/nation/story_112609.jsp#.WKKzMm997IU

PMO has pushed for greater autonomy to the IIMs

It should be of utmost concern to policy makers that with a lack of strong emphasis on creating an inclusive Board of Governors and faculty and further granting greater powers to the Board to decide the administrative policy of Institute, fee structure etc. the government could well be ensuring that the IIMs will be out of reach for large sections of the society. Interestingly it was the PMO that was insistent on making IIMs as autonomous as possible. This is evident from the facts that the PMO wanted all references to the 'Visitor' dropped from the Bill; have only one instead of two nominees of the Central Government in the Board; and five instead of three alumni members – thus in all likelihood perpetuating the views of an 'old boys club' from a certain section of society. It was also the PMO that wanted the 'Coordination Forum' to be headed by an eminent person, not the HRD Minister as proposed by the ministry. After Prakash Javadekar became the Union Minister of MHRD all the demands made by the PMO were accepted after which the Cabinet approved the Bill.^{vii}

That the IIMs will be accountable to the Central Government as they exercise their powers and functions and that their reports are to be tabled in the Parliament is just a sop as the ultimate authority in all matters is the Board of Governors. This document explains that the grant of autonomy to the IIMs on the pretext of ‘freeing’ the management education system to achieve global excellence will come at the cost of an inclusive body that will herald management education system in India. The absence of such a body will be unable to accommodate the interests of traditionally backward communities as well as women. A skewed diversity in the student body will reflect in the IIM graduates who eventually form a part of the corporate workforce and also, as history is evidence, top management level positions. Perhaps the short term ramifications of this Bill are not that apparent. However, in the long run this Bill would most likely not benefit the marginalized sections of our society and all stakeholders must raise these concerns.

PART II: KEY ISSUES

Following are some of the key issues concerning this Bill:

1. **No strict reservation policy in faculty recruitment**
 2. **Other B-schools fear popularity of their diplomas will fall**
 3. **'New' IIMs will benefit the most with the Institute of National Importance (INI) status**
 4. **Quality of education in IIMs needs to improve before they are given complete autonomy**
 5. **Unchecked autonomy to IIMs could replace focus on academic rigor with profiteering motives**
 6. **Possible escalation in fee structure owing to Board's discretionary powers**
- **No strict reservation policy in faculty recruitment:** Even though the present Bill introduces an affirmative policy while hiring teachers it has been reported that experts believe this policy is “too mild” to enforce a quota-based system. It was reported by *The Telegraph* that P.S. Krishnan, an expert on reservation issues, said the government had given the IIMs enough leeway to avoid implementing the reservation policy - 15 per cent for Scheduled Castes, 7.5 per cent for Scheduled Tribes and 27 per cent for other backward classes - while hiring faculty. The IIMs have been avoiding reservation in faculty recruitment since their inception, citing a government order of 1975 that exempted scientific and technical posts from the quota ambit.^{viii}

Clause 8(3) of the Bill states -

The admission to every academic course or programme of study in each Institute shall be based on merit assessed through transparent and reasonable criteria disclosed through its prospectus, prior to the commencement of the process of admission by such Institute:

Provided that nothing in this section shall be deemed to prevent the Institute from making special provisions for the employment or admission of women, persons with disabilities or for persons belonging to any socially and educationally backward classes of citizens and, in particular, for the Scheduled Castes and the Scheduled Tribes.

With the Bill refraining from instituting binding affirmative policy reservation in faculty recruitment for the IIMs, this government is preventing the social diversification in one of the premier institutes of this country. In spite of the fact that the Institutes would have reserved faculty positions for SC/ST/OBC candidates provided the government issued such directions in writing, this government has not created a strict mandate for the same in the Bill, fairly indicative of the fact that representation of these categories is not its priority.^{ix}

Whether the socially and economically backward classes of the population will benefit as this government recognizes IIMs as Institutes of National Importance is a question that remains to be answered. While lack of merit can be used an excuse by the IIMs for not recruiting faculty from the reserved categories; the

IIMs and this government have ignored that an emphasis on recruiting faculty belonging to SC/ST/OBC categories would have also supported encouragement of students from SC/ST/OBC categories to pursue higher studies and possibly apply for faculty positions. By steering clear of making affirmative action, traditionally marginalized sections of our country have lost an opportunity to benefit from government's endeavors 'to attain standards of global excellence in management' by empowering the IIMs.

- **Other B-schools fear popularity of their diplomas will fall:** By virtue of their reputation IIMs have lent a certain amount of credibility to a postgraduate diploma in management (PGDM). Other big private B-schools which offer PGDM — such as XLRI-Jamshedpur, BIMTECH in Greater Noida and SP Jain Institute of Management and Research in Mumbai — are skeptical that if IIMs do not offer PGDM, their own PG diplomas will suffer in market value and put them at a distinct disadvantage. If this government is committed to 'attaining standards of global excellence in management and management research' it will have to improve the quality of Indian management education in totality. For this the focus has to be expanded beyond the 20 IIMs and have legislation that would provide a level playing field to all PGDM institutions accredited by National Board of Accreditation or National Assessment and Accreditation Council, thus contributing to improve the overall quality of management education.^x
- **'New' IIMs will benefit the most with the Institute of National Importance (INI) status:** It has been reported that alumni and current students are of the opinion that those in the newer branches of IIM will benefit the most from passing of this Bill. Out of the 20 IIMs in the country the oldest three at – Calcutta and Ahmadabad, Bangalore – are considered most prestigious and their alumni and robust placement rates trump whether they award a degree or a diploma. However, the new IIMs at one – Visakhapatnam, Amritsar, Nagpur all established in 2015 – could benefit from this move as students do not have to debate choosing a diploma from an IIM or a degree.^{xi} If these reports are to be believed it appears that this Bill caters to the commercial expansion of IIMs without the quality of education being of paramount concern.
- **Quality of education in IIMs needs to improve before they are given complete autonomy:** Samir K Barua, former director of IIM-A, states that most new IIMs are mere nameplate institutions, several with no director, no permanent faculty or administrative staff. According to him the shortage of qualified teachers plagues even the established IIMs and therefore the proliferation of IIMs without concern for qualified academic resources to run them has meant severe dilution of brand IIM. Since the quality of education imparted in the new IIMs is yet to stabilize at accepted levels granting them complete autonomy without academic rigor is likely to be counterproductive. Further, the temptation of this government to start "a plethora of programmes opportunistically, including doctoral and bachelor's programmes, may further hurt the cause of management education that is already reeling under onslaught on quality."^{xii}
- **Unchecked autonomy to IIMs could replace focus on academic rigor with profiteering motives:** As per Samir K Barua, former director of IIM-A, the expansion of IIMs into distance education has been indiscriminate with little control on the quality of offerings. As academic rigor of teaching programmes is on the decline with the emphasis shifting to revenue generation rather than transfer of cutting edge knowledge established IIMs are moving on the path to become "pedestrian institutions."^{xiii} However, Ashish Nanda, Director at IIM-A, disagrees. He states that the small size of established IIMs (in student and faculty strength) which is roughly half the size of most top quality MBA institutions in the world is hurting the academic vitality of IIMs making them uneconomical.^{xiv}

In any case, what cannot be ignored is the fact that with IIMs being given greater autonomy and the emphasis on commercial expansion – the Board under the Bill has the power to set up centers of management studies outside India – academic rigor is very likely to take a back seat in favor of revenue generation.

- **Possible escalation in fee structure owing to Board’s discretionary powers**

As per the Bill, the Board shall specify regulations to determine the fee structure for the course of study in the IIMs. As the government does not have the final say in capping the fees it is not an unforeseen possibility that future students could be subject to fee hikes. Especially since the IIMs have been insistent that they retain control fee structure, admission criteria, formation of academic departments, salary of the staff and constitution of the Board.^{xv} The need to retain decision making power in these aspects with the Board exemplifies their reluctance to adhere to the stand the government has taken with regard to other INIs.

With more power to the Board and lesser governmental interference many aspiring students from marginalized sections may be compelled to take loans. In a climate of job deficit and a young workforce, such students would enter the workforce with large debts and their decisions to take jobs will be motivated by their concerns of debt repayment. Such decisions will have a detrimental impact on the probability of IIM graduates taking up teaching, research oriented jobs, higher studies which would be a loss for the objective of this Bill itself which aims to acquire global excellence in management research itself.

PART III. THE BILL

Following are some key features of the proposed Indian Institutes of Management Bill, 2017:

- **Greater autonomy to IIMs:** This Bill bestows more autonomy than what the IIMs currently enjoy. Additionally, IIMs will also be able to grant degrees to their students. If this Bill is passed then the IIMs will be the first set of ‘Institutions of National Importance’ in which the President will have no direct role. In other institutions such as the IITs and NITs, the President acts as the ‘Visitor’ who appoints the directors and chairpersons on the advice of the HRD Ministry. IIMs, under the Bill, are empowered to appoint their own directors and chairpersons. Currently, registered as Societies, they don’t enjoy this liberty.^{xvi} This is a major departure from the Institutes of National Importance model. Major appointments had to go through the Visitor. Who replaces him, if there is a replacement, is the question that will determine the extent of the autonomy of IIMs.^{xvii}
- **Management of the IIMs will be Board driven:** The Chairperson and Director of an institution will be selected by the Board. This means neither the human resource development (HRD) ministry nor the president of India will have a say in the selection of top executives at these B-schools. There will be greater participation of experts and alumni, and inclusion of women and members from Scheduled Castes/Tribes on the Board. The Bill also sets up a ‘Coordination Forum’ to “facilitate sharing of experiences and concerns with a view to enhance the performance of the institutes”. Unlike the IIT Council, which also coordinates activities of the 23 IITs, the 33-member Forum of the IIMs will not be headed by the HRD Minister. Instead, “an eminent person” shortlisted by a search-cum-selection committee, will be appointed as the Forum’s chairperson for a term of two years.
- **Periodic review:** A periodic review of the performance of the institutions will be done by independent agencies, and the results of the same will be placed in the public domain. Further, the annual report of the institutions will be placed in Parliament and CAG will audit their accounts.

PART IV. COMPARISON WITH PREVIOUS UPA BILL

The present IIM Bill has not been the first attempt to bring IIMs under the purview of the Parliament so that they have the power to grant degrees instead of diplomas. In 2011, the then Union Minister had initiated consultation with IIMs to arrive at some solution to enable the business schools to award degrees.^{xviii} Following were the essential features of the IIM Bill introduced by the previous government:

WHAT THE BILL STATES

- The senate will be the principal academic body in each IIM
- The IIM Council will be the overarching advisory body for the IIMs
- The IIMs will have to introduce reservation in faculty and non-faculty posts as per the rules of the government of India
- Provision has been made for periodic review of the performance of the IIMs
- The selection procedure for the chairman of the board of governors and the director of an IIM will remain the same

Source: <http://indiatoday.intoday.in/story/iims-oppose-draft-bill-prepared-by-hrd-ministry-seek-autonomy/1/247077.html>

Reports suggest that out of the 13 IIMs, ‘younger’ IIMs supported this proposal as they stood to benefit from the degree granting power, while the older IIMs were reluctant to accept this degree-granting status at the cost of governmental interference in their institutional affairs.^{xix} Although, it was clarified by the HRD ministry that – the proposed IIM Council would only be a coordinating body and a forum for discussions and will not have the kind of powers the IIT Council has under its Act.^{xx}

A stark contrast can be noticed between both the Bills. The present draft allows for almost complete autonomy to the IIMs in managing their institutional affairs with minimal oversight by the government. Further, unlike this previous bill the 2017 draft of the IIM Bill does not mandate reservation in faculty and non-faculty posts, something which the IIMs have been resisting.

PART V. CRITIQUE OF THE BILL

It has been often argued that less autonomy and more governmental control is responsible for the poor quality of higher education in India. It has been the vision of this government to grant academic and administrative autonomy to the ‘good quality’ higher education institutions.^{xxi} In keeping with this vision, this government has envisaged a similar future for the IIMs. Due to concerns expressed by the IIMs regarding the curbing of their autonomy the Bill was never passed during the UPA tenure. The present government has addressed this bone of contention and ensured that the IIMs are given greater autonomy – by removal of the President as the ‘visitor’, granting wider powers to the Board of Governors. When the draft Bill was first made public in June 2015, the IIMs objected to the ‘excessive government control’ as they would have had to seek the government’s approval for every decision, including fee structure, admission criteria, formation of academic departments, salary of the staff and constitution of Board of Governors.^{xxii} Under the new Bill these powers will be vested in the Board of Governors comprising of women, SC/ST and alumni among others.

Lack of a diverse Board of Governors could hamper creation of an inclusive employment space in the private sector

As the Board of Governors decides policy relating to the administration and working of the Institute with greater autonomy it is difficult to say how influential the SC/ST and women members of the Board will be in this process. One member from SC/ST category and three women members mandatorily have to be a part of the 15 member Board, clearly making them numerically weak. To add to this, the absence of government backing for a strict reservation policy in the faculty it is tough to say how well the interests - of women as well as the socially and economically backward communities - will be represented during formulation of policies in IIMs. The larger impact of not having inclusivity at the higher levels of decision making could adversely affect the Institute’s environment in being a welcoming and inclusive space for the diverse Indian milieu. Will this autonomy be utilized by the Board to bring in social and gender diversity in the student body, course design and research focus etc.? Instead if an increasingly diverse group of students were to graduate from premier Institutes like IIMs then the private sector – which creates a large proportion of the jobs -would be unable to cite a lack of qualified women and SC/ST candidates as the reason for lack of diversity at all levels in the corporate world – especially the Boards of India Inc. It is therefore clear that the Modi government is not really committed to the idea of providing larger opportunities to traditionally marginalized sections which is an obvious ramification of its decision to not have mandatory reservations in the IIMs. Especially since the Ministry of Social Justice and Empowerment is contemplating introducing reservations in the private sector for Scheduled Castes and Other Backward Classes.^{xxiii}

Autonomy is not sufficient to ensure academic excellence

The question we are left to answer is whether grant of greater autonomy to IIMs will directly result in improvement of the quality of management education. It is obvious that autonomy cannot single handedly ensure excellence. It has to be supported by the Board of Governors by enforcing standards on the faculty, rather than allowing them “to call the shots and protect its privileges, as is often the case in India.”^{xxiv} Autonomy needs to be balanced by accountability. As per Clause 11(9) of the Bill the Board of Governors in the exercise of their power and discharge of their functions will be accountable to the Central Government. Given the history of reluctance exhibited by the IIMs to governmental interference stalling the passing of the earlier draft of the IIM Bill, 2015 and this government’s vision to make higher educational institutions

autonomous – to what extent the accountability of the Board to the Central Government will settle all fears of them becoming autocratic is hard to say as of now.

Will this powerful Board of Governors be conscientious? Will the Board overpower the voices of its women and SC/ST members?

If this Bill is passed the Board would enjoy the power to decide the administration policy for the Institute and in general lay down how it is to be developed. With these powers and minimal governmental interference, will the Board emphasize on Access, Equity and Quality – three widely acknowledged criteria for judging an education system – while formulating policies? Will it ensure to not let revenue generation trump the cause of letting the fee structure remain affordable? Will the largest allocation of funds be made for recruitment excellent faculty and to encourage research over commercial expansion of the Institute? This should be of concern even more so in case of the new IIMs still establishing themselves. Since the Bill does not mandate the manner in which decisions are taken is there a possibility that a quorum is formed and made responsible for taking decisions regarding important matters? In that case what will be the significance of making reservations in the Board for these categories? Mere statutory representation is not sufficient especially when education at premier Institutes like IIMs are concerned. It appears this government has failed the marginalized sections of the society by not ensuring their representative have a strong voice in the highest decision-making body of the IIM.

In conclusion, it is true that the present Bill is an attempt by this government to free the IIMs from the shackles of bureaucratic interference and laxity in decision making. But whether it benefits the IIM as a body corporate or will it benefit the cause of better, management education and research accessible to every deserving candidate in India continues to remain a concern. And most importantly it fails to create an inclusive environment that should ideally lead to churning out management graduates who would help create a more inclusive work space and society in India.

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