
ARRANGEMENT OF CLAUSES

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Confidential (Draft)

STATEMENT OF OBJECTS AND REASONS

There is public concern that schools should not resort to unfair practices, such as charging of capitation fee and demanding donations for admitting students, not issuing receipts in respect of payments made by or on behalf of students, admission through non-transparent and questionable admission processes and false claims through misleading advertisements, engagement of unqualified or ineligible teachers, forcible withholding of certificates and other documents of students.

Prompt and effective deterrent action is constrained in the absence of any Central law prohibiting such unfair practices. It would be in public interest to protect the interests of students and parents by providing measures against such unfair practices.

THE PROHIBITION OF UNFAIR PRACTICES IN SCHOOLS, 2012

A

BILL

To provide for the prohibition of certain unfair practices in the schools and to protect interests of parents and students admitted or seeking admission therein and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1.

- 1) This Act may be called the Prohibition of Unfair Practices in the Schools Act, 2012
- 2) It extends to the whole of India except the State of Jammu and Kashmir
- 3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

Short title,
extent and
commencement

Definitions
(Can be
improved
further)

2. In this Act, unless the context otherwise requires,-

- I “admission fee” means fee charged in one lump sum at the time of admission in a school.
- II “Screening procedure” means method of selection for admission of a child in preference over another, other than a random method.
- III “advertisement” means any document described or issued

through any form of media and includes any notice, circular or other documents inviting persons domiciled in India for admission to school;

IV “Appropriate Authority” means

1. the Central Government for schools established, owned or controlled by the Central government, or by the administrator of the Union territory, having no legislature,
2. The affiliating body for private independent schools provided such body affiliates schools in more than one State;
3. the State Government for a school, other than the school referred to in sub-clause 1) and 2), established within the territory of a State
4. the Government of a Union territory having legislature for a school other than the school referred to in sub-clause 1) and 2), established within the territory of that Union territory;

V “Appropriate Government” means-

1. the Central Government for (i) schools established, owned or controlled by the Central government, or by the administrator of the Union territory, having no legislature,
2. the State Government for a school, other than the school referred to in sub-clause 1), established within the territory of a State
3. the Government of a Union territory having legislature for a school other than the school referred to in sub-clause 1), established within the territory of that Union territory;

VI “capitation fee” means any kind of donation or contribution

or payment other than the fee notified by the school:

VII “disability” means disability as defined in the Clause (i) of Section-2 of the ‘Persons with Disabilities (Equal Opportunities Protection of Rights and full Participation) Act, 1995 and as defined under clause (j) and (o) of section 2 of National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 & amendments thereto’.

VIII “examination” means examination or assessment conducted by the school or any Board of school education.

IX “guardian”, in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or a statute.

X “information notice” means any publication, whether in print or otherwise, issued for providing fair and transparent information relating to a school to the general public including to those seeking admission in such school by the management of such school or any authority or person authorized by such school to do so.

XI “local authority” means a Municipal Corporation or Municipal Council or *Zila Parishad* or *Nagar Panchayat* or *Panchayat*, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

XII “other fees and charges” – such fee including tuition fee and charges levied by the school on such regular intervals (monthly/ quarterly/ half-yearly/ annually) as specified by the affiliating body or the Appropriate Government, as the

case may be.

XIII “parent” means either the natural or step or adoptive father or mother of a child;

XIV “prescribed” means prescribed by rules made under this Act;

XV “private coaching” means teaching or guidance to students for some monetary consideration other than that given by the school as salary.

XVI “school” means any recognized school imparting school education and includes-

1. a school established, owned or controlled by the appropriate Government or a local authority;
2. an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
3. an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority; and
4. Includes pre-school classes.

XVII “school education” means education from pre-school classes through class one to twelfth;

XVIII “sexual harassment” means any unwelcome sexual gesture or behavior whether done directly or indirectly, sexually coloured remarks; physical contact and advances; showing pornography; a demand or request for sexual favours; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

XIX “society” in relation to a school means any Body corporate

registered under the Societies Registration Act, 1860 and, “trust” means any Body registered under the Indian Trusts Act, 1882 or any other law for the time being in force;

XX “State” means a State specified in the First Schedule to the Constitution and shall include a Union territory;

XXI “Ward” means a student under the care and control of any ‘Institution’/’School’ to which he is admitted or likely to be admitted.

CHAPTER II

PROHIBITION OF ACCEPTING ADMISSION FEES AND OTHER CHARGES WITHOUT RECEIPT, ADMISSION WITHOUT INTER SE MERIT LIST, ACCEPTING CAPITATION FEE AND PUBLICATION OF INFORMATION NOTICE.

3.

- 1) (a) No School shall, for admission in respect of any seat in any Class run in such School, accept any payment towards admission fee and other charges other than such fee or charges for such admission as declared by it in advance at least sixty (60) days prior to date of admission in the information notice issued by the schools or as specified by the appropriate government/ authority (?) for admission against any such seat; and
(b) The School shall issue a proper receipt in writing for such payment to the parent/guardian of student concerned so admitted.
- 2) No School shall charge any fee for information notice, or, admission form, or for screening procedure and shall place all information contained in them on its website or notice board.

Prohibition of accepting admission fee and other charges without receipt.

4. Prohibition of admission without specified inter-se merit for selection of students

- 1) In case of selection for admission to classes IX-XII, for seats declared by the school in its information notice, no person shall be eligible for admission except through *inter se* merit based on the applicable laws, rules, regulations, bye-laws of the appropriate authority and the process of deciding inter se merit will be mentioned in the information notice of each school.
- 2) Every school referred to in sub-section (1) shall:-
 - a) maintain the records of the entire process of screening of students in respect of the admission of each student;
 - b) exhibit such records in its website/records maintained ;
 - c) be liable to produce such record, whenever called upon to do so by the appropriate authority under this Act or any other law for the time being in force.

Prohibition of admission without specified *inter se* merit for selection of students.

Provided that the records under this clause shall be maintained for a period of two years reckoned from the date of completion of the admission process subject to the condition that where the admission has been questioned in any court of law or tribunal, the records shall be maintained for such period as the court or tribunal may deem fit.

5. Every school, shall publish free of cost, at least sixty days prior to the date of the commencement of admission, an information notice containing the following, for the purposes of informing those parents/guardians intending to seek admission of their wards to such school and the general public, namely:—

Mandatory publication of information notice, its contents and its pricing.

- (i) each component of the fee, deposits and other charges and amounts payable thereon by students admitted to such school for different classes and the other terms and conditions of such payment;
- (ii) the percentage of tuition fee and other charges refundable

to a student admitted in such school in case such student withdraws from such School before or after completion of course or programme of study and the time within, and the manner in, which such refund shall be made to that student;

(iii) the number of seats available in different classes for which admission is proposed to be made;

(iv) the conditions of eligibility including the minimum and maximum age limit of persons for admission as a student in a particular class, where so specified by the appropriate government.

(v) the process of admission and selection of eligible candidates applying for such admission, including all relevant information in regard to the details of screening procedure for selecting such candidates for admission to each class beyond class 8;

(vi) details of the teachers, including their educational qualifications and teaching experience and also indicating therein whether they are on regular basis or on contract;

(vii) the minimum pay and other emoluments payable for each category of teachers and other employees;

(viii) information with regard to physical and academic infrastructure and other facilities including hostel accommodation, laboratory, library and health checkup, industry tie-up wherein the practical training is to be imparted to the students and in particular the facilities accessible by students on being admitted to the school;

(ix) broad outlines of the curriculum followed by the School for every class, text books followed including the teaching hours, criteria for promotion to higher classes, practical sessions and other assignments;

(x) all relevant instructions in regard to adhering to code-of-conduct for students within the campus of the school, and the consequences thereof for violating the provisions of any instructions in this regard.

(xi) any such other information which may be specified by the

appropriate authority;

Provided that a school shall also publish information referred to in items (i) to (xi) of this sub-section, on its website/ notice board, and the attention of prospective students and the general public shall be drawn to such publication on the website/ notice board through information displayed prominently at the entrance of the school;

6. (1) No school shall, directly or indirectly, demand or charge or accept, capitation fee or demand any donation, by way of consideration either in cash or kind or otherwise for admission to any seat or seats in any class of study.

Prohibition of
capitation fee
and other
unfair
practices .

(2) No person shall, directly or indirectly, offer or pay capitation fee or give any donation, by way of consideration either in cash or kind or otherwise, for obtaining admission to any class in any school.

(3) No school shall indulge in any kind of sexual harassment.

(4) No school shall impose or collect any fees or amount other than the fees, as specified in Clause 5 (i) during the mid session.

(5) No school shall deny admission or expel any student on the ground of having HIV/ AIDS or any other serious ailment or on the grounds of disability.

(6) No school shall directly/indirectly insist for private coaching in the school or outside the school, after the school hours.

(7) No school shall insist for purchase of books, uniform, stationary or any other related materials from the school premises or a particular shop or a shop notified for this purpose,

(8) No school shall subject its students to physical punishment or mental harassment.

(9) No school shall withhold its students to appear in any Examination for which they are eligible and desirous of appearing.

(10) No school shall expel any student on account of poor academic performance or detain him/ her arbitrarily.

7. (1) No school, shall in its possession or custody, of any document deposited with it by a student for the purpose of seeking admission in such school, shall refuse to return such certificate, document to that student or withhold such certificate or other document with a view to induce or compel such student to pay any fee or fees in respect of any course which such student does not intend to pursue or avail any facility in such school.

Prohibition on refusal to, return, or, withholding certificates, or, refund of fee, etc.

(2) In case a student, after having been admitted to a school, for pursuing any course, subsequently withdraws from that school, no school in that case shall refuse to issue TC and refund such percentage of fee deposited by such student, within such time and in such manner as has been mentioned in the information notice of that school.

(3) No school shall give/issue pass Transfer Certificate to any student who has not qualified/cleared the subjects as specified by the appropriate authority to become eligible for promotion to higher class.

8. No school shall, issue or publish any advertisement not based on facts for inducing students for taking admission, including claim of being recognised/ affiliated by the appropriate authority where it is not so recognised/affiliated;

Prohibition of advertisements not based on facts

CHAPTER III IMPOSITION OF MONETARY PENALTIES

9. Any school, which knowingly does anything contrary to the information published by it in its information notice in violation of the provisions of section 5, shall, without prejudice to any proceedings for prosecution under the provisions of any other law for the time being in force, be liable to monetary penalty which may extend to ten lakh rupees.

Penalty for doing contrary to information in information notice.

10. (1) Any school, which demands or accepts capitation fee or donation, in any manner whatsoever, in violation of the

Penalty for demanding or accepting capitation

provisions of clause 6(1) & 6(2), shall, without prejudice to proceedings for prosecution under provisions of any other law for the time being in force, be liable to a monetary penalty which may extend to ten times the capitation fee charged.

fee and for other unfair practices.

(2) Any school, which indulges in other unfair practices, in violation of the provisions of clauses 6(3) to 6 (10), shall, without prejudice to proceedings for prosecution under provisions of any other law for the time being in force, be liable to a monetary penalty which may extend to ten lakh rupees.

11. Any school, which refuses to return any certificate or any other document or withholds such certificate or any other document without having sufficient cause to do so, or fails to refund the fees in violation of the provisions of section 7(2), shall, without prejudice to proceedings for prosecution under the provisions of any other law for the time being in force, be liable to a monetary penalty which may extend to one lakh rupees.

Penalty for refusal to return or withholding documents.

12. Any school, which publishes any advertisement, which is false or misleading, and in violation of the provisions of section 8, shall, without prejudice to proceedings for prosecution under the provisions of any other law for the time being in force, be liable to a monetary penalty which may extend to ten lakh rupees.

Penalty for false or misleading advertisement.

Confiscation of capitation fee, etc.

13. (1) Any capitation fee or donation or any other charges collected in contravention of the provisions of this Act, shall, without prejudice to proceedings for prosecution or imposition of penalty under the provisions of this Act or any other law for the time being in force, be liable to be confiscated, by an order made, by the body authorized to do so by the appropriate Government or by the State Education Tribunal, if available.

(2) The capitation fee or donation or any other charge confiscated shall be dealt in such manner as may be prescribed

by the appropriate government.

Appropriate
government
to notify
authority to
adjudicate
and
Grievance
Redressal in
Schools

14. The Appropriate Government shall within a period of six months from the date of commencement of this Act, notify the Authority and its jurisdiction to adjudicate the disputes and impose the penalty to be levied on the school which commits any act in contravention with the Provisions of this Act.

Provided that such an authority will ensure that every school in its jurisdiction establishes, in accordance with such requirements as may be specified by that authority, a mechanism to redress the grievances under this Act.

Adjudication
of penalty

15. (1) The authority notified in section 14 shall not admit any application unless it is satisfied that the applicant had availed of all the remedies available to him under the mechanism for redressal of grievances established under proviso to section 14.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him-

(a) if a final order has been made by the grievance redressal authority competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the grievance redressal authority competent to pass such order with regard to the application made, if a period of three months from the date on which such application was received has expired.

(3) The Notified Authority of appropriate jurisdiction may, if it finds merit in the contention of the applicant, award such relief to the applicant as to recompense him for the cost of litigation and other damages for injuries.

16. (1) A Notified Authority of appropriate jurisdiction shall

Adjudication
of penalty

not admit an application-

(a) in a case where a final order referred to in clause (a) of sub-section (2) of section 15 has been made, unless the application is made, within one month from the date on which such final order has been made;

(b) in a case where an application such as is mentioned in clause (b) of sub-section (2) of section 15 has been received and a period of three months had expired thereafter without such final order having been made, within one month from the date of expiry of the said period of three months.

(2) Notwithstanding anything contained in this section, an application may be admitted after the period of one month specified in clause (a) or clause (b) of this section, if the applicant satisfies the Notified Authority of appropriate jurisdiction that he had sufficient cause for not making the application within such period.

CHAPTER IV

MISCELLANEOUS

17. No court shall have jurisdiction to entertain any dispute or proceeding in respect of any matter which the Notified Authority, is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Bar of Jurisdiction

18. When a matter instituted before any Notified Authority is found to be frivolous or vexatious, it shall, for the reasons to be recorded in writing, dismiss the application and make an order that applicant shall pay to the opposite party such cost, not exceeding fifty thousand rupees, as may be specified in the order. frivolous or vexatious complains

19. Notwithstanding anything contained in any other law for the time being in force, appropriate authority may, by a general or special order, call upon school to furnish to that authority, periodically or as and when required any information concerning the activities carried on by the school as may be specified to enable that authority, to carry out the purposes of this Act. Provided that such information pertaining to admission which is more than two years old shall not be called.

Power to call for information.

Power of appropriate Government to make rules.

20. (1) The Appropriate Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act within a period of six month.

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

- (a) any such other information to be contained in the notice under clause (xi) of section 5;
- (b) The manner in which capitation fee or donation or other charges confiscated shall be dealt with under sub-section (2) of section 14;
- (c) Any other matter which is to be or may be, prescribed or in respect of which provision is to be made by the appropriate Government by rules.

Rules to be laid before Parliament.

21. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done

under that rule.

Protection of
action taken
in good faith

22. No suit or other legal proceedings shall be instituted against the Government or any officer or authority or person exercising powers or discharging functions under this Act for anything, which is in good faith done or intended to be done in pursuance of this Act or the rules or directions issued there-under.

Application
of other laws
not barred

23. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to
remove
difficulty

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of three years from the date of commencement of this Act.

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