



PARLIAMENT OF INDIA

RAJYA SABHA

225

**DEPARTMENT - RELATED PARLIAMENTARY STANDING
COMMITTEE ON HUMAN RESOURCE DEVELOPMENT**

TWO HUNDRED TWENTY-FIFTH REPORT

ON

THE EDUCATIONAL TRIBUNALS BILL, 2010

**(PRESENTED TO RAJYA SABHA ON 20TH AUGUST, 2010)
(LAID ON THE TABLE OF LOK SABHA ON 20TH AUGUST, 2010)**

**RAJYA SABHA SECRETARIAT
NEW DELHI**

AUGUST, 2010/SRAVANA, 1932 (SAKA)

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COMPOSITION OF THE COMMITTEE
(2009-10)

RAJYA SABHA

1. Shri Oscar Fernandes ---- *Chairman*
2. Shri M. Rama Jois
3. Shri N.K. Singh
4. Dr. Janardhan Waghmare
5. Shri Prakash Javadekar
6. Shri N. Balaganga
7. Dr. E.M. Sudarsana Natchiappan
8. Vacant
9. Vacant
10. Vacant

LOK SABHA

11. Shri Suresh Angadi
12. Shri Kirti Azad
13. Shri P.K. Biju
14. Shri Jitendrasingh Bundela
15. Shrimati J. Helen Davidson
16. Shri P.C. Gaddigoudar
17. Shri Rahul Gandhi
18. Shri Deepender Singh Hooda
19. Shri Prataprao Ganpatrao Jadhav
20. Shri Suresh Kalmadi
21. Shri P. Kumar
22. Shri Prasanta Kumar Majumdar
23. Capt. Jai Narain Prasad Nishad
24. Shri Sis Ram Ola
25. Dr. Vinay Kumar Pandey
26. Shri Tapas Paul
27. Shri Brijbhushan Sharan Singh
28. Shri Ashok Tanwar
29. Shri Joseph Toppo
30. Shri P. Viswanathan
31. Shri Madhu Goud Yaskhi

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary
Shri J. Sundriyal, Director

Shri Arun Sharma, Joint Director
Shri Sanjay Singh, Assistant Director
Shrimati Himanshi Arya, Committee Officer
Shrimati Harshita Shankar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorized by the Committee, present this Two Hundred and Twenty-fifth Report of the Committee on the Educational Tribunals Bill, 2010.*

2. In pursuance of Rule 270 relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, in consultation with the Speaker, Lok Sabha, referred** the Educational Tribunals Bill, 2010 (Annexure), as introduced in the Lok Sabha on the 3rd May, 2010 and pending therein, to the Committee on the 13th May, 2010 for examination and report.

3. The Bill being a landmark legislation for educational reforms in the country, the Committee issued a Press Release for eliciting public opinion. In response, many memoranda on the Bill were received from various organizations/individuals. Views of the stakeholders were circulated amongst the members of the Committee and also formed part of the questionnaire of the Committee referred to the Department of Higher Education for written replies.

4. The Committee considered the Bill in three sittings held on the 29th July, 11th and 18th August, 2010.

5. On the 29th July, 2010, the Committee heard the Secretary, Department of Higher Education on various provisions of the Bill.

6. The Committee, while drafting the report, relied on the following:

- (i) Background Note on the Bill received from the Department of Higher Education;
- (ii) Note on the clauses of the Bill received from the Department of Higher Education;
- (iii) Verbatim record of the oral evidence taken on the Bill;
- (iv) Presentation made and clarification given by the Secretary, Department of Higher Education;
- (v) Memoranda received from organizations/individuals; and
- (vi) Replies to questionnaire received from the Department of Higher Education.

7. The Committee considered its Draft Report on the Bill and adopted the same in its meeting held on 18th August, 2010.

8. For facility of reference, observations and recommendations of the Committee have been printed in bold letters at the end of the report.

NEW DELHI;
August 18, 2010
Sravana 27, 1932 (Saka)

OSCAR FERNANDES
Chairman,
Department-related Parliamentary
Standing Committee on
Human Resource Development

REPORT

I. INTRODUCTION

1.1 The Educational Tribunals Bill, 2010 was referred to the Department-related Parliamentary Standing Committee on Human Resource Development by the Hon'ble Chairman, Rajya Sabha under Rule 270 of the Rules of Procedure and Conduct of Business in the Council of States on the 13th May, 2010 for examination and report.

1.2 The Statement of Objects and Reasons to the Bill reads as follows:

“The goals of expansion in higher education to effectively compete with other countries can be achieved only if the regulatory regime and dispute-settlement process engender credibility and assurance. It is, therefore, proposed to establish a two-tier structure of Educational Tribunals at national and state level to adjudicate on the entire gamut of disputes that arise in the higher education system through a fast track, speedy recourse to justice delivery. Such a reform of institutional structure would enable building an effective system of checks and balances in higher education which would help the orderly growth of the sector.”

1.3 The Secretary, Department of the Higher Education, in her deposition before the Committee, gave the background for bringing the proposed legislation. The National Policy on Education, 1986, *inter alia*, advocated establishment of tribunals at the national and state level on the lines of Administrative Tribunals. The Programme of Action, 1992 of the National Policy on Education also envisaged setting up of Educational Tribunals, considering the large volume of legal disputes generated in the education system. The Supreme Court, in the TMA Pai Judgment, had suggested the establishment of Educational Tribunals at district level so that teachers did not suffer through substantial costs in litigation. The Law Commission in its 123rd Report on “Decentralisation of Administration of Justice: Disputes involving Centre of Higher Education” had recommended that “in the larger interests of the justice system as well as in the interest of the centres of education and in public interest, a separate and specific model for resolution of disputes arising in the field of education is the felt need of the time.”

1.4 The Committee was given to understand that the rationale behind bringing about the proposed Bill, were the limitations of the Administrative Tribunals Act and other existing laws. Both the jurisdiction and scope of the Administrative Tribunals Act was limited. Five State Administrative Tribunals for the entire country have proved to be too inadequate leading to over crowding and delays in disposal of cases. The other existing laws like those dealing with consumer protection, powers of the regulatory bodies in education, the industrial disputes, and the arbitrations under Universities Act have their own limitations. In such a scenario, the proposed Bill sought to cover all categories of higher educational institutions with the exception of institutions dealing with education on agriculture. Disputes relating to service matters of employees and teachers, unfair practices of managements, issues relating to affiliation with universities, regulation and overlapping of statutory bodies would fall under the domain of the Bill

1.5 The Committee was informed that rapid growth in higher education sector and the entry of a large number of private institutions therein over the years had resulted in proliferation in litigation involving various stakeholders in higher education like students, teachers, employees, managements of institutions, universities etc. At present, there are 504 university level institutions - 243 state publicly funded universities, 53 state privately funded universities, 40 central universities, 130 deemed to be universities and 33 institutions of national importance, and 25951 colleges. At the beginning of academic year 2009-10, the total number of

students enrolled in universities and colleges has been reported at 136.42 lakhs. The regular faculty strength was 5.89 lakhs at the beginning of 2009-10. With respect to technical education, intake has been reported at 14,09,742 students in 7272 institutions at the degree level and 5,08,157 in 2324 institutions at the diploma level of programmes. Enrolment in Distance learning in IGNOU alone is reported to be 2.5 million in 2009-10.

1.6 On a specific query about the latest data relating to number of litigation cases, the Department informed that there was no comprehensive empirical data available at present. As per the limited information shared by the Department, 305 cases pertaining to eleven Central universities were pending in high courts alone in the Year 2009 which meant on an average 28 cases pending per university. At this rate, about 15,000 cases could be reasonably estimated to be pending in only the high courts of the country, besides cases pending in other courts and the Supreme Court. Committee's attention was also drawn to classification of education related cases by the Supreme Court as matters relating to examination, introduction/abolition of languages, syllabi, withholding/cancellation of results, evaluation of marks, expulsion of students, tuition fee, management of educational institutions and others. This classification gave a fair idea as to the nature of disputes that were being adjudicated at present by the Apex Court, besides being indicative of the extent of the education related litigation.

1.7 On a specific query about the status of court cases in private institutions, the Committee was informed that with the increasing role of private sector in this area, grievances of teachers as well as students have also increased manifold. The situation has been further aggravated due to lack of formal systems of redressal of grievances in private institutions. Not only this, unfair practices like charging of capitation fees, under-payment to the employees, issuing of misleading advertisements etc. were rampant in private institutions.

1.8 The Committee observes that no specific assessment about the quantum of litigation in different categories of higher educational institutions both in the Government and private sector has been carried out recently by the Department. However, phenomenal growth of higher educational institutions, specifically in the private sector with new diversifying courses emerging in the recent past has no doubt also resulted indirectly in the disturbing increase in the number of court cases. It is also true that fast track mechanisms are definitely more effective and productive as compared to regular courts which are overburdened and by all accounts struggling to ensure reduction of the huge pendency of cases. Against this backdrop, the Committee welcomes the proposed legislation for setting up dedicated tribunals for resolving all conceivable disputes relating to higher educational institutions.

II. CONSULTATION PROCESS

2.1 Since the proposed legislation involves setting up of State Education Tribunals, the Department was asked to furnish details of consultation process undertaken by it. In response, the Committee was informed that the draft legislative proposal was referred to the Chief Secretaries of all State Governments and the Administrations of Union Territories on the 10th July, 2009. Draft proposal was also discussed in the meeting of Secretaries in charge of Education of State Governments convened on 23rd July, 2009. While the Education Secretaries of Orissa and Gujarat Governments shared their experience of Educational Tribunals set up in their States, Education Secretary of Haryana had expressed reservation about the financial viability of the three-tier structure of tribunals. The Committee was further informed that only State Governments of Madhya Pradesh, Chhattisgarh, Kerala and Himachal Pradesh had supported the proposal. As no response opposing the proposal was received from the other State Governments, their support was consequently presumed. The final consultations culminated into a resolution passed by CABE in its 56th meeting held on 31st August, 2009

attended by Education Ministers of 19 States who supported the establishment of Tribunals at state and national level.

2.2 The Committee is of the view that education being a concurrent subject, the proposal for setting up State Educational Tribunals, needed a wider consultation process involving all the State Governments and Union Territories. With only very few States having formally supported the proposed Bill and in the absence of any opposition from the majority of the States/UTs, their presumed support does not seem to be very convincing. Not only this, the Committee observes that out of the Education Ministers of 19 States who attended the CABE meeting, quite a few were representing school Education Department. The Committee is, therefore, of the opinion that concerted efforts should have been made by the Department so as to ensure the specific response of all the States/UTs on the proposed legislation.

2.3 The Committee has been given to understand that text of the Bill was not circulated formally to the central higher educational institutions. The Ministry did not consider it necessary to formally obtain the views of these institutions since the proposed tribunals were in no way considered to be encroaching upon the dispute resolution mechanism already existing in these institutions. The Committee finds that the Department has simply relied upon the feedback received during the extensive investigations and consultations on the issue undertaken by the Law Commission before finalizing its 123rd Report. The Law Commission had, in fact issued a working paper along with a questionnaire and gave it wide publicity. Even Association of Indian Universities circulated this working paper to all the universities with a request that every University may discuss the working paper in a one-day seminar in which all members of the university community would participate and forward their recommendations to the Law Commission. A seminar was accordingly organized on the 2nd May, 1987 which was attended by more than sixty-one Vice-Chancellors.

2.4 The Committee is not at all convinced with this justification given by the Department. The Committee would like to point out that the feedback received by the Law Commission is quite old. Higher Education Scenario at present is totally different with as many as 504 university level institutions functioning with every possibility of further expansion in future. Not only this, central higher educational institutions would be affected by the proposed Bill even though it does not encroach upon their existing grievance redressal mechanism. The Committee, therefore, opines that it would have been appropriate if central higher educational institutions were also consulted on the proposed Bill.

2.5 Committee's attention has also been drawn to the fact that this proposed legislation shall be applicable to all types of higher educational institutions, both private and public institutions thereby bringing the private higher education institutions under the purview of the proposed State and National Tribunals. However, the Committee notes that in the process of consultations, representatives of private institutions have not been engaged. Needless to mention, a segment of the stakeholders has not been consulted at all. The Department's assertion that status of incidence of litigation in private institutions is likely to be very high due to increasing role of private sector and also lack of internal forum for dispute resolution, further establishes failure of vision in not consulting these institutions. The Committee is of the view that it was very necessary to involve the stakeholders of private institutions in the consultation process, specially due to every likelihood of their different/additional problem areas. The Committee has also noted that the tribunals created by the legislation shall also have jurisdiction over the institutions engaged in medical disciplines. However, the Department has conceded that no direct consultations with regulatory bodies like Medical Council of India and Dental Council of India have been undertaken. The Committee can only conclude that consultation process on the proposed Bill has been far from

satisfactory and the whole exercise seems to be a hurried affair whereby important stakeholders have been either ignored or their consent presumed in case of nil response.

2.6 In order to fill the vacuum with respect to consultation with the States, the Committee tried to facilitate wider consultations by issuing a Press Release on the Bill inviting suggestions from the general public. In response, the Committee received memoranda from a good number of organizations/individuals on the proposed legislation. This feedback was circulated amongst the members of the Committee and issues raised therein were referred to the Department of Higher Education for their response. The Committee hopes that by obtaining the views from diverse groups, the consultation process on the Bill has been widened.

III. Broadly speaking, the Committee supports the proposed legislation, with observations/recommendations on some of the provisions of the Bill as indicated below:—

CLAUSE 2

3.1 Clause 2 of the Bill deals with the applicability of the Act which is as follows:-

“This Act shall apply to all higher educational institutions other than the higher educational institutions engaged mainly in agricultural education and research.”

The Committee finds that this provision does not make it clear whether the proposed Bill would apply to private, aided or unaided institutions, deemed to be universities etc. The Committee has been informed that the proposed legislation covers all higher educational institutions, both private and public. All institutions be it central, deemed or state universities, institutions of national importance, general educational institutions or professional educational institutions like medical and law colleges or universities have been covered under the Bill. **The Committee is, however, of the view that institutions of diversified fields of education both under Government and private sector intended to be brought under the jurisdiction of Educational Tribunals be clearly specified in Clause 2 so as to remove any ambiguity and likely complications in future.**

IV. CLAUSE 4

4.1 This clause empowers the State Governments/Central Government in respect of Union Territories to establish a State Educational Tribunal. It also empowers the State Governments to notify any Educational Tribunal existing before the commencement of the proposed legislation as State Educational Tribunal with provisions of this Act being applicable to such a Tribunal.

4.2 The Committee notes that at present, only two States, *i.e.* Orissa and Gujarat have State Educational Tribunals. The State Educational Tribunal in Orissa set up under a State Act has been functioning since 1974. Matters like service conditions of Teachers, Grant-in-Aid, Accounts and Audit and closing down of only Aided Educational Institutions functioning in the State come under the jurisdiction of this Tribunal. The Committee also notes that as per the details furnished by the Department, Gujarat has two State Tribunals *i.e.* Gujarat University Services Tribunal and Gujarat Affiliated Colleges Services Tribunal. Jurisdiction of these two State Educational Tribunals also seems to be limited. The Committee would like to point out that the domain of State Educational Tribunals as envisaged under the Bill would be very wide with all categories of higher educational institutions both under the private and Government Sector coming under them. Not only this, their powers would also be wide-ranging. It is not known whether the State Government would be agreeable to notify the existing Tribunal under the proposed legislation. **The Committee is not clear about**

the status of the existing State Tribunals in case the State Governments do not agree to notify them under the proposed legislation. Further, the Committee has no idea as to whether all the provisions regarding the State Tribunal would be acceptable to the State Governments. The Committee is of the view that all ambiguity in this regard needs to be removed at the earliest.

V. CLAUSES 5 AND 6

5.1 Clause 5 provides that each State Educational Tribunal shall consist of a Chairperson and two other Members. Clause 6 lays down the qualifications for appointments as Chairperson or Member of State Educational Tribunal as per which sitting/Ex-Judge of a High Court will be the Chairperson and Vice-Chancellor/Ex- Vice-Chancellor and Chief Secretary/Ex-Chief Secretary/person of equivalent rank will be the two members of the State Tribunal. The Committee was given to understand that the structure of the tribunals, their jurisdiction and powers were all patterned on the recommendations of the Law Commission made in its 123rd Report. The Committee, however, finds that the proposed composition of the State Tribunals is not in tune with the recommendation of the Law Commission which has suggested a five member State level tribunal comprising of a Chairperson (Judicial), two judicial members and two academic/administrative members. It has been indicated that most of the States are in favour of three-member State Educational Tribunal. Further, State Tribunal is supposed to act as a bench having the representation of judiciary, administration and academia. It has been suggested by the Department that depending on the experience gained by the State Tribunals, the number of members can be reviewed in future.

5.2 **The Committee believes that it would be practically very difficult for a three member Tribunal to take up a sizeable number of cases, leave alone the issue of expeditious disposal thereof. The Committee finds the suggestion of Law Commission as practical and balanced as a five-member State Educational Tribunal will prove to be more effective.** The Committee observes that level of cases filed in the two States having State Education Tribunals gives an idea about the outreach of proposed three-member State Education Tribunals. Total number of cases filed in Orissa Education Tribunal in 2007, 2008 and 2009 were 347,499 and 428 respectively. This is the position when jurisdiction of this Tribunal is a limited one. Similarly, during the first seven months of 2010, while 827 cases were filed before the Gujarat University Services Tribunal, 250 cases were filed before the Gujarat Affiliated Colleges Services Tribunal during this period. **The Committee is well aware of the fact that these two State Education Tribunals cover only a very limited aspect of litigation. Nobody can also dispute the fact that the proposed legislation envisages bringing under the purview of tribunals, litigation related to all conceivable aspects of higher educational institutions with the number of cases going up by many times that of what obtains at present. In such a scenario, a three member State Educational Tribunal will perhaps not prove to effective. The Committee, accordingly, recommends setting up of five-member State Education Tribunals.**

5.3 **Committee's attention has also been drawn by another allied aspect relating to setting up of State Educational Tribunals. There are both small and big States in the country. Not only this, while some of the States have a very large concentration of all categories of higher educational institutions, very few institutions are there in other States. In such a scenario, the Committee strongly feels that one educational tribunal per State cannot be made uniformly applicable across all the States. The Committee, therefore, is of the view that this issue needs to be examined thoroughly and a viable mechanism for setting up State Educational Tribunals worked out.**

5.4 Clause 6(2) of the Bill provides that a person qualified to be appointed as a member of the State Educational Tribunal should not be less than 55 years of age. Similar provision has been made in respect of

member of the National Educational Tribunal as in clause 22(2). **The Committee does not understand the rationale for fixing such a minimum age limit. Prescribing the minimum age limit to fifty five years could lead to ineligibility of otherwise competent people. The Supreme Court judgment in the Union of India vs R. Gandhi, Madras Bar Association states that if tribunals are to function efficiently and effectively, they should be able to attract younger members who have a reasonable period of service. The Committee is of the view that in order to have a dynamic system of dispute resolution, youngsters should be engaged in the tribunals and to achieve that objective, the prescription of minimum age of fifty five years should be revisited. Competent person with adequate knowledge and experience, irrespective of his/her age should be considered for making the tribunals a successful mechanism for speedy disposal of cases.**

VI. CLAUSE 12

6.1 Clause 12 of the Bill provides for senior most member of State Educational Tribunal to act as its Chairperson in the event of any vacancy arising due to death, resignation, absence and illness in the office of the Chairperson. The Bill states that the State Educational Tribunals shall be composed of a Chairperson and two members. The Chairperson of the Tribunal should be a judge of the High Court while one member should have experience of being the Vice-Chancellor and the other the Chief Secretary in the State Government. Thus, only the Chairperson has judicial experience. In the event of the Chairperson's seat being vacant, the Bill allows the two members to hear cases. This clause leaves the possibility of cases being heard without a judicial member.

6.2 Advocating a three member tribunal, the Department has clarified that the state tribunal is supposed to act as a bench, in which the judiciary, the administration and the academia are equally represented for a fair and objective adjudication. The disputes in the education sector not only require the expertise of a legal luminary but also the experience of administration and academia. The absence of the Chairperson is contemplated only in certain cases and not as a matter of routine and therefore increasing the number of judicial members only to meet such special situations was not considered viable.

6.3 The Committee would like to draw the attention of the Department to the recent recommendation of the Supreme Court which states that every two member bench of the Tribunal should always have a judicial member. Whenever any large or special benches are constituted, the number of technical members shall not exceed the judicial member. Keeping this in view, the Committee finds that Clause 12(2) violates the judgment of the Supreme Court as in the event of vacancy of the seat of Chairperson, the non-judicial member would chair the bench. The Committee, therefore, recommends that a re-thinking on the part of the Ministry is required and suitable amendment inserted.

VII. CLAUSE 15(c)

7.1 Clause 15(c) provides for the jurisdiction, powers and authority of the State Educational Tribunals with respect to 'matters relating to use of unfair practices, by any higher educational institution, which has been specifically prohibited under any law for the time being in force.' **The Committee notes that the term 'Unfair Practice' has not been defined in the Bill.** It has been given to understand that unfair practices are comprehensively defined in a separate legislation namely the 'Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010' which proposes to prohibit and punish the unfair practices in the entire higher education sector, This Bill is pending and yet to become an Act. **The Committee believes that without defining the term, 'unfair practices', it will be open**

to interpretation by the tribunals and courts. The Committee, therefore, recommends that the definition of the term ‘unfair practices’ as in the aforesaid Bill should be incorporated in the Educational Tribunals Bills, 2010 in the form of a definition to avoid any confusion.

VIII. CLAUSE 21

8.1 Clause 21 provides for the composition of the National Educational Tribunal. This tribunal shall consist of a Chairperson and such number of Members not exceeding eight to be appointed by the Central Government. Out of the eight Members, two shall be judicial members, three shall be academic members and three shall be administrative members.

8.2 Law Commission had recommended five-member apex level Tribunal comprising of three judicial members and two academic/administrative members. However, the Bill proposes to have three judicial members and three academic and three administrative members in the National Tribunal. The justification given by the Ministry is that there would be three self-contained benches of the National Tribunal.

8.3 The Committee expresses its reservations about the representation of as many as three Secretaries/ex-Secretaries to Government of India/equivalent rank in the National Tribunal. The Committee believes that this may lead to bureaucratization of the tribunal. Further, as Secretary level officers remain highly preoccupied with their assignments, their availability for sittings of National Educational Tribunal may not be so easy. These issues need to be kept in mind and the composition of National Educational Tribunal may be reviewed accordingly.

IX. CLAUSE 23

9.1 Clause 23 of the Bill deals with the composition of the Selection Committee which shall recommend a panel for appointment of the Chairperson and Members of the National Educational Tribunal. The Selection Committee shall consist of: the Chief Justice of the Supreme Court or his nominee as the Chairperson and Secretaries, Higher Education, Law and Justice Medical Education and Personnel and Training as members. Attention of the Department was drawn to only Secretaries being members of the Selection Committee indicating somewhat imbalance between academic and administrative domains. In response, the Committee was given to understand that composition of the Selection Committee was similar to that of the National Consumer Disputes Redressal Commission. Member Secretaries will be recommending eminent persons from their respective spheres. Reason given for not having more academic members is that they might be functionaries in academic or regulatory bodies and there might be a clash of interest.

9.2 The Committee is not convinced by the justification given by the Department. It believes that the composition of the Selection Committee should be a balanced one as it would be appointing the Chairperson and members of the National Tribunals who would be discharging an important task of adjudicating on disputes primarily related to educational matters. Therefore, adequate representation of the academia should be ensured in the Selection Committee so that the basic spirit behind the proposed legislation is not defeated.

X. CLAUSE 51

10.1 Clause 51 provides for the non-applicability of this Bill to minority institutions the extent to which they are inconsistent with the functions and powers vested upon the National Commission for Minority Educational Institutions established by National Commission for Minority Educational Institutions Act, 2004 or provisions contained in that Act. It was clarified by the Ministry that minority institutions would come under the purview

of the Bill and only those provisions which are inconsistent with the NCMEI Act would not apply. **The Committee agrees with the stand taken by the Ministry as the service matters, disciplinary matters etc. of the minority institutions would definitely fall under the proposed Bill and this in any way would not contravene the NCMEI Act. A dispute between a minority educational institution and a statutory regulatory body, arising not due to the minority character of the institution would not come under the purview of the Commission.**

XI. GENERAL OBSERVATIONS

11.1 The Committee had the occasion to deliberate on the functioning of Tribunals in the country. It has been observed that majority of the tribunals created in the past have failed to deliver hassle free and speedy justice. In fact, there is a general perception that these tribunals are an attempt to bypass the regularly established courts and they have not been successful in easing off the pressure of the courts. There are views that the elongation of penalty system through these tribunals makes the delivery of adjudication more complicated. The very fact that inspite of the existence of an administrative tribunal dealing with service matters, a need was felt for a tribunal exclusively for educational matters, is an indication that all is not well with the existing tribunals. It may be because of the non-execution of orders of the tribunals. **The Committee is therefore, of the view that Government needs to identify the lacunae and weaknesses of existing tribunals system and then address them in the right perspective. The Committee would also like to emphasize that the orders of the Tribunals should have some force so that they are complied with within a specified period of time.**

11.2 Reservations have been expressed by some stakeholders about the need of the proposed Bill. They opined that a separate law to make provisions for settlement of educational disputes, in addition to the existing laws in force, is not desirable as the implementation of multiple laws becomes difficult and tend to create litigations among stakeholders. Multiplicity of laws in the existing regulatory framework in higher education is one of the major flaws, as is observed by National Knowledge Commission (NKC), which is not conducive to innovation or creativity in higher education. The Ministry has agreed that tribunals are indisputably proliferating. The Law Commission, on the other hand, in its pursuit for decentralization of monolithic administration of justice in the country, has tended to support the setting up of educational tribunals. **The Committee hopes that the tribunals as proposed under the Bill do not in any way hinder the quality, innovation and creativity in higher education and are able to deliver their mandate efficiently.**

11.3 Another viewpoint which came to the notice of the Committee was that the provisions in respect of National Educational Tribunal should be deleted from the Bill. All tribunals within the territorial jurisdiction of the High Court fall within its jurisdiction both under Articles 226-227 and 228 of the Constitution as held by seven judges 'bench in Chandra Mohan's case. Therefore, constitution of Appellate Tribunal is inconsistent with the scheme of the Constitution. It was also suggested that, an Educational Division, on the lines of Commercial Division may be created in each High Court to hear appeals against the decisions of the State Tribunals. **The Committee is of the opinion that the provision regarding setting up of National Educational Tribunal is within the judicial verdict as in Chandra Mohan's case. Regarding the setting up of Educational Division, the Committee is of the view that since the Government is implementing the Commercial dispute bench for the first time, it can consider formation of such benches by increasing the number of High Court judges and Supreme Court judges whenever it plans to abolish the tribunals.**

11.4 The Committee would like to highlight another area of concern which is speedy resolution of disputes. Reservations have been expressed regarding not specifying any time limit for adjudication in the proposed legislation. It has been pointed out that a time limit for completion of a dispute may be difficult to be included,

since some of the complicated cases may take a longer time. There has been a suggestion that the Bill may provide for interim order by the tribunals. **The Committee is also apprehensive that due to the complex structure of the tribunals, a greater level of litigation may be encouraged. Also, some of the procedures under the proposed Bill may lead to delays in the delivery of speedy justice. The Department has, however, clarified that the tribunals are expected to deliver fast-track conclusive adjudication and hence provision for interim orders may not be necessary. The Committee hopes that these tribunals would be successful in discharging their mandate for a fast-track speedy justice to all the litigants. The Committee feels that in a democracy there is always some scope for improvement in the administration system and therefore efforts to simplify the complex procedures should continue for a more easier and faster resolution of disputes.**

11.5 It has been alleged that the setting up of State Educational Tribunals and the National Educational Tribunal is not a rational decision from the financial point of view as it would be an additional burden on the State and Central exchequer. As per the financial memorandum of the Bill, while one time capital investment on one tribunal is estimated to be about Rs.10 crore, recurring expenditure for the National Education Tribunal and for one State Educational Tribunal is Rs.1.25 crore and Rs.1 crore respectively. **The Committee believes that before setting up tribunals, the magnitude of cases and costs incurred in litigation should be assessed.** The Ministry has quoted from the report of the Law Commission: which states as follows:

“the establishment of the proposed tribunals would be an un-economic venture. This raises a vital issue of expenditure on administration of justice. It is at present being treated as non-development expenditure... A society without a system of efficient administration of justice in our parliamentary democracy is inconceivable... Diversification and decentralization of administration of justice may necessitate specialist tribunals in certain well-defined areas where even if the workload is not sufficient, tribunals must be set up so as to relieve the congestion and burden on the generalist courts, to be precise, High Courts and the Supreme Court, thereby achieving the more desired result of speedy and expeditious disposal of disputes, avoiding strife and tension in the society.”

The Committee is of the view that if the tribunals proposed to be established serve their desired purpose and ease off the pressure from the courts, expenditure on them would be justified. However, if they do not serve the desired purpose, the Ministry should keep in mind the extent of wasteful expenditure on the same. The Committee recommends for fixing minimum court fee in case of tribunals as well which could consolidate the financial viability thereof.

11.6 The Committee observes that the Law Commission had recommended a three-tier structure of Educational Tribunals, at national, state and district level. Similarly, in the TMA Pai case, the Supreme Court had ruled that an educational tribunal needs to be set up in each district in a state, so as to ensure speedy disposal of cases. The Committee, however, notes that the Bill proposes to have only National and State Educational Tribunals. The Committee also takes note of the following justification given by the Department in this regard:

- In the consultation process, many States were opposed to having third tier at the district level, as it would not be viable.
- Cost factor involved was quite prohibitive. For setting up tribunals in the 604 districts, Rs.302 crore would be required as non-recurring expenditure and recurring cost of Rs. 120 crore every year.

---- Out of the 604 districts, 374 districts have been identified as having a very few Higher Educational Institutions.

11.7 The Committee feels that a view can be taken for setting up of district level Tribunals in the 230 districts having higher concentration of educational institutions. The other alternative in Committee's view can be to have one district level Tribunal for 2-3 districts based on the number of institutions in these districts. The Committee would also like to draw the attention of the Ministry to the fact that Supreme Court in T.M. Pai Judgement while recommending district level Tribunals had suggested that the district Tribunals can hold circuit/camp sittings in different districts. The Committee would appreciate if the viability of all alternatives can be assessed and required action taken accordingly.

11.8 The Committee has noted that the word 'students' has not been included in the proposed Bill though it finds place in the Preamble. The students are a major stakeholder as far as this Bill is concerned. In fact, they are the victims of unfair practices in terms of ragging, charging capitation fees and other institutional malpractices. **The Committee believes that the students are the soul of an institution and their interests should be protected and taken care of. This could only be made possible by including the word 'students' in the substantive clause.** The Ministry has submitted that the students have not been left out of the legislation. The grievances of the students are most likely to arise out of certain unfair practices adopted by some higher educational institutions. The State Tribunals are empowered under Clause 15(c) of the Bill to entertain all cases relating to unfair practices brought before it by any person which includes students also. A separate but inter-connected Bill, namely Prohibition of Unfair Practices in Technical Educational Institutions and Universities Bill, 2010 has been introduced in the Parliament which seeks to protect the interests so students against all types of unfair practices. **The Committee is not convinced by the Ministry's justification as there is no harm in including the word 'students' in the Bill and making it apparently clear for the students themselves so that they can seek justice and safeguard their interests.**

11.9 Reservations have been expressed by stakeholders of private institutions regarding the proposed tribunals to follow the same yardstick for the public and private institutions. It is a well known fact that private institutions implement various incentives and accelerated increment options to enthruse and encourage qualified teaching faculty to join their institutions and continue serving their institutions. However, recruitment and promotion policy is different in the public institutions. **The Committee wonders as to how the tribunals would deliver justice in respect of public and private institutions with different policies. They would have to devise separate mechanism for private institutions based on the principle of natural justice. Same yardstick for both public and private institutions would not work out well as it will give rise to various litigations and also dampen the innovative mechanisms followed by private institutions. The Committee hopes that this may be clarified in the proposed Bill.**

11.10 Suggestion of giving representation to Scheduled Caste and Tribes (SCs & STs) in the state and national tribunals has been received. **The Committee is of the view that interests of SCs & STs should be protected and due representation given to them.**

12. The Committee adopts the remaining clauses of the bill without any amendments.

13. The enacting formula and the title are adopted with consequential changes.

14. The Committee recommends that the Bill may be passed after incorporating the amendments/additions suggested by it.

15. The Committee would like the Department to submit a note with reasons on the recommendations/suggestions which could not be incorporated in the Bill.

OBSERVATIONS/RECOMMENDATIONS — AT A GLANCE

INTRODUCTION

The Committee observes that no specific assessment about the quantum of litigation in different categories of higher educational institutions both in the Government and private sector has been carried out recently by the Department. However, phenomenal growth of higher educational institutions, specifically in the private sector with new diversifying courses emerging in the recent past has no doubt also resulted indirectly in the disturbing increase in the number of court cases. It is also true that fast track mechanisms are definitely more effective and productive as compared to regular courts which are overburdened and by all accounts struggling to ensure reduction of the huge pendency of cases. Against this backdrop, the Committee welcomes the proposed legislation for setting up dedicated tribunals for resolving all conceivable disputes relating to higher educational institution. (Para 1.8)

CONSULTATION PROCESS

The Committee is of the view that education being a concurrent subject, the proposal for setting up State Educational Tribunals, needed a wider consultation process involving all the State Governments and Union Territories. With only very few States having formally supported the proposed Bill and in the absence of any opposition from the majority of the States/UTs, their presumed support does not seem to be very convincing. Not only this, the Committee observes that out of the Education Ministers of 19 States who attended the CABE meeting, quite a few were representing school Education Department. The Committee is, therefore, of the opinion that concerted efforts should have been made by the Department so as to ensure the specific response of all the States/UTs on the proposed legislation. (Para 2.2)

The Committee is not at all convinced with this justification given by the Department. The Committee would like to point out that the feedback received by the Law Commission is quite old. Higher Education Scenario at present is totally different with as many as 504 university level institutions functioning with every possibility of further expansion in future. Not only this, central higher educational institutions would be affected by the proposed Bill even though it does not encroach upon their existing grievance redressal mechanism. The Committee, therefore, opines that it would have been appropriate if central higher educational institutions were also consulted on the proposed Bill. (Para 2.4)

Committee's attention has also been drawn to the fact that this proposed legislation shall be applicable to all types of higher educational institutions, both private and public institutions thereby bringing the private higher education institutions under the purview of the proposed State and National Tribunals. However, the Committee notes that in the process of consultations, representatives of private institutions have not been engaged. Needless to mention, a segment of the stakeholders has not been consulted at all. The Department's assertion that status of incidence of litigation in private institutions is likely to be very high due to increasing role of private sector and also lack of internal forum for dispute resolution, further establishes failure of vision in not consulting these institutions. The Committee is of the view that it was very necessary to involve the stakeholders of private institutions in the consultation process, specially due to every likelihood of their different/additional problem areas. The Committee has also noted that the tribunals created by the legislation shall also have jurisdiction over the institutions

engaged in medical disciplines. However, the Department has conceded that no direct consultations with regulatory bodies like Medical Council of India and Dental Council of India have been undertaken. The Committee can only conclude that consultation process on the proposed Bill has been far from satisfactory and the whole exercise seems to be a hurried affair whereby important stakeholders have been either ignored or their consent presumed in case of nil response. (Para 2.5)

In order to fill the vacuum with respect to consultation with the States, the Committee tried to facilitate wider consultations by issuing a Press Release on the Bill inviting suggestions from the general public. In response, the Committee received memoranda from a good number of organizations/individuals on the proposed legislation. This feedback was circulated amongst the members of the Committee and issues raised therein were referred to the Department of Higher Education for their response. The Committee hopes that by obtaining the views from diverse groups, the consultation process on the Bill has been widened. (Para 2.6)

CLAUSE 2

The Committee is, however, of the view that institutions of diversified fields of education both under Government and private sector intended to be brought under the jurisdiction of Educational Tribunals be clearly specified in Clause 2 so as to remove any ambiguity and likely complications in future. (Para 3.1)

CLAUSE 4

The Committee is not clear about the status of the existing State Tribunals in case the State Governments do not agree to notify them under the proposed legislation. Further, the Committee has no idea as to whether all the provisions regarding the State Tribunal would be acceptable to the State Governments. The Committee is of the view that all ambiguity in this regard needs to be removed at the earliest. (Para 4.2)

CLAUSES 5 AND 6

The Committee believes that it would be practically very difficult for a three member Tribunal to take up a sizeable number of cases, leave alone the issue of expeditious disposal thereof. The Committee finds the suggestion of Law Commission as practical and balanced as a five-member State Educational Tribunal will prove to be more effective. The Committee is well aware of the fact that these two State Educational Tribunals of Orissa and Gujarat cover only a very limited aspect of litigation. Nobody can also dispute the fact that the proposed legislation envisages bringing under the purview of tribunals, litigation related to all conceivable aspects of higher educational institutions with the number of cases going up by many times that of what obtains at present. In such a scenario, a three member State Educational Tribunal will perhaps not prove to effective. The Committee, accordingly, recommends setting up of five-member State Education Tribunals. (Para 5.2)

Committee's attention has also been drawn by another allied aspect relating to setting up of State Educational Tribunals. There are both small and big States in the country. Not only this, while some of the States have a very large concentration of all categories of higher educational institutions, very few institutions are there in other States. In such a scenario, the Committee strongly feels that one educational tribunal per State cannot be made uniformly applicable across all the States. The

Committee, therefore, is of the view that this issue needs to be examined thoroughly and a viable mechanism for setting up State Educational Tribunals worked out. (Para 5.3)

The Committee does not understand the rationale for fixing such a minimum age limit. Prescribing the minimum age limit to fifty five years could lead to ineligibility of otherwise competent people. The Supreme Court judgment in the Union of India vs R. Gandhi, Madras Bar Association States that if tribunals are to function efficiently and effectively, they should be able to attract younger members who have a reasonable period of service. The Committee is of the view that in order to have a dynamic system of dispute resolution, youngsters should be engaged in the tribunals and to achieve that objective, the prescription of minimum age of fifty five years should be revisited. Competent person with adequate knowledge and experience, irrespective of his/her age should be considered for making the tribunals a successful mechanism for speedy disposal of cases. (Para 5.4)

CLAUSE 12

The Committee would like to draw the attention of the Department to the recent recommendation of the Supreme Court which States that every two-member bench of the Tribunal should always have a judicial member. Whenever any large or special benches are constituted, the number of technical members shall not exceed the judicial member. Keeping this in view, the Committee finds that Clause 12(2) violates the judgment of the Supreme Court as in the event of vacancy of the seat of Chairperson, the non-judicial member would chair the bench. The Committee, therefore, recommends that a re-thinking on the part of the Ministry is required and suitable amendment inserted. (Para 6.3)

CLAUSE 15(c)

The Committee notes that the term 'Unfair Practice' has not been defined in the Bill. The Committee believes that without defining the term, 'unfair practices', it will be open to interpretation by the tribunals and courts. The Committee, therefore, recommends that the definition of the term 'unfair practices' as in the aforesaid Bill should be incorporated in the Educational Tribunals Bills, 2010 in the form of a definition to avoid any confusion. (Para 7.1)

CLAUSE 21

The Committee expresses its reservations about the representation of as many as three Secretaries/ex-Secretaries to Government of India/equivalent rank in the National Tribunal. The Committee believes that this may lead to bureaucratization of the tribunal. Further, as Secretary level officers remain highly preoccupied with their assignments, their availability for sittings of National Educational Tribunal may not be so easy. These issues need to be kept in mind and the composition of National Educational Tribunal may be reviewed accordingly. (Para 8.3)

CLAUSE 23

The Committee is not convinced by the justification given by the Department. It believes that the composition of the Selection Committee should be a balanced one as it would be appointing the Chairperson and members of the National Tribunals who would be discharging an important task of adjudicating on disputes primarily related to educational matters. Therefore, adequate representation of the academia should be ensured in the Selection Committee so that the basic spirit behind the proposed legislation is not defeated. (Para 9.2)

CLAUSE 51

The Committee agrees with the stand taken by the Ministry as the service matters, disciplinary matters etc. of the minority institutions would definitely fall under the proposed Bill and this in any way would not contravene the NCMEI Act. A dispute between a minority educational institution and a statutory regulatory body, arising not due to the minority character of the institution would not come under the purview of the Commission. (Para 10.1)

GENERAL OBSERVATIONS

The Committee is, therefore, of the view that Government needs to identify the lacunae and weaknesses of existing tribunals system and then address them in the right perspective. The Committee would also like to emphasize that the orders of the Tribunals should have some force so that they are complied with within a specified period of time. (Para 11.1)

The Committee hopes that the tribunals as proposed under the Bill do not in any way hinder the quality, innovation and creativity in higher education and are able to deliver their mandate efficiently. (Para 11.2)

The Committee is of the opinion that the provision regarding setting up of National Educational Tribunal is within the judicial verdict as in Chandra Mohan's case. Regarding the setting up of Educational Division, the Committee is of the view that since the Government is implementing the Commercial dispute bench for the first time, it can consider formation of such benches by increasing the number of High Court judges and Supreme Court judges whenever it plans to abolish the tribunals. (Para 11.3)

The Committee is also apprehensive that due to the complex structure of the tribunals, a greater level of litigation may be encouraged. Also, some of the procedures under the proposed Bill may lead to delays in the delivery of speedy justice. The Department has, however, clarified that the tribunals are expected to deliver fast-track conclusive adjudication and hence provision for interim orders may not be necessary. The Committee hopes that these tribunals would be successful in discharging their mandate for a fast-track speedy justice to all the litigants. The Committee feels that in a democracy there is always some scope for improvement in the administration system and, therefore, efforts to simplify the complex procedures should continue for a more easier and faster resolution of disputes. (Para 11.4)

The Committee believes that before setting up tribunals, the magnitude of cases and costs incurred in litigation should be assessed. The Committee is of the view that if the tribunals proposed to be established serve their desired purpose and ease off the pressure from the courts, expenditure on them would be justified. However, if they do not serve the desired purpose, the Ministry should keep in mind the extent of wasteful expenditure on the same. The Committee recommends for fixing minimum court fee in case of tribunals as well which could consolidate the financial viability thereof. (Para 11.5)

The Committee feels that a view can be taken for setting up of district level Tribunals in the 230 districts having higher concentration of educational institutions. The other alternative in Committee's view can be to have one district level Tribunal for 2-3 districts based on the number of institutions in these districts. The Committee would also like to draw the attention of the Ministry to the fact that Supreme Court in T.M. Pai Judgement while recommending district level Tribunals had suggested that the district Tribunals can hold circuit/camp sittings in different districts. The Committee would

appreciate if the viability of all alternatives can be assessed and required action taken accordingly.

(Para 11.7)

The Committee believes that the students are the soul of an institution and their interests should be protected and taken care of. This could only be made possible by including the word ‘students’ in the substantive clause. The Committee is not convinced by the Ministry’s justification as there is no harm in including the word ‘students’ in the Bill and making it apparently clear for the students themselves so that they can seek justice and safeguard their interests.

(Para 11.8)

The Committee wonders as to how the tribunals would deliver justice in respect of public and private institutions with different policies. They would have to devise separate mechanism for private institutions based on the principle of natural justice. Same yardstick for both public and private institutions would not work out well as it will give rise to various litigations and also dampen the innovative mechanisms followed by private institutions. The Committee hopes that this may be clarified in the proposed Bill.

(Para 11.9)

The Committee is of the view that interests of SCs & STs should be protected and due representation given to them.

(Para 11.10)

ANNEXURE

THE EDUCATIONAL TRIBUNALS BILL, 2010

ARRANGEMENT OF CLAUSES

CHAPTER I
PRELIMINARY

Clauses

1. Short title, extent and commencement.
2. Applicability of Act.
3. Definitions.

CHAPTER II
STATE EDUCATIONAL TRIBUNALS

4. Establishment of State Educational Tribunal.
5. Composition of State Educational Tribunal.
6. Qualifications for appointment as Chairperson or Member of State Educational Tribunal.
7. Selection Committee.
8. Term of office, salaries and allowances of Chairperson and Members of State Educational Tribunal
9. Resignation.
10. Removal and suspension of Chairperson and Members of State Educational Tribunal.
11. Vacancies.
12. Member of State Educational Tribunal to act as its Chairperson in certain cases.
13. Prohibitions as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of State Educational Tribunal.
14. Staff of State Educational Tribunal and their salaries and allowances.
15. Jurisdiction, powers and authority of State Educational Tribunal.
16. Manner of making application before State Educational Tribunal.
17. Applications not to be admitted unless other remedies exhausted.
18. Limitation.

19. Filing of appeal to National Educational Tribunal.

CHAPTER III
NATIONAL EDUCATIONAL TRIBUNAL

20. Establishment of National Educational Tribunal.

21. Composition of National Educational Tribunal.

22. Qualifications for appointment as Chairperson or Member of National Educational Tribunal.

23. Selection Committee.

24. Term of office, salaries and allowances of Chairperson and Members of National Educational Tribunal.

25. Resignation.

Clauses

26. Removal and suspension of Chairperson and Members of National Educational Tribunal.

27. Vacancies.

28. Member of National Educational Tribunal to act as its Chairperson in certain cases.

29. Prohibition as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of National Educational Tribunal

30. Staff of National Educational Tribunal and their salaries and allowances.

31. Powers and authority of National Educational Tribunal.

32. Filing of application for adjudication of dispute by National Educational Tribunal.

33. Applications not to be admitted unless other remedies exhausted.

34. Limitation.

35. Appeal against order passed under this Chapter

CHAPTER IV
PENALTIES

36. Penalty for failure to comply with orders of Tribunal.

37. Execution of award or order of Tribunal.

38. Cognizance of offence.

CHAPTER V
MISCELLANEOUS

39. Procedure of State Educational Tribunals and National Educational Tribunal.

40. Interim orders.

41. Proceedings before Tribunal to be judicial proceedings.

42. Vacancy in State Educational Tribunals or National Educational Tribunal not to invalidate acts or proceedings.
43. Members and staff of Tribunals to be public servants
44. Administrative control.
45. Dismissal of frivolous or vexatious complaints.
46. Finality of orders.
47. Exclusion of jurisdiction of civil courts.
48. Protection of action taken in good faith.
49. Act to have overriding effect
50. Application of other laws not barred.
51. Non-applicability of this Act to minority institutions in certain cases.
52. Power of Central Government to make rules.
53. Power of State Government to make rules.
54. Rules to be laid before Parliament and State Legislature.
55. Power to remove difficulties.

Bill No. 55 of 2010

THE EDUCATIONAL TRIBUNALS BILL, 2010

A

BILL

to provide for the establishment of Educational Tribunals for effective and expeditious adjudication of disputes involving teachers and other employees of higher educational institutions and other stake holders (including students, universities, institutions and statutory regulatory authorities) and to adjudicate penalties for indulging in unfair practices in higher education and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:----

CHAPTER I
PRELIMINARY

| | | |
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| | <p>1. (1) This Act may be called the Educational Tribunals Act, 2010.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>(3) It shall come into force on such date or dates as the Central Government may, by notification, appoint: and different dates may be appointed for different States and any reference in any provision of this Act to the commencement of this Act shall be construed in relation to any State or part thereof as a reference to the coming into force of that provision in that State or part thereof.</p> <p>2. This Act shall apply to all higher educational institution other</p> | <p>Short title extent and commencement.</p> <p>Application of Act</p> |
|--|--|---|

than the higher educational institutions engaged mainly in agricultural education and research.

3. (1) In this Act, unless the context otherwise requires.—

(a) “Academic Member” means a Member appointed as such under sub-section (2) of section 22;

(b) “Administrative Member” means a Member appointed as such under sub-section (3) of section 22;

(c) “affiliation” together with its grammatical variations, includes, in relation to a college or institution.—

(i) recognition of such college or institution by a university; or

(ii) association of such college or institution with a university; or

(iii) admission of such college or institution to the privileges of a university;

(d) “appropriate Government”.—

(i) in relation to a Union territory, means the Central Government;

(ii) in relation to a State, means the Government of the State in which the State Educational Tribunal is established under this Act;

(e) “appropriate State Legislature” means such Legislature of the State as has jurisdiction over the matter;

(f) “appropriate statutory regulatory authority” mean’ any authority established under any law for the time being in force for co-ordinating or determining or maintaining the standards of higher education and research;

(g) “Central Educational Institution” means----

(i) a university established or incorporated by or under a Central Act; or

(ii) an institution of national importance set up by an Act of Parliament; or

(iii) an institution, declared as an institution deemed to be University under section 3 of the University Grants Commission Act, 1956, and maintained by, or receiving aid from the Central Government; or

(iv) an institution maintained by, or receiving aid from.—

(A) the Central Government, whether directly or indirectly;

(B) affiliated to university referred to in sub-clause (i) or to an institution referred to in sub-clause (ii); or a constituent unit of an

Definitions

institution referred to in sub-clause (iii);

(v) a higher educational institution set up by the Central Government under the Societies Registration Act, 1960;

(h) “Chairperson” means the Chairperson of a State Educational Tribunal or the National Educational Tribunal, as the case may be;

(i) “college” means any institution, whether known as such or by any other name which provides for a course of study for obtaining any qualification from a university and which, in accordance with the rules and regulations of such university, is recognised as competent to provide for such course of study and present students undergoing such course of study for examination for the award of such qualification;

(j) “contractual provisions” in relation to a teacher or an employee engaged on contract by an high educational institution means the provisions of the terms and conditions of the contract governing the service of such teacher or employee to such institution;

(k) “degree” means any such degree, as may, with the previous approval of the Central Government, be specified in this behalf by the University Grants Commission by notification in the Official Gazette, under section 22 of the University Grants Commission Act, 1956;

(l) “diploma” means such award, not being a degree, granted by a higher educational institution certifying that the recipient has successfully completed a course of study of not less than nine months duration;

(m) “distance education systems” means the distance education systems as defined in clause (e) of section (2) of the Indira Gandhi National Open University Act, 1985;

(n) “High Court” means the High Court of the State within whose jurisdiction the State Educational Tribunal is situated;

(o) “higher educational institution” means an institution of learning including an university, an institution deemed to be university, a college, an institute, an institution of national importance declared as such by an Act of Parliament or a constituent unit of such institution, which is imparting (whether through conduct of regular classes or distance education system) higher education beyond twelve years of schooling leading to the award of a degree or diploma;

(p) “institution deemed to be University” means an institution declared by the Central Government, as deemed to be a university

under section 3 of the University Grants Commission Act, 1956;

(q) “Judicial Member” means a Member appointed as such under sub-section (1) of section 22 and includes the Chairperson;

(r) “Member” includes the Chairperson and a Member of the National Educational Tribunal or a State Educational Tribunal, as the case may be;

(s) “National Educational Tribunal” means the National Educational Tribunal established under section 20;

(t) “notification” means a notification published in the Official Gazette and the expression “notify” with its cognate meanings and grammatical variations shall be construed accordingly;

(u) “prescribed” means prescribed rules made by the appropriate Government of the Central Government, as the case may be, under this Act;

(v) “service” means service with an higher educational institution;

(w) “service matters”, in relation to a teacher or an employee of a higher educational institution means all matters relating to the conditions of their service as respects.–

(i) remuneration including pay, allowances, pension and other retirement benefits permissible in accordance with the terms and conditions of service of such teacher of employee;

(ii) tenure including appointment, probation, confirmation, seniority promotion, reversion, premature retirement or superannuation;

(iii) Leave of any kind;

(iv) Disciplinary matters; or

(v) Any other matter whatsoever;

(x) “service rules” means the rules or regulations or statutes or bye-laws or ordinances or contractual provisions, as the case may be, of the higher educational institution, governing service matters, of any teacher or any employee (whether appointed on permanent or temporary or visiting or contract basis) of such institution;

(y) “society” means a society registered under the Societies Registration Act, 1860 or under any corresponding law for the time being in force in a State;

(z) “State Educational Tribunal” means a State Educational

Tribunal established in a State under section 4;

(za) “Vice Chancellor” means –

(i) Chief executive of a university; or

(ii) head of a Central Educational Institution, not leaving a college

(2) Words and expressions used and not defined in this Act but defined in the University Grants Commission Act, 1956 and not inconsistent with this Act shall have the meanings respectively assigned to them in that Act.

CHAPTER II

STATE EDUCATIONAL TRIBUNALS

4. The appropriate Government shall, by notification, establish a Tribunal to be known as the “State Educational Tribunal” to exercise the powers conferred upon it under this Act:

Provided that an appropriate Government may notify any Educational Tribunal existing before the commencement of this Act as the “State Educational Tribunal” for the purposes of this Act and thereafter the provisions of this Act shall apply to such Tribunal.

5. Each State Educational Tribunal shall consist of a Chairperson and two other Members of which not less than one shall be a woman to be appointed by the appropriate Government.

6. (1) A person shall be qualified to be appointed as the Chairperson of a State Educational Tribunal, if such person is, or has been, a Judge of the High Court:

Provided that no appointment under this section shall be in consultation with the Chief Justice of the High Court.

(2) A person shall be qualified to be appointed as a Member of Tribunal, if such person: –

(a) is not less than fifty-five years of age;

(b) is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters;

(c) is or has been, a Vice Chancellor or a person who is or has been of the rank and equivalence of a Chief Secretary of the State Government;

(3) Out of the two Members referred to in sub-section (1) of section 5, one Member shall be chosen from amongst persons who is

Establishment of State Educational Tribunal.

Composition of State Educational Tribunal.

Qualifications for appointment as Chairperson or Member of State Educational Tribunal.

or has been the Vice Chancellor and the other Member shall be chosen from amongst persons who is or has been, the Chief Secretary of the State Government or equivalent rank.

7. (1) The Chairperson and Members of the State Educational Tribunal shall be appointed by the appropriate Government from a panel of names recommended by a Selection Committee consisting of-

(a) the Chief Justice of the High Court or his nominee
Chairperson;

(b) the Chief Secretary of the State Government
Member;

(c) an officer of the State Government of the rank and equivalence of a Secretary to the Government of India with experience in dealing with educational matters Member.

(2) The Secretary-in charge of higher education in the Department of Education or Department dealing with educational matters of the State Government shall be the convenor of the meetings of the Selection Committee.

(3) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed by the appropriate Government:

Provided that in the case of the Selection Committee in respect of an Educational Tribunal to be established in a Union territory, the provisions of this section shall have the effect as if for the Word "State Government" the Words "Central Government" has been substituted.

(4) No appointment of the Chairperson or Member of the State Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee,

(5) Subject to the provisions of sub-sections (1) to (4) the Selection Committee may regulate its own procedure.

8. (1) The Chairperson and every Member of the State Educational Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that the Chairperson or other Members of the State Educational Tribunal shall not hold office as such after he has attained the age of seventy years.

(2) The salaries and allowances payable to and the other terms

Selection Committee

Term of office, salaries and allowances of Chairperson and Members of State Educational Tribunal.

and conditions of service of the Chairperson and other Members of a State Educational Tribunal shall be such as may be prescribed by the appropriate Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson and other Member shall be varied to their disadvantage alter their appointment.

9. The Chairperson or a Member of the State Educational Tribunal may, by notice in writing under his hand addressed to the appropriate Government resign his office:

Provided that the Chairperson or a Member of the State Educational Tribunal shall, unless he is permitted by the appropriate Government to relinquish his office sooner continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

10. (1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office the Chairperson or any other Member of the State Educational Tribunal who—

(a) has been adjudged an insolvent: or

(b) has engaged at any time during his term of office in any paid employment: or

(c) has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or

(d) has become physically or mentally incapable of acting as such Chairperson or other Member; or

(e) is of unsound mind and stands so declared by a competent court: or

(f) has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions as such Chairperson or other Member: or

(g) has so abused his position as to render his continuance in office prejudicial to the public interest: or

(h) has been guilty of proved misbehavior: or

(i) has such other disqualifications as may be prescribed by the appropriate Government.

(2) “Notwithstanding anything contained in sub-section (1) no Chairperson or a Member of the State Educational Tribunal shall be

Resignation

Removal and suspension of Chairperson and Members of State Educational Tribunal.

removed from his office on the grounds specified in clause (f) or clause (g) or clause (h) of sub-section (i), except by an order made by the appropriate Government after an inquiry made in this behalf by a Judge of the High Court in which such Chairperson or such Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The appropriate Government may, by rules, regulate the procedure for the inquiry referred to in sub-section (2).

11. If for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the State Educational Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the State Educational Tribunal from the stage at which the vacancy is filled.

12. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the State Educational Tribunal by reason of his death or resignation, the senior-most Member of the State Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new chairperson appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson of the State Educational Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

13. On ceasing to hold office.–

(a) the Chairperson or Member of the State Education Tribunal as the case may be, shall, subject to the provisions of this Act, be ineligible, for a period of five years from the date on which they cease to hold office, for further employment (including as consultant or expert or otherwise) in any higher educational institution within such State, whether under the Central Government or the Government of any State or any private educational institution or in any institution whose matters had been before such Chairperson or Member;

(b) the Chairperson or Member shall not appear, act or plead before the State Educational Tribunal in which he had been the Chairperson or Member.

14. (1) The appropriate Government shall, after consultations with the

Vacancies.

Members of State Educational Tribunal to act as its Chairperson in certain cases.

Prohibitions as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of State Educational Tribunal.

Staff of State Educational Tribunal and their salaries and

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| | <p>Chairperson of the State Educational Tribunal, determine the nature and categories of the officers and other employees required to assist the State Educational Tribunal in the discharge of its functions and provide such Tribunal with such officers and other employees as it may think fit.</p> <p>(2) The officers and other employees of the State Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of such Tribunal.</p> <p>(3) The salaries and allowances payable to, and the other terms and conditions of service of the officers and other employees of a State Educational Tribunal shall be such as may be prescribed by the appropriate Government.</p> <p>15. Save as otherwise expressly provided in this Act, the State Educational Tribunal shall exercise powers and authority in relation to,—</p> <p>(a) service matters of any teacher or any other employee of a higher educational institution;</p> <p>(b) matters relating to affiliation of any higher education institution (not being University) with the affiliating University;</p> <p>(c) matters relating to use of unfair practices, by any higher educational institution which has been specifically prohibited, under any law for the time being in force;</p> <p>(d) matters as may be assigned to it by any other law for the time being in force.</p> <p>16. Every application, for redressal of grievance or settlement of disputes relating to any of the matters specified under clauses (a) to (d) of section 15, shall be made to the Educational Tribunal in such form and accompanied by such documents and on payment of such fee and the manner as may be prescribed by the appropriate Government.</p> <p>17. (1) The State Educational Tribunal shall not admit any applications in respect of a matter under clause (a) of section 15 unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules for redressal of grievances or settlement of disputes,—</p> <p>(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules or contractual provisions as to Redressal of grievances or settlement of disputes,—</p> | <p>allowances.</p> <p>Jurisdiction, powers and authority of State Educational Tribunal.</p> <p>Manner of making application before State Educational Tribunal.</p> <p>Applications not to be admitted unless other remedies exhausted.</p> |
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(a) if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance or disputes; or

(b) where no final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order with regard to the application representation made or appeal preferred by such person, if a period of three months from the date on which such application or representation was made or appeal was preferred has expired; or

(c) where no service rules exist on the service matter in dispute.

Explanation.— For the purposes of this section, the words “final order” means an order passed by such final appellate authority of the higher educational institution as provided in the service rules but does not include an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act, 1996.

18. (1) A State Educational Tribunal shall not admit an application.—

(a) in a case where a final order referred to in clause (a) of sub-section (2) of section 17 has been made, unless the application is made, within a period of six months from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 17 has been made and a period of three months had expired thereafter without such final order having been made, within a period of six months from the date of expiry of the said period of three months;

(c) in any other matter, within a period of six months from the date the cause of action arose.

(2) Notwithstanding anything contained in this section an application may be admitted after the period of six months specified in clause (a) or clause (b) or clause (c) of this section, if the applicant satisfies the State Educational Tribunal that he had sufficient cause for not making the application within such period.

19. Any person aggrieved by an order made by a State Educational Tribunal in respect of any matter specified under clauses (b) to (d) of section 15, may prefer an appeal against such order to the National Educational Tribunal within a period of sixty days from the date of the order, in such form and manner and accompanied with such

Limitation

Filing of appeal to National Educational Tribunal.

documents and such fees as may be prescribed by the Central Government:

Provided that the National Educational Tribunal may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

CHAPTER III

NATIONAL EDUCATIONAL TRIBUNAL

20. The Central Government shall, by notification, establish a Tribunal to be known as the “National Educational Tribunal” to exercise the powers conferred upon it under this Act.

21. (1) The National Educational Tribunal shall consist of a Chairperson and such number of Members not exceeding eight to be appointed by the Central Government.

(2) Out of the eight Members to be appointed under sub-section (1) –

- (a) two shall be Judicial Members;
- (b) three shall be Academic Members;
- (c) three shall be Administrative Members.

(3) Not less than one-third of the total number of Member’s appointed under sub-section (1) shall be women.

(4) Subject to the provisions of this Act,–

(a) the jurisdiction of the National Educational Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson consisting of three Members of which one Member shall be a Judicial Member, one Member shall be an Academic Member and one Member shall be an Administrative Member.

(5) Notwithstanding anything contained in sub-section (4), the Chairperson may transfer a Member from one Bench to another Bench.

(6) The National Educational Tribunal shall sit in New Delhi.

22. (1) A person shall be qualified to be appointed as the Chairperson or Judicial Member of the National Educational Tribunal, if such person is, or has been, a Judge of the Supreme Court:

Establishment of National Educational Tribunal.

Composition of National Educational Tribunal.

Qualifications for appointment as Chairperson or Member of National Educational Tribunal.

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.

(2) A person shall be qualified to be appointed as an Academic Member of the National Educational Tribunal if such person,—

(a) is not less than fifty-five years of age;

(b) is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty-five years in dealing with matters relating to higher education or administration in educational matters;

(c) is, or has been, a Vice Chancellor of any University, or a Director of an institution of national importance.

(3) A person shall be qualified to be appointed as an Administrative Member of the National Educational Tribunal if such person,—

(a) is not less than fifty-five years of age;

(b) is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty-five years in dealing with matters relating to higher education, public affairs or administration in educational matters;

(c) is, or has been, a Secretary to the Government of India or equivalent rank.

23. (1) The Chairperson and Members of the National Educational Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

(a) the Chief Justice of India or his nominee Chairperson;

(b) the Secretary in charge of higher education in the Ministry of Human Resource Development of the Government of India Member;

(c) the Secretary in the Ministry of Law and Justice of the Government of India Member;

(d) the Secretary in charge of medical education in the Ministry of Health and Family Welfare of the Government of India Member;

(e) the Secretary in charge of the Department of Personnel and Training of the Government of India Member.

(2) The Secretary in charge of higher education in the Ministry of

Selection Committee

Human Resource Development of the Government of India shall be the convenor of the meetings of the Selection Committee.

(3) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed by the Central Government.

(4) No appointment of the Chairperson or Member of the National Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee.

(5) Subject to the provisions of sub-sections (1) to (4), the Selection Committee may regulate its own procedure.

24. (1) The Chairperson and every other Member of the National Educational Tribunal shall, hold office as, such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that the Chairperson or other Member of the National Educational Tribunal shall not hold office as such after he has attained the age of seventy years.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the National Educational Tribunal shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson and other Member shall be varied to their disadvantage after their appointment.

25. The Chairperson or a Member of the National Educational Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member of the National Educational Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

26. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office, the Chairperson or any other Member of the National Educational Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has engaged any time, during his term of office, in any paid

Term of office, salaries and allowances of Chair-person and Members of National Educational Tribunal.

Resignation.

Removal and suspension of Chairperson and Members of National Educational Tribunal.

employment; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has become physically or mentally incapable of acting as such Chairperson or other Member; or

(e) is of unsound mind and stands so declared by a competent court; or

(f) has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions as such Chairperson or other Member; or

(g) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(h) has been guilty of proved misbehaviour; or

(i) has such other disqualifications as may be prescribed.

(2) Notwithstanding anything in sub-section (1), no Chairperson or a Member of the National Educational Tribunal shall be removed from his office on the grounds specified in clause (f) or clause (g) or clause (h) of sub-section (1) except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or such Member has been informed of the charge against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the inquiry referred to in sub-section (2).

27. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the National Educational Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the National Educational Tribunal from the stage at which the vacancy is filled.

28. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the National Educational Tribunal by reason of his death or resignation, the senior-most Member of the National Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson of the National Educational Tribunal is unable to discharge his functions owing to absence, illness or any

Vacancies.

Members of National Educational Tribunal to act as its Chairperson in certain cases.

other cause, the senior-most Member of the National Educational Tribunal, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

29. On ceasing to hold office,—

(a) the Chairperson or Member, as the case may be, of the National Educational Tribunal shall, subject to the provisions of this Act, be ineligible, for a period of five years from the date they cease to hold office, for further employment (including as consultant or expert or otherwise) in any higher educational institution, whether under the Central Government or the Government of any State or any private educational institution or in any institution whose matters had been before such Chairperson or Member; and

(b) the Chairperson or Member shall not appear, act or plead before the National Educational Tribunal or the State Educational Tribunal.

30. (1) The Central Government shall, after consultation with the Chairperson of the National Educational Tribunal determine the nature and categories of the officers and other employees required to assist the National Educational Tribunal in the discharge of its functions and provide such Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the National Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of such Tribunal.

(3) The salaries and allowances payable to, and the other terms and conditions of service of the officers and other employees of the National Educational Tribunal shall be such as may be prescribed by the Central Government.

31. (1) Save as otherwise expressly provided in this Act, the National Educational Tribunal shall exercise power and authority in relation to—

(a) any dispute between any higher educational institution and appropriate statutory regulatory authority;

(b) any reference made to it by any appropriate statutory regulatory authority amongst statutory regulatory authorities;

(c) any matter of affiliation between any higher educational institution (other than a University) and the affiliating University. Where such University is a Central Educational Institution having powers of affiliation in two or more States;

Prohibition as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of National Educational Tribunal.

Staff of National Educational Tribunal and their salaries and allowances.

Powers and authority of National Educational Tribunal.

(d) any constituent unit of an institution deemed to be University or a Central Educational institution located in a State other than the State in which such Institution deemed to be university or a Central Educational Institution is located:

(e) on the matters as may be assigned to it by any other law for the time being in force.

(2) The National Educational Tribunal shall exercise appellate jurisdiction as provided in section 19 over a matter under clause (b) to (d) of section 15 decided by any State Educational Tribunal.

(3) The National Educational Tribunal shall have the power to call for the records and pass appropriate orders in any matter which is pending before or has been decided by any State Educational Tribunal. where it appears to the National Educational Tribunal that such State Educational Tribunal has exercised jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(4) Where cases involving the same or substantially the same issues, to the satisfaction of the National Educational Tribunal. either on its own motion or on an application made by a party to any such case. are pending before the National Educational Tribunal and one or more State Educational Tribunals, or before two more State Educational, Tribunals. the National Educational Tribunal may withdraw the case or cases pending before the State Educational Tribunal or the State Educational. Tribunals and dispose of all the cases itself.

Provided that the National Educational Tribunal may, after determining the said issues return any case so withdrawn together with a copy of its order on such questions to the State Educational Tribunal from which the case has been withdrawn and the State Educational Tribunal shall on receipt thereof, proceed to dispose of the case in conformity with such order.

32. Any person. for settlement of any dispute arising out of matters referred to in clause (a) or in clause (b) or in clause (c) or in clause (d) or clause (e) of sub- section (1) of section 31 may make an application. in such form and accompanied by such documents and on payment of such fee and the manner as may be prescribed by the Central Government. within a period of six months from the date when such dispute first arose:

Provided that the National Educational Tribunal may entertain an appeal or application after the expiry of the said period of six months.

Filing of application for adjudication of dispute by National Educational Tribunal.

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| | <p>if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.</p> <p>33. (1) The National Educational Tribunal shall, not admit an application in respect of a service matter of any teacher or any other employee of the Constituent Unit or any Institution deemed to be a University or Central Educational Institution referred to in clause (d) of section 31 unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules for redressal of grievances.</p> <p>(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances.–</p> <p>(a) if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order under such rules rejecting any appeal preferred or representation made by such person in connection with the grievance; or</p> <p>(b) where no final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order with regard to the application or representation made or appeal preferred by such person. if a period of three months from the date on which such application or representation was made or appeal was preferred was made has expired; or</p> <p>(c) where no service rules exist on the service matters raised:</p> <p><i>Explanation.</i>----For the purposes of this section, the words "final order" means an order passed by such final appellate authority of the higher educational institution as provided in the service rules but does not include an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act 1996.</p> <p>34. (1) A National Educational Tribunal shall not admit an application.----</p> <p>(a) in a case where a final order referred to in clause (c) of sub-section (2) of section 33 has been made. unless the application is made, within a period of six months from the date on which such final order has been made;</p> <p>(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 33 has been made and a period of three months had expired thereafter without such final order having been made within a period of six months from the date</p> | <p>Applications not to be admitted unless other remedies exhausted.</p> <p>Limitation.</p> |
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of expiry of the said period of three months;

(c) in any other matter within a period of six months from the date the cause of action arose.

(2) Notwithstanding anything contained in this section, an application may be admitted after the period of six months specified in clause (a) or clause (b) or clause (c) of this section, if the applicant satisfies the National Educational Tribunal that he had sufficient cause for not making the application within such period.

35. Any person aggrieved by an order made by the National Educational Tribunal may prefer an appeal against such order to the Supreme Court within a Period of sixty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of sixty days. If it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

CHAPTER IV

PENALTIES

36. Whoever fails to comply with any order made by any State Educational Tribunal or the National Educational Tribunal, as the case may be, he she be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten lakh rupees, or with both.

37. (1) An order made by every State Educational Tribunal and the National Educational Tribunal. under this Act shall be executable as a decree of a civil court, and for this purpose, the State Educational Tribunal and the National Educational Tribunal and the National Educational Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may transmit to the Collector having jurisdiction over the concerned higher educational institution or against the person against whom an order had been made, and the Collector shall execute the order.

(3) Where the higher educational institution or any person, against whom the order is made by the State Educational Tribunal or the National Educational Tribunal, as the case may be, fails to make the payment or deposit the amount as directed by such Tribunal within the period specified in the order, such amount shall be recoverable from such institution or person as arrears of land revenue.

Appeal against order passed under this Chapter.

Penalty for failure to comply with orders of Tribunal.

Execution of award or order of Tribunal.

38. (1) No court shall take cognizance of any offence punishable under this Chapter, save on a complaint made by the officer authorised by the National Educational Tribunal or a State Educational Tribunal, as the case may be.

(2) No Court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence punishable under this Chapter.

CHAPTER V
MISCELLANEOUS

39. (1) For the purpose of inquiring into an application, every State Educational Tribunal and the National Educational Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the appropriate Government or by the Central Government. as the case may be.

(2) A person making an application under this Act may appear either in person or authorise one or more legal practitioners to present his case before the State Educational Tribunal or the National Educational Tribunal.

(3) Any institution may authorise one or more legal practitioners or any of its officers to present its case before the State Educational Tribunal or the National Educational Tribunal.

(4) The State Educational Tribunal shall not be bound by the

Cognizance of offences.

Procedure of State Educational Tribunal and National Educational Tribunal.

procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the appropriate Government.

(5) The National Educational Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the Central Government.

(6) The State Educational Tribunal and the National Educational Tribunal shall conduct such proceedings as may be required for it to arrive at a conclusion provided that an opportunity of being heard and produce such evidence as may be necessary, shall be adequately offered to all the parties at issue.

(7) Every proceeding referred to in sub-section (6) shall be conducted, in the case of the State Educational Tribunal, by its Chairperson and at least one Member thereof sitting together:

Provided that where a Member of the State Educational Tribunal, for any reason, is unable to conduct a proceeding till it is completed, the Chairperson and the other Member of such Tribunal shall continue the proceeding from the stage at which it was last heard by the previous Member.

(8) Every proceeding referred to in sub-section (6) shall be conducted in the case of the National Educational Tribunal by a bench constituted by the Chairperson of the National Educational Tribunal under clause (b) of sub-section (4) of section 21.

(9) On the conclusion of proceeding the State Educational Tribunal or the National Educational Tribunal. As the case may be. shall pass such orders as it deems fit and provided such relief as may be desirable. Including the award of such punitive damages. As it deems fit. To the affected party at issue:

Provided that where the proceeding is conducted by the Chairperson and one Member of the State Educational Tribunal and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other Member of such Tribunal for hearing of such point and the opinion of the majority shall be the order of the State Educational Tribunal:

Provided further that the order of the State Educational Tribunal on the matters covered under clause (a) of section 15 shall be final.

(10) Every order made by the State Educational Tribunal or the

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| | <p>National Educational Tribunal as the case may be under sub-section (a) shall be signed by the Chairperson or Member or Members who heard the case and passed the order.</p> <p>40. Notwithstanding anything contained in any other provisions of the Act or in any other law for the time being in force. no interim order, whether by way of injunction or stay in any other manner. shall be made by a State Educational Tribunal or the National Educational Tribunal as the case may be, on or in any proceedings relating to an application unless.</p> <p>(a) Copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and</p> <p>(b) opportunity to be heard is given to such part in the matter.</p> <p>41. All proceedings before any State Educational Tribunal and the National Educational Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.</p> <p>42. Not act or proceeding of any State Educational Tribunal or the National Educational Tribunal shall be questioned or be invalid merely on the ground of existence of any vacancy or defect in the establishment of the State Educational Tribunal and The National Educational Tribunal.</p> <p>43. The Chairperson and other Members or the State Educational Tribunals and the National Educational Tribunal and the officers and other employees of the State Educational, Tribunals and the National Educational Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.</p> <p>44. The National Educational Tribunal shall have administrative control over all the State Educational Tribunals in the following matters, Namely.–</p> <p>(a) calling for periodical returns regarding the institution. disposal and pendency of cases;</p> <p>(b) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties. furnishing of English translation of orders written in any language. speedy grant of copies of documents;</p> <p>(c) generally overseeing the functioning of the State Educational Tribunals to ensure that the objects and purposes of the Act are best</p> | <p>Interim orders.</p> <p>Proceedings before Tribunal to be judicial proceedings.</p> <p>Vacancy in State Educational Tribunals of National Educational Tribunal and to invalidate acts or proceedings.</p> <p>Members and staff of Tribunals to be public servants.</p> <p>Administrative control.</p> |
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| | <p>served without in any way interfering with their quasi-judicial freedom.</p> <p>45. Where a matter instituted before any State Educational Tribunal or the National Educational Tribunal, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding fifty thousand rupees, as may be specified in the order.</p> <p>46. Every order of a State Educational Tribunal or the National Educational Tribunal, as the case may be, shall the State, if no appeal has been preferred against such order under the provisions of this Act, be final.</p> <p>47. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the State Educational Tribunal or the National Educational Tribunal 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.</p> <p>48. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or against the Chairperson or any other Member or any other person authorised by the Chairperson of any State Educational Tribunal or the National Educational Tribunal, as the case may be, for anything which is done in good faith or intended to be done in pursuance of this Act or any rule or order made thereunder in the discharge of official duties.</p> <p>49. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained, in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.</p> <p>50. 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.</p> <p>51. Nothing contained in this Act or the rules made thereunder shall apply to any minority institution to the extent to which they are inconsistent with the functions and powers vested upon the National Commission for Minority Educational Institutions established under the National Commission for Minority Educational Institutions Act, 2004 or provisions contained in that Act.</p> <p>52. (1) The Central Government may, by notification in the Official</p> | <p>Dismissal of frivolous or vexations complaints.</p> <p>Finality of orders.</p> <p>Exclusion of jurisdiction of civil courts.</p> <p>Protection of action taken in good faith.</p> <p>Act to have overriding effect.</p> <p>Application of other laws not barred.</p> <p>Non-applicability of this Act to minority institutions in certain cases.</p> <p>Power of Central Government to make rules.</p> |
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Gazette, make rules to carry out the provisions of this Act.

(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) the form and manner in which an appeal may be preferred, the documents which shall be accompanied with it and the fee payable in respect of filing of such appeal or for the service of execution of processes under section 19;

(b) the term of the Selection Committee and the manner of selection of panel of names under sub-section (3) of section 23;

(c) the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the National Educational Tribunal under sub-section (2) of section 24;

(d) the other disqualifications for removal of the Chairperson or other Member of the National Educational Tribunal under clause (i) of sub-section (1) of section 26 and, the procedure for the inquiry referred to in sub-section (3) of that section;

(e) the salaries and allowances payable to, and other terms and conditions of, service of, the officers and other employees of the National Educational Tribunal under sub-section (3) of section 30;

(f) the form in which an application may be made the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filling of such application or for the service of execution of processes under section 32;

(g) the other matters under clause (i) of sub-section (1) of section 39 in respect of which the National Educational Tribunal shall have the powers under the Code of Civil Procedure, 1908 while trying a suit;

(h) the procedure for conduct of proceedings. of the National Educational Tribunal under sub-section (5) of section 39;

(i) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

53. (1) The appropriate Government may, by notification or the Official Gazette, Make rules to carry out the provisions of this Act.

(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:—

Power of State Government to make rules.

(a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (3) of section 7;

(b) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the State Educational Tribunal under sub-section (2) of section 8;

(c) the other disqualifications for removal of the Chairperson or other Member of the State Educational Tribunal under clause (i) of sub-section (1) of section 10, and the procedure for the inquiry referred to in sub-section (3) of that section;

(d) the salaries and allowances payable to, and other terms and conditions of service of the officers and other employees of, the State Educational Tribunal under sub-section (3) of section 14;

(e) the form in which an application may be made the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes under section 16;

(f) the other matters under clause (i) of sub-section (1) of section 39 in respect of which the State Educational Tribunal shall have the Powers under the Code of Civil Procedure, 1908 while trying a suit;

(g) the procedure for conduct of proceedings of the State Educational Tribunal under sub-section (4) of section 39;

(h) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

54. (1) Every rule made by the Central Government 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.

(2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

55. (1) If any difficulty arises in giving effect to the provisions of this

Rules to be laid before Parliament and State Legislature.

Power to remove difficulties.

| | | |
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| | <p>Act the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:</p> | |
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Provided that no such order shall be made after the expiry of the period of three years from the date on which this Act receives assent of the President.

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

STATEMENT OF OBJECTS AND REASONS

In view of rapid growth in the higher education sector, which has resulted in increased litigation involving students, teachers, employees, managements of higher educational institutions and universities and others, there is an urgent need to provide for a mechanism for speedy resolution of their disputes to maintain and to improve the quality and efficient functioning of institutions of higher education.

2. The National Policy on Education, 1986, *inter alia*, states that Educational Tribunals would be established at the national and state level. The Programme of Action, 1992 of the National Policy on Education also states that Educational Tribunals would be set up considering the large volume of legal disputes generated in the education system.

3. The goals of expansion in higher education to effectively compete with other countries can be achieved only if the regulatory regime and dispute-settlement process engender credibility and assurance. It is, therefore, proposed to establish a two-tier structure of Educational Tribunals at National and State level to adjudicate on the entire gamut of disputes that arise in the higher education system through a fast track, speedy recourse to justice delivery. Such a reform of institutional structure would enable building an effective system of checks and balances in higher education which would help the orderly growth of the sector.

4. The proposed Educational Tribunals Bill, 2010, *inter alia*, provides –

(a) for establishment of the State Educational Tribunal consisting of a Chairperson, who is or has been a Judge of the High Court and two other Members, who have the ability, integrity and standing, and have adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters or is, or has been, a Vice Chancellor or a person who is, or has been, of the rank and equivalence of a Chief Secretary of the State Government;

(b) that the State Educational Tribunal shall exercise powers and authority in relation to –

(i) service matters of any teacher or any other employee of a higher educational institution;

(ii) matters relating to affiliation of any higher educational institution (not being an University) with the affiliating university;

(iii) matters relating to use of unfair practices, by any higher educational institution, which has been specifically prohibited under any other law for the time being in force; and

(iv) matters as may be assigned to it by any other law for the time being in force;

(c) for establishment of the National Educational Tribunal consisting of a Chairperson and upto eight other Members of which two shall be Judicial Members who are, or have been, a Judge of the Supreme Court; three shall be Academic Members who are, or have been, a Vice Chancellor of any University, or Director of an institution of national importance; and three shall be Administrative Members who are, or have been, a Secretary to the Government of India or equivalent rank;

(d) that the National Educational Tribunal shall exercise powers and authority in relation to–

(i) any dispute between any higher educational institution and any appropriate statutory regulatory authority;

(ii) any reference made to it by any appropriate statutory regulatory authority amongst Statutory Regulatory Authorities;

(iii) any matter of affiliation between any higher educational institution (other than an University) and the affiliating University, where such University is a Central Educational Institution having powers of affiliation in two or more States;

(iv) matters relating to any constituent unit of an institution deemed to be University or Central Educational Institution located in a State other than the State in which such institution deemed to be university or Central Educational Institution is located; and

(v) matters as may be assigned to it by any other law for the time being in force;

(e) that the Chairperson or Members of a State Educational Tribunal and the National Educational Tribunal shall be ineligible for a period of five years from the date they cease to hold office for further employment in any higher educational institution;

(f) for imprisonment for a term which may extend to three years, or with fine which may extend to ten lakh rupees, or with both in case failure to comply with any order made by any State Educational Tribunal or the National Educational Tribunal, as the case may be.

5. The notes on clauses explain in detail the various provisions contained in the Bill.
6. The Bill seeks to achieve the above objectives.

KAPIL SIBAL

NEW DELHI:
The 19th April, 2010.

NOTES ON CLAUSES

Clause 2.- This clause specifies the institutions to which the provisions of the proposed legislation shall apply. This provides that the proposed legislation shall apply to all higher educational institutions other than the higher educational institutions engaged mainly in agricultural education and research.

Clause 3.- This clause defines certain words and expressions used in the Bill.

Clause 4.- This clause empowers the concerned State Government in case of States and the Central Government in case of Union territories to establish a Tribunal to be known as the “State Educational tribunal” to exercise the powers conferred upon it under the proposed legislation in each State or Union territory. It also empowers the State Government to notify any Educational Tribunal existing before the commencement of the proposed legislation as the State Educational Tribunal for the purposes of the proposed legislation.

Clause 5.- This clause provides that each State Educational Tribunal shall consist of a Chairperson and two other Members, of which one shall be a woman to be appointed by the appropriate Government.

Clause 6.- This clause specifies the qualifications for appointment as Chairperson or Members of the State Educational Tribunal. Sub-clause (1) provide that a person shall be qualified to be appointed as the Chairperson of a State Educational Tribunal, if such person is, or has been, a Judge of the High Court and the appointment of the Chairperson shall be made only after consultation with the Chief Justice of the High Court. Sub-clause (2) provides that a person shall be qualified to be appointed as a Member of the State Educational Tribunal, if such person is not less than fifty-five years of age and is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters. Sub-clause (3) states that out of the two other Members, one Member shall be chosen from amongst persons who is, or, has been, the Vice Chancellor and the other Member shall be chosen from amongst persons who is, or has been, the Chief Secretary of the State Government or equivalent rank.

Clause 7.- This clause provides for the selection of the Chairperson and other Members of the State Educational Tribunal. The Selection Committee shall comprise the Chief Justice of the High Court or his nominee as its Chairperson, the Chief Secretary of the State Government and an officer of the State Government of the rank and equivalence of a Secretary to the Government of India with experience in dealing with educational matters as its Members. It provides that the Selection Committee shall recommend a panel of names to the appropriate Government for appointment. Sub-clause (2) provides that the Secretary in charge of higher education in the Department of Education or Department dealing with educational matters of the State Government shall be the convenor of the meetings of the Selection Committee. Sub-clause (3) provides that the term of the Selection Committee and the manner of selection of panel of names may be prescribed by rules by the appropriate Government. Sub-clause (5) provides that the Selection Committee may regulate its own procedure in its deliberations. Sub-clause (4) states that no appointment of the Chairperson or Member of the State Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee.

Clause 8.- This clause provides that the Chairperson and other Member of the State Educational Tribunal shall hold office for a term of five years from the date on which they enter upon office and shall be eligible for reappointment, but shall not hold office after they have attained the age of seventy years. Sub-clause (2) provides that the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be prescribed by the appropriate Government.

Clause 9.- This clause provides the manner in which the Chairperson or a Member of the State Educational Tribunal may resign his office. This provides that the Chairperson or Member may, by notice in writing under his hand addressed to the appropriate Government, resign his office and shall, unless he is permitted by the appropriate Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

Clause 10.- This clause provides the manner of removal of the chairperson or a Member of the State Educational Tribunal. It specifies the ground for removal of the chairperson and Member which, *inter-alia*, include where the Chairperson or a Member has been is an adjudged an insolvent or has engaged at any time during his term of office in any paid employment, or has been convicted of an offence which in the opinion of the Central Government involves moral turpitude, or has become physically or mentally incapable, or is of unsound mind and stands so declared by a competent court, or has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions, or has so abused his position as to render his continuance in office prejudicial to the public interest, or has been guilty of proved misbehavior or has such other disqualifications as may be prescribed under rules made by the appropriate Government. Sub-clause (2) provides that no Chairperson or a Member of the State Educational Tribunal shall be removed from his office on the grounds specified in clause (f) or clause (g) or clause (h) of sub-cause (1) in this clause, except by an order made by the appropriate Government after an inquiry made in this behalf by a Judge of the High Court in which such Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard. Sub-clause (3) empowers the appropriate Government to regulate the procedure for the inquiry.

Clause 11.- This clause provides that if any vacancy occurs in the office of the Chairperson or a Member of the State Educational Tribunal for any reason other than temporary absence, the appropriate Government shall appoint another person to fill the vacancy and the proceedings may be continued before the State Educational Tribunal from the stage at which the vacancy is filled.

Clause 12.- This clause provides that in the event of the occurrence of any vacancy in the office of the Chairperson of the State Educational Tribunal by reason of his death or resignation, the senior-most Member of the State Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new Chairperson appointed to fill such vacancy, enters upon his office. It further also provides that when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Clause 13.- This clause provides for the prohibitions as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of State Educational Tribunal. It provides that the Chairperson or Member shall be ineligible, for a period of five years from the date on which they cease to hold the office, for further employment in, or, in matters related to, any higher educational institution within the State, whether under the Central Government or the Government of any State or any private educational institution and that the Chairperson or Member shall not appear, act or plead before the State Educational Tribunal in which they had been the Chairperson or Member.

Clause 14.- This clause empowers the appropriate Government to determine, after consultations with the Chairperson of the State Educational Tribunal, the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide such Tribunal with such officers

and other employees as it may think fit. It further provides that the officers and other employees of the State Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Tribunal. It also empowers the appropriate Government to determine the salaries and allowances payable and the other terms and conditions of service of the officers and other employees of the State Educational Tribunal.

Clause 15.- This clause specifies the jurisdiction, powers authority to be exercised by the State Educational Tribunal in relation to service matters of any teacher or any other employee of a higher educational institution; matters relating to affiliation of any higher educational institution (not being an University) with the affiliating University; matters relating to use of unfair practices by any higher educational institution. which has been specifically prohibited under any law for the time being in force and matters as may be assigned to it by any other law for the time being in force.

Clause 16.- This clause empowers the appropriate Government to prescribe the manner, the form, the documents required and the fees to be paid in making an application before the State Educational Tribunal for adjudication of any grievance.

Clause 17.- This clause provides that the State Educational Tribunal shall not admit an application for adjudication in disputes under sub-cause (a) of clause 15 relating to service matters of any teacher or any other employee of a higher educational institution unless it is satisfied that the applicant had availed of all the remedies available under the relevant service rules for redressal of grievances or settlement of disputes. Sub-clause (2) provides that a person shall be deemed to have availed of all the remedies available to him under the relevant service rules or contractual provisions if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order, rejecting any appeal preferred or representation made by such person in connection with the grievance or disputes; or where no final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order with regard to the application or representation made or appeal preferred by such person, if a period of three months from the date on which such application or representation was made or appeal was preferred has expired; or where no service rules exist on the service matter in dispute. It further provides that an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act, 1996 would not be subject to adjudication by the State Educational Tribunal.

Clause 18.- This clause provides for limitation. It provides that a State Educational Tribunal shall not admit an application in a case where a final order under clause (a) of sub-clause (2) of clause 17 has been made, unless the application is made within a period of six months from the date of the final order or in a case where an appeal or representation as mentioned in clause (b) of sub-clause (2) of clause 17 has been made and a period of three months had expired without any final order having been made, within a period of six months from the date of expiry of the period of three months. It further provides that in any other matter the State Educational Tribunal shall not admit an application unless it has been made within a period of six months from the date the cause of action arose. Sub-clause (2) provides that the State Educational Tribunal may admit an application after the specified period of six months if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within this period.

Clause 19.- This clause provides that any person aggrieved by an order made by a State Educational Tribunal may prefer an appeal against the order to the National Educational Tribunal within a period of sixty days from the date of the order. It further empowers the National Educational Tribunal to entertain an appeal

after the expiry of the period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within this period.

Clause 20.- This clause empowers the Central Government to establish a National Educational Tribunal to exercise the powers conferred upon it under the proposed legislation.

Clause 21.- This clause provides that the National Educational Tribunal shall consist of a Chairperson and such number of Members not exceeding eight to be appointed the Central Government. Sub-clause (2) provides that out of the eight other Members, two shall be Judicial Members, three shall be Academic Members and three shall be Administrative Members. Sub-clause (2) specifies that not less than one-third of the total number of Members shall be women. Sub-clause (4) provides that subject to the provisions of the proposed legislation, the jurisdiction of the National Educational Tribunal may be exercised by Benches with a Bench being constituted by the Chairperson consisting of three Members of which one Member shall be a Judicial Member, one Member an Academic Member and one Member an Administrative Member. Sub-clause (5) provides that the Chairperson may transfer a Member from one Bench to another Bench. Sub-clause (6) provides that the National Educational Tribunal shall sit at New Delhi.

Clause 22.- This clause specifies the qualifications for appointment as Chairperson or Members of the National Educational Tribunal. Sub-clause (1) provides that a person shall be qualified to be appointed as the Chairperson or Judicial Member of the National Educational Tribunal, if such person is, or has been, a Judge of the Supreme Court and the appointment of the Chairperson shall be made only after consultation with the Chief Justice of India. Sub-clause (2) provides that a person shall be qualified to be appointed as a Academic Member of the National Educational Tribunal, if such person is not less than fifty-five years of age and is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters or is or has been a Vice-Chancellor of any University or a Director of an institution of national importance. Sub-clause (3) provides that a person shall be qualified to be appointed as a Administrative Member if he is not less than fifty-five years of age and is of ability, integrity and standing having knowledge and experience of not less than twenty-five years in dealing with matters relating to higher education, public affairs or administration in educational matters and is, or has been, a Secretary to the Government of India or equivalent rank.

Clause 23.- This clause provides for the selection of the Chairperson and other Members of the National Educational Tribunal. Sub-clause (1) provides that the Selection Committee shall comprise the Chief Justice of India or his nominee as its Chairperson, the Secretary in charge of higher education in the Ministry of Human Resource Development, the Secretary in the Ministry of Law and Justice, the Secretary in charge of medical education in the Ministry of Health and Family Welfare and the Secretary in charge of the Department of Personnel and Training as its Members. Which shall recommend a panel of names to the Central Government for appointment. Sub-clause (2) provides that the Secretary in charge of higher education in the Ministry of Human Resource Development shall be the convenor of the meetings of the Selection Committee. Sub-clause (3) provides that the term of the Selection Committee and the manner of selection of panel of names shall be prescribed by rules by the Central Government. Sub-clause (4) states that no appointment of the Chairperson or Member of the National Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee. Sub-clause (5) provides that the Selection Committee may regulate its own procedure in its deliberations.

Clause 24.- This clause provides that the Chairperson and Member of the National Educational Tribunal shall hold office for a term of five years from the date on which they enter upon office and shall be eligible for

reappointment, but shall not hold office after they have attained the age of seventy years. Sub-clause (2) provides that the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be prescribed by the Central Government.

Clause 25.- This clause provides the manner in which the Chairperson or a Member of the National Educational Tribunal shall resign office. It provides that the Chairperson or Member may, by notice in writing under his hand addressed to the Central Government, resign his office and shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his terms of office, whichever is the earliest.

Clause 26.- This clause provides the manner of removal of the Chairperson or a Member of the National Educational Tribunal. It specifies the grounds for removal which *inter-alia*, include where the Chairperson or a Member has been adjudged an insolvent, has or engaged at any time during his term of office in any paid employment, or has been convicted of an offence which in the opinion of the Central Government involves moral turpitude, or has become physically or mentally incapable, or is of unsound mind and stands so declared by a competent court, or has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions, or has so abused his position as to render his continuance in office prejudicial to the public interest, or has been guilty of proved misbehavior or has such other disqualifications as may be prescribed under rules made by the Central Government. Sub-clause (2) provides that no Chairperson or a Member of the National Educational Tribunal shall be removed from his office on the ground specified in clause (1) or Clause (g) or clause (h) of sub-clause (1) in this clause except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which the Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard. Sub-clause (3) empowers the Central Government to regulate the procedure for the inquiry.

Clause 27.- This clause provides that if any vacancy occurs in the office of the Chairperson or a Member of the National Educational Tribunal for any reason other than temporary absence, the Central Government shall appoint another person to fill the vacancy and the proceedings may be continued before the National Educational Tribunal from the stage at which the vacancy is filled.

Clause 28.- This clause provides that in the event of the occurrence of any vacancy in the office of the Chairperson of the National Educational Tribunal by reason of his death or resignation. The senior-most Member of the National Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new Chairperson appointed to fill such vacancy, enters upon his office. It further also provides that when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Clause 29.- This clause provides for the prohibitions as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of National Educational Tribunal. It provides that the Chairperson or Member shall, subject to the provisions of the proposed legislation, be ineligible, for a period of five years from the date on which they cease to hold office, for further employment (including as consultant or expert or otherwise) in any higher educational institution, whether under the Central Government or the Government of any State or any private educational institution and that the Chairperson or Member shall not appear, act or plead before the National Educational Tribunal in which they had been the Chairperson or Member.

Clause 30.- This clause empowers the Central Government to determine after consultations with the Chairperson of the National Educational Tribunal, the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide such Tribunal with such officers and other employees as it may think fit. It further provides that the officers and other employees of the National Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Tribunal. The clause also empowers the Central Government to prescribe the salaries and allowances payable and the other terms and conditions of service of the officers and other employees of the National Educational Tribunal.

Clause 31.- This clause specifies the jurisdiction, powers and authority to be exercised by the National Educational Tribunal. It provides that jurisdiction of the National Educational Tribunal shall extend to matters of dispute between any higher educational institution and any appropriate statutory regulatory authority; any reference made to it by any appropriate statutory regulatory authority, disputes amongst Statutory Regulatory Authorities; any matters of affiliation between any higher educational institution (other than an University) and the affiliating University, where such University is a Central Educational Institution having powers of affiliation in two or more States; any constituents unit of an institution deemed to be University or a Central Educational institution is located in a State other than the State in which such institution deemed to be university or a Central Educational institution is located, and on matters as may be assigned to it by any other law for the time being in force. Sub-clause (2) provides that the National Educational Tribunal shall exercise appellate jurisdiction over any matter decided by any State Educational Tribunal. Sub-clause (3) provides that the National Educational Tribunal shall have the power to call for the records and pass appropriate orders in any matter which is pending before or has been decided by any State Educational Tribunal, where it appears to the National Educational Tribunal that the State Educational Tribunal has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction vested or has acted in exercise of its jurisdiction illegally or with material irregularity. Sub-clause (4) provides that the National Educational Tribunal may exercise jurisdiction in respect of matters vested in the State Educational Tribunal where cases involving the same or substantially the same issues, to the satisfaction of the National Educational Tribunal, either on its own motion or on an application made by a party to any such case, are pending before the National Educational Tribunal and one or more State Educational Tribunals or before two or more State Educational Tribunals, the National Educational Tribunal may withdraw the case or cases pending before the State Educational Tribunal or the State Educational Tribunals and dispose of all the cases itself.

Clause 32.- This clause empowers the Central Government to prescribe the manner, the form, the documents required and the fees to be paid in making an application before the National Educational Tribunal for adjudication of any grievance.

Clause 33.- This clause provides that the National Educational Tribunal shall not admit an application for adjudication in disputes relating to service matters of any teacher or any other employee of higher educational institution or a Central Educational institution referred to sub-clause (a) or clause 3, unless it is satisfied that the applicant had availed of all the remedies available under the relevant service rules for redressal of grievances or settlement of disputes. Sub-clause (2) provides that a person shall be deemed to have availed of all the remedies available to him under the relevant service rules or contractual provisions if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order, rejecting any appeal preferred or representation made by such person in connection with the grievance or disputes or where no final order has been made by the higher educational

institution or other authority or officer or other person competent to pass such order with regard to the application or representation made or appeal preferred by such person, if a period of three months from the date on which such application or representation was made or appeal was preferred has expired; or where no service rules exist on the service matter in dispute. It further provides that an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act, 1996 would not be subject to adjudication by the National Educational Tribunal.

Clause 34.-This clause provides that a National Educational Tribunal shall not admit an application in a case where a final order referred to in clause (a) of sub-clause (2) of clause 33 has been made, unless the application is made within a period of six months from the date of the final order or in a case where an appeal or representation as in mentioned clause (b) of sub-clause (2) of clause 33 has been made and a period of three months had expired without any final order having been made, within a period of six months from the date of expiry of the period of three months. The clause further provides that in any other matter the National Educational Tribunal shall not admit an application unless it has been made within a period of six months from the date the cause of action arose. Sub-clause (2) provides that the National Educational Tribunal can admit an application after the specified period of six months if the applicant satisfies the Tribunal that he had sufficient cause for not marking the application within this period.

Clause 35.- This clause provides that any person aggrieved by an order made by a National Educational Tribunal may prefer an appeal against the order to the Supreme Court within a period of sixty days from the order. The clause empowers the Supreme Court to entertain an appeal after the expiry of the period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within this period.

Clause 36.-This clause specifies the penalties for failure to comply with orders of the Tribunals under the proposed legislation. It provides that a person shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten lakh rupees, or with both if he fails to comply with any order made by any State Educational Tribunal or the National Educational Tribunal.

Clause 37.- This clause provides that an order made by every State Educational Tribunal and the National Educational Tribunal under the proposed legislation shall be executable as a decree of a civil court, and for this purpose the Tribunals shall have all the powers of a civil court. Sub-clause (2) provides that the Tribunals under the proposed legislation may transmit the order to the Collector having jurisdiction over the concerned higher educational institution or against the person against whom the order had been made, and the Collector shall execute the order. Sub-clause (3) provide, that where the higher educational institution or any person against whom the order is made by the Tribunals, fails to make the payment or deposit the amount as directed by the Tribunal within the period specified in the order, the amount shall be recoverable from the institution or person as arrears of land revenue.

Clause 38.- This clause provides that no court shall take cognizance of any offence except on a complaint made by an officer authorized by the National Educational Tribunal or a State Educational Tribunal under the proposed legislation. Sub-clause (2) provides that no court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence.

Clause 39.-This clause provides for procedure of the National Educational Tribunal or a State Educational Tribunal under the proposed legislation. Sub-clause (1) vests powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the matters specified therein. Sub-clause(2) provides that a person making an application may appear either in person or authorise one or more legal

practitioners to present his case before the State Educational Tribunal or the National Educational Tribunal. Sub-clause (3) provides that an institution may authorise one or more legal practitioners or any of its officers to present its case before the Tribunals under this legislation. Sub-clauses (4) and (5) provides that the State Educational Tribunal or the National Educational Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to other provisions of the proposed legislation and of any rules made by the appropriate Government or the Central Government respectively in case if the State Educational Tribunal and the National Educational Tribunal. Sub-clause (6) provides that the Tribunals shall conduct its proceedings as may be required for it to arrive at a conclusion provided that an opportunity of being heard and produce evidence is adequately offered to all the parties at issue. Sub-clause (7) provides that every proceeding before the State Educational Tribunals shall be conducted by its Chairperson and at least one Member sitting together. However, where a Member for any reason is unable to conduct a proceeding till it is completed, the Chairperson and the other Member of the Tribunal shall continue the proceeding from the stage at which it was last heard by the previous Member. Sub-clause (8) provides that every proceeding in case of National Educational Tribunal shall be conducted by its benches. Sub-clause (9) provides that on the conclusion of proceedings, the Tribunals Shall pass such orders as it deems fit and provide such relief including the award of such punitive damages, as it deems fit, to the affected party at issue. It further provides that where the proceeding is conducted by the Chairperson and one Member of the State Educational Tribunal and they differ on any point or points, they shall state the point or points they differ and refer the same to the other Member of the said Tribunals for hearing on the points of difference and the opinion of the majority shall be the order of the said Tribunal. Sub-clause (10) provides that every order made by the State Educational Tribunal or the National Educational Tribunal shall be signed by the Chairperson and Member or Members who heard the case and passed the order.

Clause 40. -This clause provides the power of the Tribunal relating to interim orders while hearing the matter. It provides that no interim order, whether by way of injunction or stay of any other manner, shall be made by a State Educational Tribunal or the National Educational Tribunal in any proceedings unless copies of the application and of all documents in support of the plea for the interim order are furnished to the party against whom the application is made and opportunity to be heard is given to the opposing party in the matter.

Clause 41.- This clause provides that all proceedings before the Tribunal shall be deemed to be judicial proceedings with the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Clause 42.- This clause provides that no act or proceeding of any State Educational Tribunal or the National Educational Tribunal shall be questioned or be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Tribunal.

Clause 43.- This clause provided that the Chairperson, other Members and the officers and other employees of the State Educational Tribunals or the National Educational Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

Clause 44.- This clause provides for administrative control of the National Educational Tribunal over the State Educational Tribunals in the matter of calling for periodical returns regarding the institution, disposal and pendency of cases and issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing English translation of orders written in any language, speedy grant of copies of documents and generally overseeing the functioning of the Slate Educational Tribunals to ensure that the objects and purposes of the legislation are best served without in any way interfering with their quasi-judicial freedom.

Clause 45.- This clause provides for dismissal of frivolous or vexatious complaints filed before the Tribunals and imposition of penalty. It provides that where a matter instituted before any State Educational Tribunal or the National Educational Tribunal is found to be frivolous or vexatious, the concerned Tribunal shall, for reasons to be recorded in writing, dismiss the application and make an order that the applicant shall pay to the opposite party the cost not exceeding fifty thousand rupees, as may be specified in the order.

Clause 46.- This clause provides for finality of the orders of the State Educational Tribunal or the National Educational Tribunal in case no appeal is filed against the order.

Clause 47.- This clause ousts the jurisdiction of the Civil Courts to exercise the jurisdiction, power or authority in relation to such matters as are exercisable by the Tribunals under the proposed legislation.

Clause 48.- This clause seeks to provide the protection to the Central Government, the State Government, the Chairpersons and any other Members of the State Educational Tribunals or the National Educational Tribunal or any other person against suit, prosecution or other legal proceeding for the action taken in good faith or in discharge of the official duties.

Clause 49.- This clause provides that the provision of the proposed legislation shall have an overriding effect on any other law for the time being in force or any instrument having the force of law.

Clause 50.- This clause provides that the provisions of this legislation shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

Clause 51.- This clause provides that nothing contained in the proposed legislation or the rules made thereunder shall apply to any minority institution to the extent to which they are inconsistent with the functions and powers vested upon the National Commission for Minority Educational Institutions established under the National Commission for Minority Educational Institutions, 2004 or provisions contained in that Act.

Clause 52.- This clause provides for power of the Central Government to make rules. It provides that the Central Government may, by notification in the Official Gazette. Make rules to carry out the provisions of the proposed legislation. Sub-clause (2) specifies matters for which such rules may be made by the Central Government.

Clause 53.- This clause provides for power of the State Government to make rules. It provides that the appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of the proposed legislation. Sub-clause (2) specifies matters for which such rules may be made by the appropriate Government.

Clause 54.- This clause provides that every rule made by the Central Government shall be required to be laid before each House of Parliament and every rule made by the State Government shall by required to be laid before the appropriate State legislature.

Clause 55.- This clause empowers the Central Government to make, by order published in the official Gazette, provisions for removal of difficulties in giving effect to the provisions of the proposed legislation. Such orders could be made only within two years from the commencement of the proposed legislation. Sub-clause (2) provides that every order issued under this clause is required to be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 20 of the Bill provides that the Central Government shall establish as the National Educational Tribunal to exercise the power conferred on it by or under the proposed legislation Clause 21 of the Bill provides that the Tribunal shall consist of a Chairperson and two judicial Members, three Academic Members and three Administrative Members Sub-clause (2) of clause 24 of the Bill provides that the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be determined by the Central Government. Sub-clause (1) of clause 30 of the Bill empowers the Central Government to determine after consultation with the Chairperson the nature and categories of officers and other employees required to assist the Tribunal. Sub-clause (3) of said clause provides the salaries and allowances payable to, and the other terms and conditions of service, of the officers and other employees of the Tribunal.

2. On a representative basis the recurring annual expenditure on salary of the Chairperson, Members, Officers and other staff of the National Educational Tribunal and other administrative expenses is estimated to be one crore and twenty-five lakh rupees and the one-time capital investment is estimated to be about ten crore rupees.

3. Clause 4 of the Bill provides that the Central Government shall establish the State Educational Tribunal in each Union Territory to exercise the powers conferred on it by or under the proposed legislation Clause 5 of the Bill provides that the Tribunal shall consist of a Chairperson and two other Members. Sub-clause (2) of clause 8 of the Bill provides that the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be determined by the Central Government Sub-clause (1) of clause 14 of the Bill empowers the Central Government to determine after consultation with the Chairperson the nature and categories of officers and other employees required to assist the Tribunal. Sub-clause (3) of said clause provides for the salaries and allowances. Payable to, and the other terms and conditions of service of the officers and other employees of the Tribunal.

4. On a representative basis, the recurring annual expenditure on salary of the Chairperson, Members, officers and other staff of each State Educational Tribunal and other administrative expenses is estimated to be one crore rupees and the one-time capital investment is estimated to be about ten crore rupees for the seven Union territories. The annual recurring expenditure is estimated to be seven crore rupees and the one-time capital investment of seventy crore rupees.

5. The manpower requirement and the total financial implication in terms of recurring and non-recurring expenditure as well as the modalities involved would however, be determined after appointment of the Chairperson and Members of the proposed State Educational Tribunal. Hence, It would be difficult to work out the exact expenditure, Both recurring and non-recurring at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 52 empowers the Central Government to make, by notification in the official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) includes —(a) the matters in respect of which such rules may be made. These matters, *inter alia*, specifies the form and manner in which an appeal may be preferred, the documents which shall be accompanied with it and the fee payable in respect of filing of such appeal or for the service of execution of processes under clause 19; (b) the term of the Selection Committee and the manner of selection of panel of names under sub-clause (3) of clause 23; (c) the salaries and allowances payable to the other terms and conditions of service of the Chairperson and other Members of the National Educational Tribunal under sub-clause (2) of clause 24; (d) the procedure for the inquiry referred to in sub-clause (3) of clause 26; (e) the salaries and allowances payable to, and other terms and conditions of service of the officer and other employees of the National Educational Tribunal under sub-clause (3) of clause 30; (f) the form in which an application may be made, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes under clause 32; (g) the other matters under clause (i) of sub-clause (1) of clause 39 in respect of which the National Educational Tribunal shall have the powers under the Code of Civil Procedure, 1908 while trying a suit; (h) the procedure for conduct of proceedings of the National Educational Tribunal under sub-clause (5) of Clause 39.

2. Sub-Clause (1) of clause 53 empowers the State Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include – (a) the term of the Selection Committee and the manner of selection of panel of names under sub-clause (3) of clause 7; (b) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the State Educational Tribunal under sub-clause (2) or clause 8; (c) the procedure for the inquiry referred to in sub-clause (3) of clause 10; (d) the salaries and allowances payable to, and other terms and conditions of service of the officers and other employees of the State Educational Tribunal under sub-clause (3) of clause 14; (e) the form in which an application may be made, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes under clause 16; (f) the other matters under clause (i) of sub-clause (1) of clause 39 in respect of which the State Educational Tribunal shall have the powers under the Code of Civil Procedure, 1908 while trying a suit; (g) the procedure for conduct of proceedings of the State Educational Tribunal under sub-clause (4) of clause 39. In so far as it relate to a Union territory the Central Government shall make rules for the purposes of this clause.

3. Clause 54 provides that every rule made by the Central Government are required to be laid before each House of Parliament and every rule made by the State Government are required to be laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

4. The matters in respect of which rules may be made relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

A

BILL

to provide for the establishment of Educational Tribunals for effective and expeditious adjudication of disputes involving teachers and other employees of higher educational institutions and other stake holders (including students, universities, institutions and statutory regulatory authorities) and to adjudicate penalties for indulging in unfair practices in higher education and for matters connected therewith or incidental thereto.

(Shri Kapil Sibal, Minister of Human Resource Development)

LOK SABHA

CORRIGENDA

to

THE EDUCATIONAL TRIBUNALS BILL, 2010

[To be/As introduced in Lok Sabha]

1. Page (i), in the arrangement of clauses, in clause 2,-
for “Applicability of Act”
read “Application of Act”
2. Page 3, line 32,-
for “cognote”
read “cognate”
3. Page 4, line 7,-
for “leaving”
read “being”
4. Page 6, line 47,-
for “not being”
read “not being a”
5. Page 19, line 2,-
for “authority amongst”
read ‘authority, a dispute amongst’
6. Page 20, line 3,-
for “proposes”
read “proposed”
7. Page 21, line 10,-
for “Member which”
read “Members which”
8. Page 21, line 17,-
for “misbehavior”
read “misbehaviour”

9. Page 23, line 3,
for “out or the”
read “out of the”
10. Page 23, line 5,-
for “Sub-clause (2)”
read “Sub-clause (3)”
11. Page 23, line 24,-
for “a Administrative”
read “an Administrative”
12. Page 24, line 7,-
for “has been is an adjudged an insolvent,”
read “has been adjudged insolvent,”
13. Page 24, line 8,-
for “has or engaged”,
read “or has engaged”
14. Page 24, line 17,-
for “sub-clause (1)”
read “sub-section (1)”
15. Page 24, line 31,-
for “further also provides”
read “further provides”
16. Page 25, line 2,-
for “Education”
read “Educational”
17. Page 25, line 6,-
for “than an University”
read “than University”
18. Page 25, line 33,-
for “referred to sub-clause (a) of clause 3”
read “referred to in clause (d) of section 31”
19. Page 25. line 4 from the bottom,-

- for "in mentioned"
read "is mentioned"
20. Page 25, line 3 from the bottom,-
for "sub-clause (2) of clause 33"
read "sub-section (2) of section 33"
21. Page 27, line 1,-
for "the Tribunals"
read "the Tribunal"
22. Page 27, line 6,-
for "the said Tribunal"
read "such Tribunal"
23. Page 27, line 24,-
for "clause provided"
read "clause provides"
24. Page 28, line 11,-
for "Institutions 2004"
read "Institutions Act, 2004"
25. Page 29, line 8,-
for "Central Governments"
read "Central Government"
26. Page 30, line 3,-
omit "in the Official Gazette"
26. Page 30, line 22,-
omit "in the Omcial Gazette"
27. Page 30, Omit lines 8 and 9 from the bottom.

NEW DELHI; .

April 27, 2010

Vaisakha 7,1932 (Saka)

MINUTES

XXVI
TWENTY - SIXTH MEETING

The Committee on Human Resource Development met at 4.00 P.M. on Thursday, the 29th July, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes — *Chairman*
2. Shri N.K. Singh
3. Shri M. Rama Jois
4. Dr. Janardhan Waghmare
5. Dr. E.M. Sudarsana Natchiappan
6. Shri Prakash Javadekar

LOK SABHA

7. Shri Suresh Angadi
8. Shri P.K. Biju
9. Shrimati J. Helen Davidson
10. Shri P.C. Gaddigoudar
11. Shri Deepender Singh Hooda
12. Shri Prasanta Kumar Majumdar
13. Shri Tapas Paul
14. Shri Ashok Tanwar

LIST OF WITNESSES

**I. DEPARTMENT OF HIGHER EDUCATION
MINISTRY OF HUMAN RESOURCE DEVELOPMENT**

- (i) Shrimati Vibha Puri Das, Secretary
- (ii) Shri Sunil Kumar, Additional Secretary
- (iii) Shri R.P. Sisodia, Director, UGC
- (iv) Shri V. Umashankar, P.S. to H.R.M.

II. LEGISLATIVE DEPARTMENT

Dr. G.N. Raju, Joint Secretary

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary
Shri J. Sundriyal, Director
Shri Arun Sharma, Joint Director
Shri Sanjay Singh, Assistant Director
Shrimati Himanshi Arya, Committee Officer
Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee and apprised them about the agenda *i.e.* a preliminary discussion with the Secretary, Department of Higher Education on the Educational Tribunals Bill, 2010. The Chairman informed the members that the background note from the Department indicated that very few States had responded on the Bill. In view of State Educational Tribunals

proposed to be set up under the Bill, the Committee decided to take up the matter with the States so as to ensure wider consultation process. The Committee, accordingly, authorized the Chairman of the Committee to seek permission of Hon'ble Chairman, Rajya Sabha for the purpose.

3. * * *

4. The Committee, then, heard the views of the Secretary, Department of Higher Education on the rationale and scope of various provisions of the Educational Tribunals Bill, 2010. The Chairman and members raised certain queries which were replied to by the witnesses. The Committee decided to send a questionnaire to the Department for written replies within a fortnight.

5. A verbatim record of the proceedings was kept.

6. The Committee adjourned at 5.40 P.M.

XXVII
TWENTY - SEVENTH MEETING

The Committee on Human Resource Development met at 4.00 P.M. on Wednesday, the 11th August, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes — *Chairman*
2. Shri N .K. Singh
3. Shri M. Rama Jois
4. Dr. Janardhan Waghmare
5. Shri N. Balaganga
6. Dr. E.M. Sudarsana Natchiappan

LOK SABHA

7. Shri Suresh Angadi
8. Shrimati J. Helen Davidson
9. Shri P. C. Gaddigoudar
10. Shri Deepender Singh Hooda
11. Shri Prataprao Ganpatrao Jadhav
12. Dr. Vinay Kumar Pandey
13. Shri Tapas Paul
14. Shri Joseph Toppo
15. Shri P. Viswanathan
16. Shri Madhu Goud Yaskhi

SECRETARIAT

Shrimati Vandana Garg, Additional, Secretary

Shri J. Sundriyal, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee to discuss the Educational Tribunals Bill, 2010. The Chairman sought the suggestions/views of the members on the feedback received through the memoranda from various organizations/ individuals and the replies to the questionnaire received from the Department of Higher Education. He wanted the members to firm up the observations of the Committee on the Bill. The Committee, then deliberated on the documents before it and directed the Secretariat to draft the report for its consideration in its next meeting so that the final report could be presented to both Houses during the ongoing Monsoon Session of Parliament.

3. The Committee adjourned at 4.40 P.M. to meet again on Wednesday, the 18th August, 2010.

XXVIII
TWENTY - EIGHTH MEETING

The Committee on Human Resource Development met at 3.30 P.M. on Wednesday, the 18th August, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes — *Chairman*
2. Shri M. Rama Jois
3. Dr. Janardhan Waghmare
4. Shri Prakash Javadekar
5. Shri N. Balaganga
6. Dr. E.M. Sudarsana Natchiappan

LOK SABHA

7. Shri P.K. Biju
8. Shrimati J. Helen Davidson
9. Shri Prasanta Kumar Mazumdar
10. Dr. Vinay Kumar Pandey
11. Shri Tapas Paul
12. Shri Ashok Tanwar
13. Shri Joseph Toppo
14. Shri Madhu Goud Yaskhi

SECRETARIAT

Shrimati Vandana Garg, Additional, Secretary

Shri J. Sundriyal, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

2. Welcoming the members to the meeting of the Committee, the Chairman apprised them of the agenda for the day. He sought their views on both pieces of legislation.

3. The Committee, first, considered the draft 225th Report on the Educational Tribunals Bill, 2010 and adopted the same with certain modifications. The Committee decided to present the Report to both Houses of Parliament on 20th August, 2010. It was decided that while Shri Oscar Fernandes, Chairman of the Committee and in his absence, Dr. Janardhan Waghmare will present the Report in Rajya Sabha, Shri Ashok Tanwar, and in his absence, Dr. Vinay Kumar Pandey will lay the Report in Lok Sabha.

4. *

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5. The Committee adjourned at 6.00 P.M. to meet again on Thursday, the 26th August, 2010.