

Bill No. 56 of 2010

THE PROHIBITION OF UNFAIR PRACTICES IN TECHNICAL EDUCATIONAL  
INSTITUTIONS, MEDICAL EDUCATIONAL INSTITUTIONS  
AND UNIVERSITIES BILL, 2010

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A

BILL

*to provide for the prohibition of certain unfair practices in technical educational institutions, medical educational institutions and universities and to protect interests of students admitted or seeking admission therein and to provide 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

5 1. (1) This Act may be called the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Act, 2010.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

10 (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

Short title,  
extent and  
commencement.

## Definitions.

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

(a) "admission test" means competitive admission test referred to in section 4;

(b) "advertisement" means any document described or issued as advertisement through any form of media and includes any notice, circular or other documents inviting persons domiciled in India for admission to technical educational institutions, medical educational institutions and universities within or outside the territory of India; 5

(c) "appropriate statutory authority" means any authority established under any law for the time being in force for co-ordinating or determining or maintaining the standards of higher education for technical education, medical education and education in universities; 10

(d) "capitation fee" means any amount, (by whatever name called),—

(i) demanded or charged or collected, directly or indirectly, for, or, on behalf of any institution, or paid by any person in consideration for admitting any person as student in such institution; and which is in excess of the fee payable towards tuition fee and other fees and other charges declared by any institution in its prospectus for admitting any person as student in such institution; or 15

(ii) paid or demanded or charged or collected, by way of donation, for, or, on behalf of any institution, or paid by any person in consideration for admitting any person as a student in such institution; 20

(e) "institution" means a technical educational institution or medical educational institution or any such institution registered under the Societies Registration Act, 1860 and recognised as such by the appropriate statutory authority or a university as defined in section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a university under section 3 of that Act or under any other law for the time being in force; 21 of 1860. 3 of 1956. 25

(f) "National Educational Tribunal" means the National Educational Tribunal established under the Educational Tribunals Act, 2010;

(g) "notification" means a notification published in the Official Gazette and the expression "notify" with its cognate meanings and grammatical variations shall be construed accordingly; 30

(h) "prescribed" means prescribed by rules made by the Central Government under this Act;

(i) "prospectus" includes any publication, whether in print or otherwise, issued for providing fair and transparent information, relating to an institution, to the general public (including to those seeking admission in such institution) by the management of such institution or any authority or person authorised by such institution to do so; 35

(j) "State" means a State specified in the First Schedule to the Constitution and shall include a Union territory;

(k) "State Educational Tribunal" means the State Educational Tribunal established under the Educational Tribunals Act, 2010; 40

(l) "State Government",—

(i) in relation to an institution situated in one state, means the State Government of that State;

(ii) in relation to an institution situated in more than one State, means the State Government of a State in which the main campus of such institution is situated. 45

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

## CHAPTER II

5 CONDUCTING TESTS FOR ADMISSION, PUBLICATION OF PROSPECTUS AND PROHIBITION OF COLLECTION OF CAPITATION FEE, ETC.

3. (1) No institution shall, for admission in respect of any seat in any course or programme of study conducted in such institution, accept any payment towards admission fee and other fees and charges,—

10 (a) other than such fee or charges for such admission as declared by it in the prospectus for admission against any such seat; and

(b) without a proper receipt in writing issued for such payment to the concerned student so admitted in such institution.

15 (2) No institution shall charge any fee for an admission test other than an amount representing the reasonable cost incurred by it in conducting such test.

20 4. (1) In case the appropriate statutory authority has specified the process of selection for admission to any course or programme of study in any institution which includes conducting competitive admission test for ascertaining the competence of any person to pursue such course or programme of study, in that case, no person shall be admitted to such course or programme of study in such institution, except through an admission test conducted by,—

(a) a body as may be notified under this Act by the appropriate authority for conducting such admission tests; or

25 (b) such institution or a group of institutions if such institution or group of institutions have been so authorised by the Central Government or a State Government or any appropriate authority or by any other authority so authorised and notified to conduct such test.

30 (2) In case the process of selection for admission to any course or programme of study in any institution including conducting competitive admission test has not been specified under sub-section (1), in that case, no person shall be eligible for admission to such course or programme of study in such institution except through *inter se* merit to be specified in the prospectus of each institution.

(3) Every institution referred to in sub-sections (1) and (2) shall,—

35 (a) maintain the records of the entire process of selection of students including answer sheets of the competitive admission test conducted in respect of the admission of each student;

(b) exhibit such records in its website;

40 (c) be liable to produce such record, whenever called upon to do so by the appropriate statutory authority under this Act or any other law for the time being in force;

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

45 5. (1) Every institution, shall publish, before expiry of sixty days prior the date of the commencement of admission to any of its courses or programmes of study, a prospectus containing the following for the purposes of informing those persons intending to seek admission to such institution and the general public, namely:—

Prohibition of accepting admission fee and other fees and charges without receipt.

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

Mandatory publication of prospectus, its contents and its pricing.

(i) each component of the fee, deposits and other charges payable by the students admitted to such institution for pursuing a course or programme of study, and the other terms and conditions of such payment;

(ii) the percentage of tuition fee and other charges refundable to a student admitted in such institution in case such student withdraws from such institution before or after completion of course or programme of study and the time within, and the manner in, which such refund shall be made to that student; 5

(iii) the number of seats approved by the appropriate statutory authority in respect of each course or programme of study for the academic year for which admission is proposed to be made; 10

(iv) the conditions of eligibility including the minimum and maximum age limit of persons for admission as a student in a particular course or programme of study, where so specified by the institution;

(v) the educational qualifications specified by the relevant appropriate statutory authority, or by the institution, where no such qualifying standards have been specified by any statutory authority; 15

(vi) the process of admission and selection of eligible candidates applying for such admission, including all relevant information in regard to the details of test or examination for selecting such candidates for admission to each course or programme of study and the amount of fee to be paid for the admission test; 20

(vii) details of the teaching faculty, including therein the educational qualifications and teaching experience of every member of its teaching faculty and also indicating therein whether such members are on regular basis or as visiting member;

(viii) the minimum pay and other emoluments payable for each category of teachers and other employees; 25

(ix) information in regard to physical and academic infrastructure and other facilities including hostel accommodation, library and hospital or industry wherein the practical training to be imparted to the students and in particular the facilities accessible by students on being admitted to the institution;

(x) broad outlines of the syllabus specified by the appropriate statutory authority or by the institution, as the case may be, for every course or programme of study, including the teaching hours, practical sessions and other assignments; 30

(xi) all relevant instructions in regard to maintaining the discipline by students within or outside the campus of the institution, and, in particular such discipline relating to the prohibition of ragging of any student or students and the consequences thereof and for violating the provisions of any regulation in this behalf made under the University Grants Commission Act, 1956 or any other law for the time being in force. 35 3 of 1956.

(xii) any such other information which may be prescribed:

Provided that an institution shall publish information referred to in items (i) to (xii) of this sub-section, on its website, and the attention of prospective students and the general public shall be drawn to such publication on the website through advertisements displayed prominently in the different newspapers and through other media; 40

Provided further that an institution may publish prospectus in accordance with this section at any time before the period of sixty days specified under this sub-section (1).

(2) Every institution shall fix the price of each printed copy of the prospectus, being not more than the reasonable cost of its publication and distribution and no profit be made out of the publication, distribution or sale of prospectus. 45

6. (1) No institution shall, directly or indirectly, demand or charge or accept, capitation fee or demand any donation, by way of consideration for admission to any seat or seats in a course or programme of study conducted by it. Prohibition of capitation fee.

(2) No person shall, directly or indirectly, offer or pay capitation fee or give any donation, by way of consideration either in cash or kind or otherwise, for obtaining admission to any seat or seats in a course or programme of study in any institution.

7. (1) No institution, who has in its possession or custody, of any document in the form of certificates of degree, diploma or any other award or other document deposited with it by a person for the purpose of seeking admission in such institution, shall refuse to return such degree, certificate, award or document to that person or withhold such degree, certificate award or other document with a view to induce or compel such person to pay any fee or fees in respect of any course or programme of study which such person does not intend to pursue or avail any facility in such institution. Prohibition on refusal to, return, or, withholding degree, diploma, or, refund of fee, etc.

(2) In case a student, after having admitted to an institution, for pursuing any course or programme of study in such institution, subsequently withdraws from such institution, no institution in that case shall refuse to refund such percentage of fee deposited by such student and within such time as has been mentioned in the prospectus of such institution.

8. No institution shall, issue or publish,—

(a) any advertisement for inducing students for taking admission in the institution, claiming to be recognised by the appropriate statutory authority where it is not so recognised; or Prohibition of advertisements not based on facts or misleading.

(b) any information, through advertisement or otherwise, in respect of its infrastructure or academic facilities or of its faculty or standard of instruction or academic or research performance, which the institution, or, person authorised to issue such advertisement on behalf of the institution, knows to be false or not based on facts or to be misleading.

### CHAPTER III

#### IMPOSITION OF MONETARY PENALTIES

9. Any institution, which knowingly does anything contrary to the information published by it in its prospectus in violation of the provisions of section 5, shall, without prejudice to any proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees. Penalty for doing contrary to information, in prospectus.

10. Any institution, which demands or accepts capitation fee or donation, in any manner whatsoever, in violation of the provisions of section 6, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees. Penalty for demanding or accepting capitation fee.

11. Any institution, which refuses to return any degree, certificate, award or any other document or withholds such degree, certificate, award or any other document without having sufficient cause to do so, or fails to refund the fees in violation of the provisions of section 7, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to one lakh rupees. Penalty for refusal to return or withholding documents.

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

13. Where an advertisement issued, after commencement of this Act, in violation of the provisions of section 8, includes any untrue statement or falsely describes any fact or is misleading, every person who authorised the issue of such advertisement shall, without Penalty for untrue advertisement.

prejudice to proceeding under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees.

Penalty for which no specific provision is made under the Act.

14. Whoever, commits an offence under this Act for which no penalty has been specified elsewhere other than under this Chapter, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, <sup>5</sup> be liable to a penalty which may extend to five lakh rupees and in the case of a society or trust, with a penalty which may extend to ten lakhs rupees.

Confiscation of capitation fee, etc.

15. (1) Any capitation fee or donation or any other charges collected in contravention of the provisions of this Act, shall, without prejudice to the proceedings for prosecution or imposition of penalty under the provisions of this Act or any other law for the time being in force, be liable to be confiscated, by an order made by the concerned State Educational Tribunal or the National Educational Tribunal, as the case may be. <sup>10</sup>

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

Adjudication of penalty.

16. Save as otherwise provided in this Act, all the matters (including the penalties <sup>15</sup> leviable under this Chapter) shall be adjudicated by the concerned State Educational Tribunal or the National Educational Tribunal, as the case may be.

#### CHAPTER IV.

##### OFFENCES

Offences.

17. (1) Without prejudice to any award of penalty by the State Educational Tribunal or the National Educational Tribunal under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. <sup>20</sup>

(2) If any person fails to pay the penalty imposed by the State Educational Tribunal or the National Educational Tribunal or fails to comply with any of its directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. <sup>25</sup>

Cognizance of offences.

18. (1) No court shall take cognizance of any offence under this Act which is alleged <sup>30</sup> to have been committed by any institution or director, manager, secretary or other officer thereof, except on the complaint in writing of such person authorised by the Central Government or the State Government in that behalf or by such person authorised by the concerned appropriate statutory authority, as may be prescribed.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the <sup>35</sup> first class shall try any offence punishable under this Act.

Offences to be non-cognizable.

19. (1) Every offence under section 6 of this Act shall be deemed as cognizable within the meaning of the Code of Criminal Procedure, 1973. <sup>2 of 1974.</sup>

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, <sup>2 of 1974.</sup> every offence, under this Act (other than an offence under section 6), shall be deemed to be <sup>40</sup> non-cognizable within the meaning of the said Code.

Offences by societies or trusts.

20. (1) Where an offence under this Act has been committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and be liable to be proceeded <sup>45</sup> against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed

without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

5 (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary, trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section—

21 of 1860.  
2 of 1882.

10 (a) "society" means any body corporate registered under the Societies Registration Act, 1860 and, "trust" means any body registered under the Indian Trusts Act, 1882 or any other law for the time being in force;

15 (b) "director", in relation to a society or trust, means a member of its governing board other than an *ex officio* member representing the interests of the Central or State Government or the appropriate statutory authority.

20 21. (1) Where an offence under this Act has been committed by an institution, every person who at the time the offence was committed was in charge of, and was responsible to, the institution for the conduct of the business of the institution, as well as the institution, shall be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly:

Offences by institution.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

25 (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by an institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any governor, chancellor, director, trustee, manager, secretary or other officer of such institution, such governor, chancellor, director, trustee, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER V

MISCELLANEOUS

35 22. No court shall have jurisdiction to entertain any dispute 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.

Bar of jurisdiction.

40 23. When an institution is accused of having committed an offence under section 8, the burden of proving that such institution has not committed such offence, shall be on the institution.

Burden of proof.

45 24. Notwithstanding anything contained in any other law for the time being in force, the Central Government or a State Government, as the case may be, and the appropriate statutory authority may, by a general or special order, call upon any technical educational institution or medical educational institution or university to furnish to that Government or the appropriate statutory authority, as the case may be, periodically or as and when required any information concerning the activities carried on by the institution or university as may be prescribed to enable that Government or the appropriate statutory authority, as the case may be, to carry out the purposes of this Act:

Power to call for information.

Crediting sums realised by way of penalties to Consolidated Fund of India.

25. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Non-applicability of this Act to minority institutions in certain cases.

26. Nothing contained in this Act or the rules made there under shall affect the right of the minorities to establish and administer educational institutions of their choice.

Power of Central Government to make rules.

27. (1) The Central Government may, by notification in the Official Gazette, make rules 5 for carrying 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) any such other information to be contained in the prospectus under clause (xii) of section 5; 10

(b) the manner in which capitation fee or donation or other charges confiscated shall be dealt with under sub-section (2) of section 15;

(c) the persons authorised to file a complaint, before a court in respect of an offence under this Act on behalf of the Central Government or State Government or concerned appropriate statutory authority, under sub-section (1) of section 18; 15

(d) the information concerning the activities carried on by the technical educational institution or medical educational institution or university to be furnished periodically or as and when required by the Central or a State Government or appropriate statutory authority under section 24;

(e) any other matter which is to be or may be, prescribed or in respect of which 20 provision is to be made by the Central Government by rules.

Rules to be laid before Parliament.

28. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, 25 both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Protection of action taken in good faith.

29. No suit or other legal proceedings shall be instituted against the Government or 30 any officer or authority or person exercising powers or discharging functions under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or the rules or directions issued thereunder.

Application of other laws not barred.

30. 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. 35

Power to remove difficulties.

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

Provided that no order shall be made under this section after the expiry of the period of 40 three years from the date of commencement of this Act.

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

## STATEMENT OF OBJECTS AND REASONS

There has been an unprecedented growth in higher education in recent years, of which the growth of higher professional education, especially technical and medical education has been mainly through private participation. The current national policy supported by several judicial pronouncements is against commercialization of higher education, though the policy encourages private 'not-for-profit' participation with surplus revenues to be ploughed back for growth and development of institutions.

2. There is public concern that technical and medical educational institutions, and universities should not resort to unfair practices, such as charging of capitation fee and demanding donations for admitting students, not issuing receipts in respect of payments made by or on behalf of students, admission to professional programmes of study through non-transparent and questionable admission processes, low quality delivery of education services and false claims of quality of such services through misleading advertisements, engagement of unqualified or ineligible teaching faculty, forcible withholding of certificates and other documents of students.

3. Prompt and effective deterrent action is constrained in the absence of any Central law prohibiting capitation fee and other unfair practices. While the current policy in higher education is to promote autonomy of institutions, adoption of unfair practices by misusing autonomy would be disastrous for the credibility of the higher education sector. It would be in public interest to balance autonomy of higher education institutions with measures to protect the interests of students and others accessing higher education.

4. It is, therefore, proposed to provide for the matter specified in the preceding paragraph in the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 which, *inter alia*, provides for—

(a) prohibition of accepting admission fee and other fees and charges other than such fee or charges for such admission as declared by the institution in the prospectus for admission against any seat and without a proper receipt in writing issued for such payment to the concerned student so admitted in the institution;

(b) prohibition of admission without specified admission test for selection of the students where such test is required to be conducted as per appropriate statutory authority;

(c) mandatory publication of prospectus, its contents and its pricing;

(d) prohibition of demanding or charging or accepting, directly or indirectly, capitation fee or demand by donation, by way of consideration for admission to any seat or seats in course or programme of study, by the institutions;

(e) prohibition on refusal to return or withholding degree, diploma, or other documents deposited with the institution or refund of fee, if the student withdraws from the institution;

(f) prohibition of advertisement not based on facts or misleading;

(g) imposition of monetary penalty up to fifty lakh rupees for doing contrary to information in prospectus, demanding or accepting capitation fee and publishing false or misleading advertisement or untrue advertisement and penalty up to one lakh rupees for refusal or withholding documents; confiscation of capitation fee or donation or any other charges collected in contravention of the provisions of the proposed legislation by the State Educational Tribunal and the National Education Tribunal (proposed to be established under the Educational proposed Tribunals Act, 2010).

5. Clause 26 of the Bill provides that the proposed legislation shall not affect the right of the minorities to establish and administer educational institution of their choice.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

KAPIL SIBAL

NEW DELHI;

*The 19th April, 2010.*

### Notes on clauses

*Clause 2.*— This clause defines various expressions used in the proposed legislation. It *inter alia* defines expressions "admission test", "advertisement", "appropriate statutory authority", "capitation fee", "institution", "National Educational Tribunal", "prospectus", and "State Educational Tribunal" used in the proposal legislation.

*Clause 3.*— This clause makes prohibition of accepting admission fee and other fees and charges without receipt. It provides that no institution shall, for admission in respect of any seat in any course or programme of study conducted in such institution, accept any payment towards admission fee and other fees and charges other than such fee or charges for such admission as declared by it in the prospectus for admission against any such seat and without a proper receipt in writing issued for such payment to the concerned student so admitted in such institution. It further provides that no institution shall charge any fee for an admission test other than an amount representing the reasonable cost incurred by it in conducting such test.

*Clause 4.*— This clause makes prohibition of admission without specified admission tests or *inter se* merit for selection of students. It provides that in case the appropriate statutory authority has specified the process of selection for admission to any course or programme of study in any institution which includes conducting competitive admission test for ascertaining the competence of any person to pursue such course or programme of study, in that case, no person shall be admitted to such course or programme of study in such institution, except through an admission test conducted by a body as may be notified under the proposed legislation by the appropriate authority for conducting such admission tests or such institution or a group of institutions if such institution or group of institutions have been so authorised by the Central Government or a State Government or any appropriate authority or by any other authority so authorised and notified to conduct such test.

It further provides that in case the process of selection for admission to any course or programme of study in any institution including conducting competitive admission test has not been specified under sub-clause (1) of this clause, in that case, no person shall be eligible for admission to such course or programme of study in such institution except through *inter se* merit to be specified in the prospectus of each institution. It also imposes a duty on every institution to maintain the records of the entire process of selection of students; exhibit such records in its website and produce such record, whenever called upon to do so by the appropriate statutory authority. The records under this clause shall be maintained for a period of one year or if it has been questioned in any court or tribunal, then, for such period the said court or tribunal may direct.

*Clause 5.*— This clause makes mandatory the publication of prospectus, its contents and its pricing. It provides that every institution shall publish, before expiry of sixty days prior to the date of the commencement of admission to any of its courses or programmes of study, a prospectus containing the details specified in items (i) to (xii) for the purposes of informing to those persons intending to seek admission to such institution and the general public.

It further provides that every institution shall fix the price of each printed copy of the prospectus, being not more than the reasonable cost of its publication and distribution and no profit be made out of the publication, distribution or sale of prospectus.

*Clause 6.*— This clause prohibits the capitation fee and donations, etc. It provides that no institution shall, directly or indirectly, demand or charge or accept, capitation fee or demand any donation, by way of consideration for admission to any seat or seats in a course or programme of study conducted by it. It further provides that no person shall, directly or indirectly, offer or pay capitation fee or give any donation, by way of consideration either in cash or kind or otherwise, for obtaining admission to any seat or seats in a course or programme of study in any institution.

*Clause 7.*— This clause makes prohibition on refusal to, return, or, withholding degree, diploma, or, refund of fee, etc. It provides that no institution, who has in its possession or custody, of any document in the form of certificates of degree, diploma or any other award or other document deposited with it by a person for the purpose of seeking admission in such institution, shall refuse to return such degree, certificate, award or document to that person or withhold such degree, certificate award or other document with a view to induce or compel such person to pay any fee or fees in respect of any course or programme of study which such person does not intend to pursue or avail any facility in such institution.

It further provides that in case a student subsequently withdraws from such institution, no institution in that case shall refuse to refund such percentage of fee deposited by such student and within such time as has been mentioned in the prospectus of such institution.

*Clause 8.*— This clause makes prohibition of advertisements not based on facts or misleading. It provides that no institution shall issue or publish any advertisement for inducing students for taking admission in the institution, claiming to be recognised by the appropriate statutory authority where it is not so recognised or any information, in respect of its infrastructure or academic facilities or of its faculty or standard of instruction or academic or research performance, which the institution, or, person authorised to issue such advertisement on behalf of the institution, knows to be false or not based on facts or to be misleading.

*Clause 9.*— This clause provides that any institution which knowingly does anything contrary to the information published by it in its prospectus in violation of the provisions of clause 5 shall be liable to a penalty which may extend to fifty lakh rupees, without prejudice to proceedings for prosecution under the provisions of the proposed legislation or any other law for the time being in force.

*Clause 10.*— This clause provides that if any institution for demands or accepts capitation fee or donation, in any manner whatsoever, in violation of the provisions of clause 6 shall be liable to a penalty which may extend to fifty lakh rupees, without prejudice to proceedings for prosecution under the provisions of the proposed legislation or any other law for the time being in force.

*Clause 11.*— This clause provides that any institution, which refuses to return any degree, certificate, award or any other document or withholds such degree, certificate, award or any other document without having sufficient cause to do so, or fails to refund the fees in violation of the provisions of clause 7 shall be liable to a penalty which may extend to one lakh rupees, without prejudice to proceedings for prosecution under the provisions of the proposed legislation or any other law for the time being in force.

*Clause 12.*— This clause provides that any institution which publishes any advertisement which is false or misleading and in violation of the provisions of clause 8, a penalty which may extend to fifty lakh rupees, without prejudice to proceedings for prosecution under the provisions of the proposed legislation or any other law for the time being in force.

*Clause 13.*— This clause provides that where an advertisement issued, after commencement of the proposed legislation, in violation of the provisions of clause 8, includes any untrue statement or falsely describes any fact or is misleading, every person who authorised the issue of such advertisement shall be liable to a penalty which may extend to fifty lakh rupees, without prejudice to proceedings for prosecution under the provisions of the proposed legislation or any other law for the time being in force.

*Clause 14.*— This clause provides that whoever, commits an offence under the proposed legislation for which no penalty has been specified elsewhere other than under Chapter III, shall, be liable to a penalty which may extend to five lakh rupees and in the case of a society or trust, with a penalty which may extend to ten lakhs rupees, without prejudice to proceedings for prosecution or imposition of penalty under the provisions of this Act or any other law for the time being in force.

*Clause 15.*— This clause provides that any capitation fee or donation or any other charges collected in contravention of the provisions of the proposed legislation, shall, be liable to be confiscated, by an order made by the concerned State Educational Tribunal or National Educational Tribunal, as the case may be, constituted under the provisions of the Educational Tribunals Act, 2010, and the capitation fee or donation or any other charge confiscated shall be dealt in such manner as may be prescribed by rules made by the Central Government.

*Clause 16.*— This clause provides that all the matters (including the penalties leviable under Chapter II of the proposed legislation shall be adjudicated by the concerned State Educational Tribunal or the National Educational Tribunal, as the case may be, constituted under the provisions of the Educational Tribunals Act, 2010.

*Clause 17.*— This clause provides punishment for contravention of the provisions of the proposed legislation. It provides that without prejudice to any award of penalty by the State Educational Tribunal or the National Educational Tribunal, if any person contravenes or attempts to contravene or abets the contravention of the provisions of proposed legislation or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

It further provides that if any person fails to pay the penalty imposed by the State Educational Tribunal or National Educational Tribunal or fails to comply with any of its directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

*Clause 18.*— This clause provides that no court shall take cognizance of any offence under the proposed legislation, except on the complaint in writing of the person authorised by the Central Government or by the State Government in that behalf or of a person authorised by the concerned appropriate statutory authority and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the proposed legislation. The rules made under the proposed legislation shall provide for the persons so authorised to file complaints.

*Clause 19.*— This clause provides that every offence under clause 6 of the proposed legislation alleging the demand of capitation fee shall be deemed as cognizable within the meaning of the Code of Criminal Procedure, 1973 and notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence (other than an offence under clause 6) under the proposed legislation shall be deemed to be non-cognizable within the meaning of the said Code.

*Clause 20.*— This clause provides that where an offence under the proposed legislation has been committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

It further provides that if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, then such person shall not be liable to the punishment. It also provides that notwithstanding anything contained in sub-clause (1), where any offence under the proposed legislation has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary, trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. It also explains the expressions "society" and "director" used in this clause.

*Clause 21.*— This clause provides that where an offence under the proposed legislation has been committed by an institution, every person who at the time the offence was committed

was in charge of, and was responsible to, the institution for the conduct of the business of the institution, as well as the institution, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

It further provides that nothing contained in this sub-clause shall render any such person liable to any punishment provided in the proposed legislation, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. It also provides that where any offence under proposed legislation has been committed by an institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any governor, chancellor, director, trustee, manager, secretary or other officer of such institution, such governor, chancellor, director, trustee, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Clause 22.*— This clause provides bar of jurisdiction of civil court. It provides that no court shall have jurisdiction to entertain any dispute or proceeding in respect of any matter which the State Educational Tribunal or the National Educational Tribunal is empowered by or under the proposed legislation 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 the proposed legislation.

*Clause 23.*— This clause provides that when an institution is accused of having committed an offence under clause 8 (concerning the making false claims through advertisements or otherwise which are not based on facts or misleading), the burden of proving that such institution has not committed such offence, shall be on the institution.

*Clause 24.*— This clause confers power on the Central Government and the State Governments and the appropriate statutory authority to call upon any information concerning the activities carried on by the institution or university as may be prescribed to enable that Government or the appropriate statutory authority to carry out the purposes of the proposed legislation from any technical educational institution or medical educational institution or university.

*Clause 25.*— This clause provides that all sums realised by way of penalties under the proposed legislation shall be credited to the Consolidated Fund of India.

*Clause 26.*— This clause provides a bar on application of the proposed legislation to any minority institutions in certain cases. It provides that nothing contained in the proposed legislation or the rules made there under shall affect the right of the minorities to establish and administer educational institutions of their choice.

*Clause 27.*— This clause empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of the proposed legislation. It further specifies the matter for which the Central Government may make rules.

*Clause 28.*— This clause provides that the every rule made by the Central Government shall be laid before each House of Parliament.

*Clause 29.*— This clause make provision for protection of action taken in good faith. It provides that no suit or other legal proceeding shall lie against the Government or any officer or authority or person exercising powers or discharging functions under the proposed legislation, for anything which is in good faith done or intended to be done in pursuance of the proposed legislation or any rule or order made thereunder.

*Clause 30.*— This clause provides that the provisions of the proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force

*Clause 31.*— This clause provides for provisions for removal of difficulties. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the

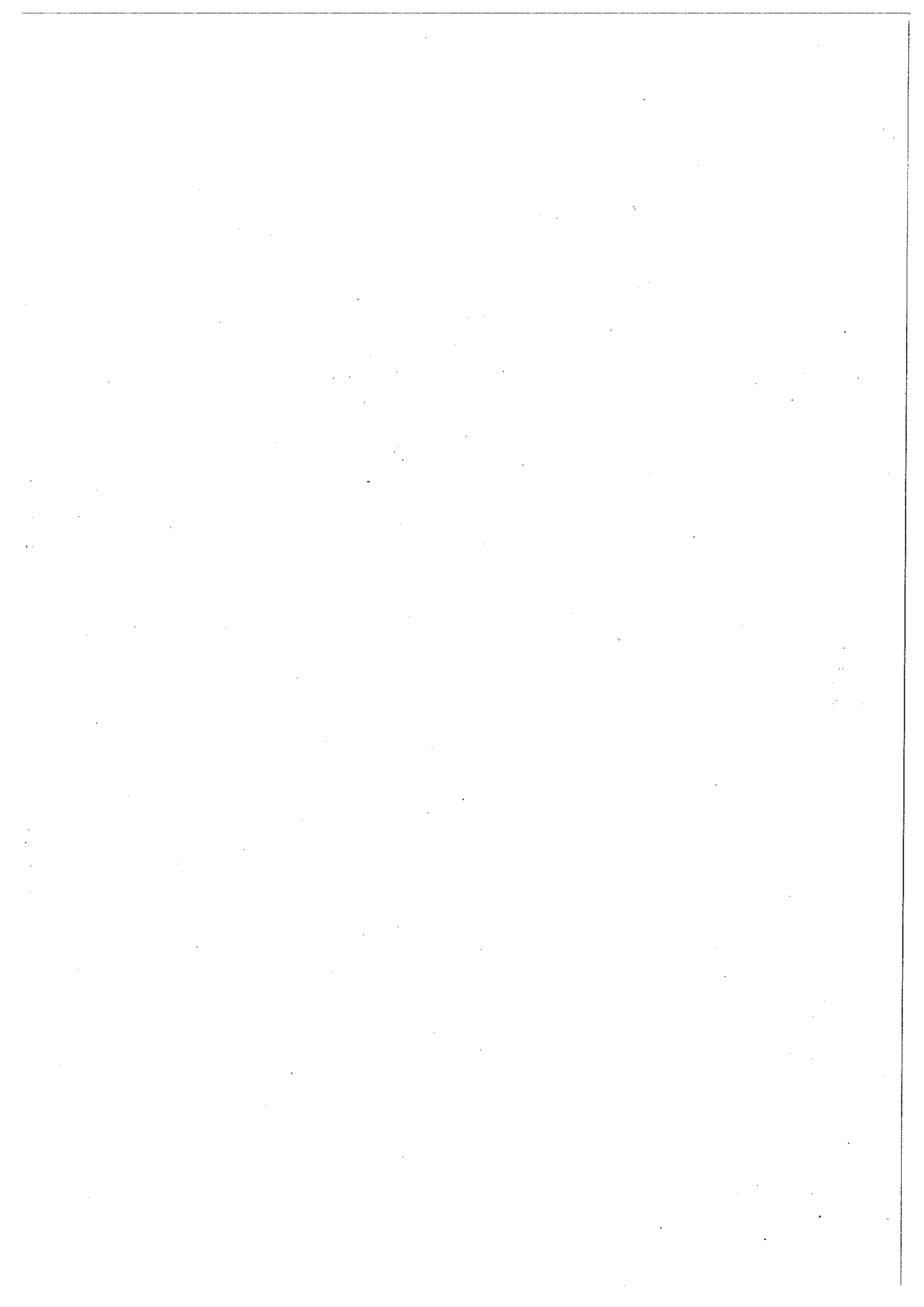
Central Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of the proposed legislation as may appear to it to be necessary for removing the difficulty. It further provides that such order shall be made within a period of three years from the date of commencement of the proposed legislation. It also provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 27 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for 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 matters (a) any such other information to be contained in the prospectus under clause (xii) of clause 5; (b) the manner in which capitation fee or donation or other charges confiscated shall be dealt with under sub-clause (2) of clause 15; (c) the persons authorised to file a complaint, before a court in respect of an offence under this Act on behalf of the Central Government or State Government or concerned appropriate statutory authority, under sub-clause (1) of clause 18; (d) the information concerning the activities carried on by the technical educational institution or medical educational institution or university to be furnished periodically or as and when required by the Central or a State Government or appropriate statutory authority under clause 24; and (e) any other matter which is to be or may be, prescribed or in respect of which provision is to be made by the Central Government by rules.

2. The rules made under clause 27 of the Bill, shall be laid, as soon as they are made, before both the House of Parliament under clause 28 of the Bill.

3. The matters in respect of which rules may be made are matter of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers; therefore, of normal character.



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to provide for the prohibition of certain unfair practices in technical educational institutions, medical educational institutions and universities and to protect interests of students admitted or seeking admission therein and to provide for matters connected therewith or incidental thereto.

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*(Shri Kapil Sibal, Minister of Human Resource Development)*

GMGIPMRND—1851LS(S5)—21.04.2010.