STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT

The Prohibition Of Unfair Practices In Technical Educational Institutions, Medical Educational Institutions And Universities Bill, 2010

TWO HUNDRED THIRTY-SIXTH REPORT

The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 seeks 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.

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. 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.

Prompt and effective deterrent action is constrained in the absence of any Central law prohibiting capitation fee and other unfair practices. It is, therefore, proposed to provide for the matter specified above which the bill, inter alia provides for:

- Prohibition of accepting admission fee and other fees, without a proper receipt in writing issued for such payment to the concerned student so admitted in the institution
- Prohibition of admission without specified admission test for selection of the students
- Prohibition on refusal or withholding degree or diploma, as well as refusal to return the fees in case the student withdraws from the university
- Prohibition of accepting or charging, directly or indirectly, capitation fee or demand donation by ways of consideration for admission to any seat in a particular course in the university
- prohibition of advertisement not based on facts or misleading
- imposition of monetary penalty upto 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 upto 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
- Not affecting the rights of minorities in their choice to establish and administer educational institutions.

CONSULTATION PROCESS

Keeping in view the likely impact of the proposed legislation on higher educational institutions spread across the country, the views of the stakeholders involved in the functioning of higher educational institutions were assessed.

The proposed “malpractices law” would be incomplete without a proper regulatory framework.

The States concurred with the proposal of the Central Government to pursue legislative initiatives for ensuring access with equity and controlling the fees charged by private institutions and institutions deemed to be universities.

Complaints of the committee with the inquiries conducted by the department

The lack of a thorough consultative process while drafting such a historic piece of legislation having a wide ranging impact on the functioning of higher educational institutions spread across the country aroused complaints.

The right course of action would have been to pursue the crucial policy matter with all the State Governments, at least those having a very high concentration of higher educational institutions. No direct consultations with regulatory bodies like MCI, DCI, etc. had been undertaken since consultations with these bodies were internal to the Ministry of Health and Family Welfare, being under the purview of that Ministry and other major stakeholders, *i.e.* statutory regulatory bodies like UGC, MCI, AICTE etc. remained a part of the formal exercise only.

Measures to curb the defects

A comparative analysis of State laws *vis-a-vis* the proposed legislation was made and it was observed that the State laws cannot be considered comprehensive enough when compared with the present Bill. However, there are certain provisions in the State laws which need to be reflected in the central legislation also to make it more effective.

The participation of the private sector in higher education through Deemed to be Universities, State Private Universities, self-financed colleges and self-financed courses led to prevalence of certain undesirable practices. UGC (Establishment of and Maintenance of Standards of Private Universities) Regulations, 2003 and UGC (Institution Deemed to be Universities) Regulations, 2010 have limitations and do not give powers to UGC to effectively deal with erring universities. Committee's attention was drawn to relevant provisions of UGC Act (Sections 14 and 24) whereunder UGC can withhold grants and impose penalties. However, a fine of Rs.1000/- under section 24 for awarding unspecified degrees or running a fake institution cannot be considered a deterrent for erring institutions.

AICTE, the primary regulatory body for technical education in the country had statutory powers to take all necessary steps to prevent commercialization of technical education, to fix norms/guidelines for charging tuition and other fees, to lay down norms/standards for courses, curricular, physical and instructional facilities, staff pattern/qualifications, quality

instructions, assessments and examinations and provide guidelines for admission of students. However, the jurisdiction for implementation of the same was through the University system and the State Higher Education System. Hence, implementation sometimes became long drawn and probably ineffective.

Accordingly, a Central law for prompt and effective deterrent action was the need of the hour. It was informed that the most common violations being made, particularly by private institutions related to charging of high fees, non-refund of fees in case of withdrawal of admission by students, non-return of original certificates, awarding of unspecified degrees, starting unapproved study centres/off campus centres outside their jurisdiction.

Debate on Constitutional validity of the bill

The objective of the Bill was to regulate charging of donations and capitation fee, admission fee and other charges, admission processes, advertisement and promotion and various other acts and operations of universities, besides institutions of technical and medical education. However, doubts were raised about the constitutional validity of the bill.

The arguments given in this regard followed the example of the following entries in the constitutional list:

1. Entry 44 of the Union List

Parliament was categorically debarred by the Constitution to enact a law for regulation of universities according to the entry 22 of the union list that read-

"Incorporation, regulation and winding up of corporations, whether trading or not with objects not confined to one State, but not including universities."

2. Entry 32 of the State List

"Incorporation, regulations and winding up of corporations, other than those specified in List I and universities, unincorporated trading, literacy, scientific, religious and other societies and associations, co-operative societies."

3. Entry 25 of the Concurrent List

"Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

It was also pointed out that although education is a concurrent subject as per Entry 25 of List III, however, power to regulate universities still cannot be exercised by Parliament because this subject is categorically excluded from the legislative powers of Parliament *vide* Entry 44 of Union List.

4. Entry 66 of Union List

Giving the Parliament a limited jurisdiction, this entry limits its power to legislate only for coordination and determination of standards that too in institutions of higher education only and not for universities.

"Coordination and determination of Standards in institutions for higher education or research and scientific and technical institutions."

5. Entry 63 of Union List

Parliament was only competent to legislate for universities which were in existence at the commencement of the Constitution as BHU, AMU, Delhi University, established in pursuance of article 371 E and any other institution declared by Parliament by law to be an institution of national importance by virtue of Entry 63 of Union List.

When this issue was taken up with the Department, the following clarifications were given:

Citing entry 25 of list III and entry 66 of list I, the department left no scope of doubt about the competence of the Parliament to legislate on matters relating to education. Entry 25 of List III has the effect of modifying Entry 32 (List II), as in items under List III, Parliament has precedence. Moreover, the present proposal does not in any way abridge the legislative competence of States in terms of Entry 32 of List-II. Therefore, the legal infirmities pointed out in the question above which were relevant before the Constitution was amended in 1976

are no more so now, since education has been transferred to the Concurrent List. Entry 44 clearly excludes universities and, therefore, is not relevant to the present proposal."

There existed no law which dealt with the cases of malpractices comprehensively in the higher education sector. No existing law in the country was directed at prohibiting and punishing malpractices in higher education. Though there were general criminal offences prescribed in the Indian Penal Code (IPC) like cheating etc., every time a case of cheating could not be established. Section 24 of the UGC Act provided for a penalty of Rs.1000/- only. **It did not have any criminal penalties which were required in case of unfair practices and was consequently ineffective in dealing with unfair practices. Secondly, increased litigation arising out of enactment of legislation would be handled through the Educational Tribunals, thereby preventing over-burdening of normal courts.**

Another view-point put forth was that the definition of the term 'consumer' as per section 2(d) of the Consumer Protection Act, 1986 included students under its ambit with an account of the malpractices affecting their interest covered under section 2(t) and 2 (g) of the Act. The Committee provides a clear distinction between the roles of the consumer protection act and the proposed legislation, hoping to clear all the doubts raised by the private sector organisations.

ISSUES NOT COVERED IN THE BILL

Certain areas had either not been included in the Bill or remained inadequately covered.

a) Scope of the bill

- The scope of the Bill had been restricted to technical and medical institutions and universities including deemed universities. It excluded other universities, colleges for general and professional education and other institutions of higher general education, including, notably, colleges for teacher education.
- The National Council for Teacher Education was left out from this list.
- The instances of unfair practices need to be curbed in all categories of higher educational institutions be it Central Universities, deemed to be universities, State Universities, all higher educational institutions including institutions of national importance.
- The definition of 'institution' needed to be a very specific definition about the coverage of all categories of institutions intended to be covered under the ambit of the proposed legislation.
- The Educational Tribunals Bill, 2010 was mandated to provide effective and expeditious adjudication of disputes involving teachers and other employees of higher educational institutions and other stakeholders including students. It would have been appropriate if specific provisions relating to unfair practices where teachers/employees are the victims were also incorporated in the Bill on the pattern of what is envisaged for students.

b) Definition of the term 'Unfair practices'

All the unfair practices were not covered in the Bill at present and accordingly penalties have been prescribed only for specific unfair practices as enumerated therein, pointing out a few limitations of Clause 14 of the bill.

- Quantum of penalty in this clause extending to five lakh rupees/ten lakh rupees was very less when compared with specified unfair practices.

RECOMMENDATIONS OF THE COMMITTEE

a) **Definition- Clause 2**

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

(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.

Through discussions with students, admissions did not take place on merit but on the basis of capitation fee. In the name of 'other charges', capitation fee was being asked from the students at the time of admission. The "other charges" to the extent possible should be specified in the Act itself so that there was no scope left for the institutions to demand "capitation fee" in the garb of other charges from the students and an amount of excess tuition fee should be specified so as to identify it as capitation fee. **Ten percent excess of tuition fee can be the benchmark for identifying 'capitation fee'. The definition of 'capitation fee' be made more specific so as to curb the malpractice of capitation fees demanded by the institutions thereby protecting the interests of students and their parents.**

b) **Prohibition of accepting admission fees and other without providing receipts- Clause 3**

There is a need for having a mechanism for deciding the fees to be charged by the Institutions/Universities especially in view of very high fees being charged by private universities. One option given was to fix the upper limit for various courses. This can be fixed by the State Fee Regulation Committees and where such Committees don't exist, fees can be fixed higher on a justified basis *i.e.* ten per cent higher than fixed by State

Committees. The fees so fixed can be for a year or can be revised only after a minimum period *i.e.* three years.

The absence of any specific definition of the term 'other fees and charges' would leave the ground open for the managements of higher educational institutions to ask for any kind of charges from students as they deem fit.

Kerala Self Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004 and **the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987** include the following fees: - Tuition fee, Term fee, Library fee and security deposit, Lab fee and security deposit, Gymkhana fee, Examination fee and Hostel fee, mess charges. This could be the benchmark for the specification of charges to be defined in the Bill.

c) Prohibition of admission without any admission tests- Clause 4

The main purpose of this provision is to have a transparent admission process based either on entrance test or on *inter se* merit of students. Once this is accomplished, allegations of admission tests conducted by private institutions being only farcical and also not based on *inter se* merit of students can be checked in the real sense. However, the implementation mechanism therefore has to be made tamper-free and foolproof. Accordingly, **effective regulation and monitoring of entrance or admission tests must be done to make the admission process more credible and authentic without infringing the autonomy of institutions/universities.**

Another important issue highlighted in this clause was the need for having qualified faculty as per the prescribed norms. There have been many instances where less qualified faculty and even fresh pass outs are engaged by the institutions for teaching. As per this provision, the institution would have to give details of the teaching faculty, their educational qualifications, teaching experience and minimum pay and other emoluments payable for each category of teachers and other employees. However, mere publication in the prospectus by an institution about its faculty which may not be qualified as per norms or even absence of adequate number of faculty can make it justified since the institution has disclosed the information in its prospectus. The reference about prescribed norms/statutory obligations should be there in respect of faculty details also.

d) Relation to penalties- Clause 9 to 14

A uniform amount of penalty for all types of offences was against the principle of natural justice. There should be different penalties for different violations and the penalties should also be proportional to the offence. A major and minor violation cannot be treated as equal. The quantum of penalties under these provisions needs to be worked out with reference to case to case basis based on merit of each case or violation.

A penalty of Rs. one crore for charging of capitation fee will act as an effective deterrent for institutions/individuals involved in such an activity. The need for specifying a minimum penalty for violations as it is believed that all offences under the Act should be treated as serious as they affect the interests of students and may put their future at stake.

Apprehensions have been voiced about misuse of clauses 12 and 13 relating to penalties for false or misleading advertisement or untrue advertisement by the authorities since the determination of violations under these provisions can be very subjective. Holding both the institution and the authorized person equally and separately responsible does not seem to be justified. The Committee is in agreement with this apprehension and requests the Department to review these provisions.

e) Offences- Clause 17

The Committee is of the view that with State/National Educational Tribunals being given the authority to adjudicate in the matter relating to contravention of provisions of the Act, inclusion of a provision whereunder notwithstanding award of penalty by Educational Tribunals, imprisonment for a term extending to three years or with fine or both, does not seem to be justified. Similarly, on non-payment of penalty imposed by Educational Tribunal or non-compliance of its directions/orders, prison term extending to three years or with fine from rupees fifty thousand to rupees five lakh or with fine is also proposed, a provision which was thought of as harsh.

The Committee has also taken note of clause 36 of the Educational Tribunals Bill, 2010, whereunder non-compliance of any order of State Educational Tribunal is liable to be punishable with a imprisonment term extending to three years or with fine upto ten lakh rupees. The Committee is of the view that with a specific provision (clause36) already

incorporated in the Educational Tribunals Bill, 20W, inclusion of similar provision having another penalty provision does not seem to be based on justifiable grounds.

f) Cognizance of offences- Clause 18

The contention of the Department for denying the aggrieved party opportunities to approach the courts directly was not convincing. There are bound to be cases where due to unfair practices resorted to by an institution, future prospects of a student were at stake. It may be due to unfair practice in the conduct of examinations. Urgent remedy could be awarded for them. Thus, it is more than clear that in the event of only a very genuine grievance of the affected party where all the prescribed channels have failed to provide relief, it would be compelled to approach the court.

g) Burden of proof- Clause 23

Putting onus on educational institutions would make the institution assume greater responsibility in informing students and other stakeholders about its standard of quality, infrastructure etc. The provision seems to be justified, in view of the fact that the aggrieved party would be a student/ his parents who would be approaching a Tribunal against the management of an institution. The institution would be more economically efficient than the aggrieved student or his/her parents and the burden of proof should therefore lie with the accused.

h) Non-applicability of the act to minority institutions in certain cases- Clause 26

Clause 26 of the Bill reads as follows- *"Nothing contained in this Act or the rules made thereunder shall affect the right of the minorities to establish and administer educational institutions of their choice."*

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.

As per the Department's submission, minority educational institutions are not exempted from the operation of other laws such as regulating standards of education, if they are not violative of the might under Article 30 (1).

Article 30(1)- "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. "

The present provision could lead to an interpretation whereby any instance of unfair practice resorted by a minority educational institution may not be acted upon. It needs to be ensured that interests of all the students including those studying in minority institutions are safeguarded, giving rise to a new provision that brings the minority institutions within the ambit of the minority institutions.

i) **Application of other laws not barred- Clause 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."

One of the stakeholders was of the view that this was a very damaging provision as this provision nullifies everything in the Bill.

It is implied that the central law would prevail over the state laws, and no scope should be left for confusion leading to multiplicity of litigations. However, a similar provision is mentioned in the Educational Tribunals Bill, 2010 along with a provision which enables the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in any other law for the time being in force or in any instrument having effect by virtue of any law other then this Act. The same provisions should be added in the proposed legislation, recommending to revisit and alter the existing provision.