

**Annexure-3(II)**

**THE PROHIBITION OF UNFAIR PRACTICES IN SCHOOLS BILL, 2012**

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# THE PROHIBITION OF UNFAIR PRACTICES IN SCHOOLS, 2012

A

## BILL

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

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

### CHAPTER I

#### PRELIMINARY

#### 1.

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

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

I. "appropriate Government" means-

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

II. "capitation fee" means any kind of donation or contribution or payment other than the fee notified by the school;

1. demanded or charged or collected, directly or indirectly, for, or, on behalf of any school, or paid by any person in

consideration for admitting any student in such school; which is in excess of the fee payable towards tuition fee and other fees and other charges declared by any school in its prospectus for admitting any student in such school; or

2. paid or demanded or charged or collected, by way of donation, for, or, on behalf of any School, or paid by any person in consideration for admitting any student in such school;
- III. "child" means a male or female child of the age of **5-17 years**;
- IV. "child belonging to disadvantaged group" means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;
- V. "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;
- VI. "school education" means the education from Pre-School Classes through Grade/Class first to Twelfth.
- VII. "parent" means either the natural or step or adoptive father or mother of a child;
- VIII. "guardian", in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or a statute;
- IX. school management committee in relation to a school means a committee comprising of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers such that at least three-fourth of members of such Committee shall be parents or guardians; and further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section; and also that fifty per cent of Members of such Committee shall be women.
- X. "local authority" means a Municipal Corporation or Municipal Council or *Zila Parishad* or *Nagar Panchayat* or *Panchayat*, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local

- authority in any city, town or village;
- XI. "National Commission for Protection of Child Rights" means the National Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005;
- XII. "notification" means a notification published in the Official Gazette;
- XIII. "prescribed" means prescribed by rules made under this Act;
- XIV. "Schedule" means the Schedule annexed to this Act;
- XV. "school" means any recognized school imparting school education and includes-
1. a school established, owned or controlled by the appropriate Government or a local authority;
  2. an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
  3. a school belonging to specified category; and
  4. an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;
  5. Includes Pre-School Classes through Grade/Class first to Twelfth.
- XVI. "screening procedure" means the method of selection for admission of a child, in preference over another, other than a random method;
- XVII. "specified category", in relation to a school, means a school known as *Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School* or any other school having a distinct character which may be specified, by notification, by the appropriate Government;
- XVIII. "State Commission for Protection of Child Rights" means the State Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005.
- XIX. "admission test" means competitive admission test;
- XX. "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 school;
- XXI. "prospectus" includes any publication, whether in print or otherwise, issued for providing fair and transparent information, relating to an School, to the general public (including to those seeking admission in such School) by the management of such School or any authority or person authorised by such School to do so;
- XXII. "State" means a State specified in the First Schedule to

- the Constitution and shall include a Union territory;
- XXIII. "State Educational Tribunal" means the State Educational Tribunal established under the Educational Tribunals Act, 2009;
- XXIV. "State Government", in relation to an School situated in one state, means the State Government of that State;
- XXV. "society" in relation to a school means any Body corporate registered under the Societies Registration Act, 1860 and, "trust" means any Body registered under the Indian Trusts Act, 1882 or any other law for the time being in force;
- XXVI. "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.

## CHAPTER II

### APPROPRIATE TITLE TO BE GIVEN

#### PROHIBITION OF ACCEPTING FEE, CAPITATION FEE, OTHER FEES AND CHARGES WITHOUT RECEIPT

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

- 3.
- 1) (1). No School shall, for admission in respect of any seat in any **Class** run in such School, accept any payment towards admission fee and other fees and charges other than such fee or charges for such admission as declared by it in advance in the notice for admission against any such seat; and
    - a) The School shall issue a proper receipt in writing for such payment **to the parent/guardian of** student concerned so admitted in such School.
  - 3) (i) *No School shall charge any fee for information brochure, prospectus, admission form or an admission test and shall place all such information on its website or notice board.*
    - (ii) *No school shall impose or collect any fees or amount during the mid session.*

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

- 1) In case the appropriate statutory authority has specified the process of selection for admission to VI, IX, XI standards in any institution which includes conducting competitive admission test for ascertaining the competence of any person to pursue such course or study, in that case, no person shall be admitted to such course 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 test; or
- b. Such institution or a group of institutions that have been so authorized by the Central Government or a State Government or any appropriate authority or by any other authority so authorized and notified to conduct such test.
- 2) In case the process of selection for admission to IX/XI standard in any school including conducting admission test has not been specified under sub-section (3), no person shall be eligible for admission to such course or programme of study in such institution except through *inter se* merit to be mentioned in the prospectus of each school.
- 3) Every school referred to in sub-sections () and () shall:-
- 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/records maintained ;
- 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

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

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.

**Mandatory Publication of Notice, its Contents and its Pricing**

5. (1) Every school, shall publish, before expiry of sixty days prior to the date of the commencement of admission, a notice containing the following for the purposes of informing those parents/guardians intending to seek admission for their wards to such school and the general public, namely:—
- (i) each component of the fee, deposits and other charges payable by students admitted to such **school** for different

Mandatory publication of notice, its contents and its pricing.

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

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

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

(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 **class beyond class 8** and the amount of fee to be paid for the admission test;

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

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

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

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

(xi) all relevant instructions in regard to maintaining the discipline by students within or outside the campus of the school, and, in particular such discipline relating to the prohibition of bullying of any student or students and the consequences thereof and for violating the provisions of any regulation in this regard.

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

Provided that a **school** shall also publish information referred to in items (i) to (xii) of this sub-section, on its website/records maintained, and the attention of prospective students and the general public shall be drawn to



such publication on the website through information displayed prominently at the entrance of the school or by specifying the information in its website.

**Prohibition of capitation fee etc.**

Prohibition of capitation fee.

6. (1) No school 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 any class of study.

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

(4) No School shall deny admission or expel any student if he/she is reported to have any serious diseases such as on the ground of having HIV/AIDS or any other serious ailment

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

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

**(7) No school shall indulge in any kind of corporal punishment on its students.**

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

**(9) No school shall expel any student on account of poor academic performance detain arbitrarily.**

**10n any kind of sexual harassment.**

**PROHIBITION ON REFUSAL TO, RETURN, OR, WITHHOLDING CERTIFICATES, OR, REFUND OF FEE, ETC:-**

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

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

(2) In case a student, after having admitted to a school, for

pursuing any course, subsequently withdraws from such school, no school 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 notice of such school.

(3) No school shall give/issue pass Transfer Certificate to any student who has not qualified/cleared the subjected to become eligible for promotion to Higher Class, as prescribed by the appropriate authority.

**8.** No school shall, issue or publish,—

(a) any advertisement for inducing students for taking admission, claiming to being /affiliated, by the appropriate statutory authority where it is not so /affiliated;

Prohibition of advertisements not based on facts or misleading.

### **CHAPTER III IMPOSITION OF MONETARY PENALTIES**

**Penalty for doing contrary to information in prospectus**

**9.** Any school, which knowingly does anything contrary to the information published by it in its notice 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 monetary penalty and / or De-Recognize/withdrawal of Affiliation as may be prescribed by the appropriate Government.

Penalty for doing contrary to information in prospectus.

**Penalty for demanding or accepting capitation fee**

**10.** Any school, 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 provisions of this Act or any other law for the time being in force, be liable to a penalty as may be prescribed by the appropriate Government.

Penalty for demanding or accepting capitation fee.

**Penalty for refusal to return or withholding documents**

**11.** Any school, which refuses to return any certificate or any other document or withholds such certificate or any other document without having sufficient cause to do so, or fails to refund the fees in violation of the provisions of section 7, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in

Penalty for refusal to return or withholding documents.

force, be liable to a penalty as may be prescribed by the appropriate Government.

**Penalty for false or misleading advertisement**

12. Any school, which publishes any advertisement, which is false or misleading, and in violation of the provisions of section 8, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty as may be prescribed by the appropriate Government.

Penalty for false or misleading advertisement.

**Penalty for untrue 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 prejudice to proceeding under the provisions of this Act or any other law for the time being in force, be liable to a penalty as may be prescribed by the appropriate Government.

Penalty for untrue advertisement.

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

**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, be liable to a penalty as may be prescribed by the appropriate Government.

Confiscation of capitation fee, etc.

**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 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 appropriate Government **State School Education Tribunal or National School Education Tribunal**, or State / National Body as may be prescribed.

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

Adjudication of penalty

16. Save as otherwise provided in this Act, all the matters (including the penalties leviable under this Chapter) shall be adjudicated by the concerned State School Education Tribunal or the National School Education Tribunal, or as may be prescribed.

## CHAPTER IV

### OFFENCES

- Offences. **17. (1)** Without prejudice to any award of penalty by the State School Education Tribunal or the National School Education Tribunal or State / National Body as may be prescribed 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, She/he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.
- (2) If any person fails to pay the penalty imposed by the State School Education Tribunal or National School Education Tribunal or State / National Body as may be prescribed 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 \_\_\_\_\_ rupees but which may extend to \_\_\_\_\_ lakh rupees, or, with both.
- Cognizance of offences. **18. (1) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any School or director, manager 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 first class shall try any offence punishable under this Act.
- Offences to be non-cognizable. **19. Every offence under section 6 of this Act shall be deemed as cognizable within the meaning of the Code of Criminal Procedure, 1973.** 2 of 1974
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence, other than an offence under section 6, under this Act shall be deemed to be non-cognizable within the meaning of the said Code.** 2 of 1974.
- 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 shall be liable to be proceeded 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.

(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, 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.

21 of 1860.

2 of 1882

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

Offences by  
School.

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.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a school 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, or other officer of such school, such governor, chancellor, director, trustee, manager 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

**22.** No court shall have jurisdiction to entertain any dispute or proceeding in respect of any matter which the State School Education Tribunal or National School Education 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

**23. When a School is accused of having committed an offence under Section-8, the burden of proving that such school has not committed such offence, would be on the school.** Burden of proof.

**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 school 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 school 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 realized 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 Schools 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 schools of their choice.**

Power of Central Government to make rules.

**27. (1)** The Central Government may, by notification in the Official Gazette, make rules 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;

(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 authorized to file a complaint in writing on behalf of the Central Government or the State Government or the concerned appropriate statutory authority before a court in respect of an offence which is alleged to have been committed by any school or director,**

**manager or other officer thereof, under sub-section (1) of section 18;**

(d) the information concerning the activities carried on by the school 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 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, 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 any officer or authority or person exercising powers or discharging functions under this Act for anything, which is in good faith done or intended to be done in pursuance of this Act or the rules or directions issued there-under.

Application of other laws not barred

**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.

Power to remove difficulty

**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 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.

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## STATEMENT OF OBJECTS AND REASONS

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

Prompt and effective deterrent action is constrained in the absence of any Central law prohibiting capitation fee and other unfair practices. It would be in public interest to protect the interests of students.

- Charging excessive fee
- Lack of transparency in conducting the admission test for the standard XI
- Recruiting teachers without qualification
- Giving teachers and other administrative staff lesser salary than shown in the school records
- Recruiting teachers with low salary
- Allowing TGTs to teach standard XI-XII
- Exploitation of teachers through various means
- Recruiting teachers on part time basis.
- Giving children Corporal Punishment
- Not following safety guidelines
- Not admitting special children
- Not showing children/parents answer sheets
- Allowing students to take examination without adequate attendance
- Allowing students to appear in the Board examination without actually conducting classes for them
- Malpractices and unfair practices in assessment
- Advertising disproportionate infrastructure compared to actual infrastructure.
- Overpriced prospectus fees/admission forms
- Retention of tuition fees, exam fees, without valid reason.
- Accepting various fees without providing receipts
- Allowing students to use unfair means in Board examination.
- Discrimination of students, specially those belonging to SC/ST/OBC and weaker sections of society.