

A LEGAL STUDY ON PROHIBITION OF UNFAIR PRACTICES IN HIGHER EDUCATION IN INDIA

DR. H.S ADITHYA

Abstract: The educational institutions, on one hand are regarded as “temple of learning”, “temple of Maa Saraswati”, etc. and on other hand, these educational institutions, nowadays, have become money making centres only without giving any hid to our historical fame of learning. India is country where teaching and learning are, through various mediums, treated as Dharma, i.e. duty. Every educated person was under duty to teach others in Gurukulas or schools, etc. Nalanda, Vikramshila, Takshshila, Vallabhi, Varanasi, etc. were renowned centres. But the advent of modernization and globalization brought a new concept commercialization where everything is thought to be saleable and buyable. In this system, there is no place of morality, relations, and values except income. The so-called developed society has done a lot for survival and enjoyment but nothing to think our future where we can find a value based society. The mushrooming of educational institutions are a good example for this, where the management thinks its right to involve in unfair practices but the condition is so bad that the majority of us are also involved to get anyhow degrees. The present research paper brings forth the condition of unfair practices in higher education institutions and outlines the legal framework available and proposed norms to rectify this behaviour.

Keywords: Unfair Practices, Legal System, Higher Education in India and Legal Framework.

Introduction: With the entry of private participation in higher education, the situation started to be worst. The owners of such educational institutions started to get only benefits without thinking the national future interest rather they think only to make more and more benefits especially in medical and technical educational institutions. For this purpose, they involved in malpractices like admitting students without following merit, demanding capitation fees, misleading advertisements, not issuing receipt for payment made to institution, withholding certificates to compel a student to pay fee etc.

Unfair practices include demanding or paying capitation fees, admitting students without specified merit criteria, not issuing receipt for any fee charged by the institution, non transparent and questionable admission process, low quality delivery of education services, engagement of unqualified or ineligible teaching faculty, publishing misleading advertisements and withholding degree to compel a student to pay a fee. Thus, the concept of “unfair practices in higher education include all those activities which are unjust, unfair and unreasonable. The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010, intended to prohibit unfair practices does not define the term “unfair practices”.

Indian Legal System: The importance of education in India has been recognized always. Mahabharata declares that there is nothing like education which gives one such unfailing insight.” The Rig-Veda also realized that “if one human being was superior to another it was not because the person had an extra hand or eye but because education had sharpened his mind and intellect and rendered him more efficient.”

But, in Mughal and British period, the structure of education was changed with distinct purpose. On independence, the Sovereign Socialist Secular Democratic Republic India adopted and enacted the Law of the land i.e. The Constitution of India where every Indian citizen secure to: Justice – social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation. The Constitution guarantees various fundamental rights including right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies. Education including technical education, medical education and universities are part of Concurrent List of Seventh Schedule of the Constitution. Thus, both – the Central and State Governments – have concurrent authority to make laws regarding higher education. Through 86th constitutional amendment, the right to education has become now a fundamental right under Article 21A for all children in age group of six to fourteen years.

There is plethora of case laws relating to right to education. The Indian judiciary, through innovative judgments, gave more autonomous status to private educational institutions in higher education specifically unaided professional educational institutions. Taking the recourse of such judgments the unaided professional educational institutions become sovereign regarding their admission, fees, etc. which became the efficient tool of exploitation of students and guardians. In P.A Inamdar & Others v/s State of Maharashtra, the Supreme Court held that private un-

aided educational institutes are allowed to charge a particular sum which is reviewable by a committee appointed by government., as these institutions are exercising their fundamental right of freedom of trade and occupation. The Court held that enforcing the reservation policy of the State on seats in unaided professional institutions constitutes a serious encroachment on the right and autonomy of these institutions. The Bench held that merely because the State's resources in providing professional education are limited, it cannot force private educational institutions, which intend to provide better professional education, to make admissions on the basis of its reservation policy to less meritorious candidates. In order to maintain the standard of education, the governments are asked to set again a committee to supervise the process of admission. Thus, the government control is there up to the extent of establishment of a committee in this regard.

It seems that the judiciary did not take into consideration that the educational institutions are being run and are authorized to run their institutions on non-profit base and declared that the institutions have right to freedom of trade and occupation. If the educational institutions are allowed to do business then that day is not very far when degrees will be sold on footpaths. For example, the condition of B.Ed. course can be seen at lower level where the management of a B.Ed. college tries to get more admission for getting more money without giving minimum salary to teachers. If we take example of medical and technical institutions, it is very much clear that a capitation fee has become general rule. There is competition in guardians to give more donation/capitation fees for their kids to get a secured seat. Not only this, the management of educational institutions is fully aware about this and so they opt to give admission only to those students who give more donations.

In this respect, two bills – the Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Bill 2005 and Admission and Fee Structure in Private Aided and Unaided Professional Educational Institutions, 2007 were proposed which were allowed to be lapsed.

Again, the government brought a Bill in Lok Sabha namely The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 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 Reason of the Bill mentions that: 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.

The Bill also proposes a new law that is the Education Tribunals Act, 2010 to establish educational tribunals at the national and state levels. These tribunals are authorized to adjudicate all the case including the penalties leviable and courts jurisdiction is excluded to try the cases or grant injunction where educational tribunals are empowered to determine the case. Though the Bill excludes the jurisdiction of courts, yet it does not mean that a person cannot approach a court in any circumstance. When a person's fundamental rights are violated, he or she can approach to court and the bar prescribed in Section 22 will not lie there. The courts of Metropolitan Magistrate of the First class only shall try any offence under this Act but only on the complaint in writing of such person authorized by the Central Government or State Government in that behalf or by such person authorized by the concerned appropriate statutory authority may be as prescribed.

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.

UGC Guidelines, rules and regulations has to be strictly followed and implemented by all the educational institutions and universities in India offering UG/PG/Doctoral programmes.

There is a 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 and others accessing higher education.

Mandates for Educational Institutions: All educational institutions on which this law is applicable are duty bound to do the following:

1. **Publish true advertisements:** Regarding advertisements of educational institutions, there are

Advertising, Standard Council of India (ASCI) guidelines which are as follows:

- The advertisement shall not state or lead the public to believe that an institution or course or program is official, recognized, authorized, accredited, approved, registered, affiliated or has a legal defined situation, unless the advertiser is able to substantiate with evidence.
- Advertisement offering a Degree or Diploma or Certificate which by law requires be accrediting or recognizing or approving or endorsing by an institute or authority shall have the name of that institute or authority.
- In case the advertised institution or program is not accredited, or recognized or approved by a mandatory authority, then the full name and location of the said affiliated institution shall also be stated in the advertisement.
- The name and logo, if any of the affiliated Institution as indicated in 2b, shall be in the same font size as that of the advertised institution or program in visual media such as print, internet, hoarding, leaflet, prospectus, etc., including television. In audio media such as radio or TV the name of the affiliated institution if applicable must be stated.
- Advertisement shall not state or lead the public to believe that enrolment in the institution or program or preparation course or coaching classes will provide the student a temporary or permanent job, admissions to institutions, job promotions, salary increase, etc., unless the advertiser is able to submit substantiation to such effect and also assume full responsibility thereof in the same advertisement.
- Advertisement shall not make claims regarding extent of the batch placed, highest or average compensation of the students placed, admissions of students to renowned educational institutes, marks and ranking of the students passed out, testimonial of topper students, affiliation with a foreign institution, etc. unless they are substantiated with evidence.

Though these guidelines are not mandatory to comply with, yet have more importance. In this respect, the Bill also prohibits such advertisements which are not based on facts or misleading. Any institution, which publishes any advertisements, which are false or misleading, shall be liable to a penalty which may extend up to fifty lakhs rupees. Further where an advertisement issued in violation of the provisions of Section 8, includes any untrue statements or falsely describes any fact is misleading; every person who authorized the issue of such advertisement shall be liable to a penalty which may extend to fifty lakhs rupees. 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.

2. **Publish Prospectus:** Each institution has to publish a prospectus 60 days before admission begins in a course or program of study. It should include following information:

- Each component of the fee, deposits and other charges payable by the students admitted to such institution for pursuing a course or program of study and the other terms and conditions of such payment.
- The percentage of tuition fee and other charges refundable to a student withdraws from such institution before or after completion of course or program of study and the time within, and the manner in, which such refund shall be made to that student.
- 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.
- The conditions of eligibility including the minimum and maximum age limit of persons for admission as a student in a particular course or program of study where so specified by the institutions.
- 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.
- 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.
- 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.
- The minimum pay and other emoluments payable for each category of teachers and other employees.
- 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 institutions.
- 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.

- 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 UGC Act 1956 or any other law for the time being in force.
- Any such other information which may be prescribed.

The institution shall fix a reasonable price for printed copies of the prospectus based on cost of publication and distribution. No profit can be made out of the publication and sale of the prospectus. It shall also be published on the website of the institution and shall be advertised through newspapers and other media for attention of prospective students and the general public.

Any institution which knowingly does anything contrary to the information published by it in its prospectus shall be liable to a penalty which may extend to fifty lakh rupees.

3. **Provide receipt for payments made:** The Bill mentions that every institution has to give receipt of every payment – admission fee, other fees and charges made to the institution. An institution shall not charge any fee for an admission test other than an amount representing the reasonable cost incurred by it in conducting such test.
4. **Maintain records:**
 - 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.
 - Exhibit such records in its website;
 - 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.
5. **Prohibit Unfair Practices:**
 - If the admission is made through competitive admission test, the students must be admitted only through that test. If there is no such test, the admission shall be made only through inter se merit to be specified in the prospectus of each institution.
 - 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 doc-

ument 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 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. In case a student, after having admitted to an 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. 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 the 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.

- Any institution shall not, directly or indirectly, demand/charge/accept, capitation fee or donation or consideration for admission to any seat. In same tune, giving aforesaid fee/charge in cash or otherwise is prohibited for obtaining admission. The offence under this section is cognizable and except this section, shall be deemed to be non-cognizable within the meaning of the said Code
- Capitation fee 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
- 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;

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. Any capitation fee or donation or any other charges collected in contravention of the provisions of this Act be liable to be confiscated, by an order made by the concerned State Educational Tribu-

nal or the National Educational Tribunal as the case may be.

Section 14 mentions that 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 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. The Bill further mentions that all sums realized by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Concluding Observation: The higher education is regulated by multiple authorities. The University Grants Commission (UGC) is regulator of all universities and colleges. Additionally, there are other bodies also regarding professional courses like Bar Council of India (BCI) for legal education, Medical Council of India (MCI) for medical education, All India Council for Technical Education (AICTE) for technical education etc. These bodies are assigned to check regarding eligibility of educational institutions, yet the criteria of eligibility for inspection team is totally different and the team expects gifts, staying in five star hotel with family members, visit of famous places in that concerned area. If this is the criteria of eligibility, the educational institutions will continuously do their business and play with life of students and the nation. An institution, which is paying in lakhs to inspection team, will try to get more lakhs from students and for this purpose they adopt unfair means.

The proposed Bill which is pending in Parliament does not cover all aspects of unfair practices and needs attention on unfair practices committed by private educational institutions against their teachers and employees. There are many instances where the management show names of a teacher on roll but, de facto, the concerned teacher has never seen or joined

that institution. The situation becomes more vulnerable when the regulatory bodies do not want to take cognizance of such type of mal practices. Further, the law relating to appointment in these institutions must be clear and unambiguous. For example, in law colleges for appointment of a teacher, there are distinct norms laid down by BCI and UGC. Taking the recourse of such ambiguity, there are many university where non-eligible teachers have been appointed and being appointed through which the purpose of qualitative education became mockery

Suggestions and Recommendations:

1. On conspicuous places of unaided educational institutions, a circular must be displayed mentioning that "Accepting and Demanding Donation/Capitation Fee Is Punishable Offence". This provision must be advertised in newspapers, television and radio etc.
2. In unaided educational institutions, the teacher must be appointed only by university following interview. The institutions must be asked to deposit of monthly reimbursement in university account and salary of teachers must be incurred through university only.
3. To maintain transparency, there must be uniform course content, admission procedure and fee structure. In any circumstances, the private institutions must not be allowed to do what they like. The Bill is silent on this issue.
4. There must be time limit for disposal of cases by educational institutions.
5. The Bill must include the provisions to incorporate for grievance redressal cell in all educational institutions comprising fifty percent members from law background and have not any relation with management of the institution. If any issue regarding unfair practice is raised, the grievance redressal cell must adjudicate the issue in limited time framework.

References:

1. Akasanvantah, (Rigveda, X, 717)
2. Nasty vidyasamam (Mahabharata, XII)
3. Bill No; 56, of 2010.
4. Sections – 30, 16, 26, 22, 18
5. Sections – 5, 9, 3, 4(1), 4(2), 7, 10, 15, 25

Dr. H.S Adithya/M.Com., MBA. M.Phil., Ph.D., (D.Litt)/Professor/AMC Engineering College/Bangalore