

অসম ৰাজপত্ৰ



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT : : LEGISLATIVE BRANCH

NOTIFICATION

The 22nd December, 2005

No.LGL. 112/2005/158 :- The following Act of the Assam Legislative Assembly which received the assent of the Governor is hereby published for general information.

ASSAM ACT NO. XLVI OF 2005

(Received the assent of the Governor on 19th December, 2005)

THE ASSAM COLLEGE EMPLOYEES (PROVINCIALISATION) ACT, 2005

AN
ACT

to provide for provincialisation of the services of employees of the Non-Government Colleges in receipt of deficit grants-in-aid in the State of Assam.

Preamble.

Whereas it is expedient to provincialise the services of employees of the Non-Government Colleges in receipt of deficit grants-in-aid from the Government of Assam.

It is hereby enacted in the Fiftysixth Year of the Republic of India as follows :-

**Short title,
extent and
commencement.**

1.(1) This Act may be called the Assam College Employees (Provincialisation) Act, 2005.

(2) It extends to the whole of Assam except the Autonomous Council areas under the Sixth Schedule to the Constitution of India :

Provided that the State Government may, in consultation with the said Autonomous Councils, extend this Act to the Autonomous Council areas by notification published in the Official Gazette.

(3) It shall be deemed to have come into force on and from the 1st day of December, 2005.

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

- (a) "College" means any Non-Government College in Assam in receipt of deficit grants-in-aid from the Government and imparting general education in Arts, Commerce or Science stream in Graduate level ;
- (b) "employee" means an employee of a College both teaching or non-teaching appointed substantively against a sanctioned post ;
- (c) "existing employee" means an employee of a College both teaching and non-teaching appointed substantively against a sanctioned post and who is or has been in service on or after the 1st day of January, 2005 ;
- (d) "Governing Body" means the body constituted by the Government in accordance with the provisions of the Assam Non-Government College Management Rules, 2001 ;
- (e) "Government" means the Government of Assam;
- (f) "provincialisation" means taking the liabilities for payment of salaries including dearness allowance, medical allowance and such other allowances as admissible to the government employees of similar category and gratuity, pension, leave encashment, etc. as admissible, under the existing rules, to the employees of the State Government serving under the Government of Assam;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "retired employee" means an employee who has retired on attaining the age of superannuation or otherwise.

Employees to be provincialised.

3. Subject to the provisions of Article 30 and 309 of the Constitution of India, all employees of the Colleges, save and except the employees who exercise option to continue in the existing terms and conditions of service under clause (d) below, shall be deemed to have become the employees of the Government on and from the date on which the Colleges have been brought under the deficit system of grants-in-aid, on the following terms and conditions, namely :-

- (a) all rules including the rules of conduct and discipline, which are applicable to the Government servants of corresponding grade similarly situated shall be applicable;
- (b) the existing employees will continue to receive their respective existing scales of pay and other allowances etc. as admissible to them under relevant rules and orders of the Government;
- (c) the posts in each provincialised College shall constitute an independent cadre for each category of employees. No intercadre transfer from one college to another including mutual transfer shall be allowed;
- (d) the existing employees who want to continue in the existing terms and conditions of service shall give an option in writing to the Director, Higher Education, Assam within a period of three months from the date of coming into force of this Act:

Provided that the option once exercised by an existing employee is final and cannot be changed afterwards ;

- (e) any existing employee who does not exercise option under clause(d) shall be deemed to have opted for provincialisation under the provisions of this Act;
- (f) the employees of the Colleges provincialised after coming into force of this Act shall have no right of option under clause (d); and
- (g) all existing employees who do not exercise option under clause (d) shall have to refund the State Government's share of the Contributory Provident Fund with interest within six months from the date of coming into force of this Act :

Provided that if any existing employee who fails to refund the State Government's share of Contributory Provident Fund with interest within the said stipulated period such employee shall be deemed to have been opted to remain under the existing terms and conditions of service applicable to them before provincialisation.

Colleges to be known as Assam Provincialised Colleges.

4. After coming into force of this Act the Colleges provincialised under this Act shall be known as the Assam Provincialised Colleges as distinct from the Government Colleges in Assam.

Government to take over the services of employees.

5. The services of all the employees, who do not exercise the option within the stipulated period under clause (d) of section 3, shall vest with the Government with effect from the respective date of provincialisation of the Colleges.

Selection and appointment of employees.

6. Appointments of both teaching and non-teaching posts in the Colleges shall be made by the Director of Higher Education, Assam on the basis of selection and recommendation of the Governing Body of the respective College in accordance with the Rules and Procedure of the Government in force.

Rules to be followed for settlement of pension.

7. (1) The existing employees shall be governed by the existing pension Rules of the Government for the time being in force:

Provided that the employees who join on or after the 1st day of February, 2005 shall not be covered by the existing pension Rules of the Government. They shall be governed by such pension Rules or Scheme, as the case may be, as may be framed by the Government from time to time.

(2) The Director of Higher Education, Assam shall process all pension cases and send them to the Accountant General, Assam as per laid down procedure.

Mode of pension to employees who retired/died prior to 1st January, 2005.

8. Employees who retired/died, as the case may be, **prior to 1st January, 2005** shall be given only superannuation pension or the family pension, as may be applicable under the existing pension Rules of the Government. They shall not be entitled to any other pensionary benefits:

Provided that the payment of such superannuation or family pension, as the case may be, are subject to refund of the Government's share of their Contributory Provident Fund within six months from the date of coming into force of this Act:

Provided further that if the Government's share of Contributory Provident Fund is not refunded in respect of a retired/deceased employee within the aforesaid stipulated period no superannuation pension or family pension shall be admissible in respect of such employee.

Age of superannuation.

9. The provincialised employees shall go on superannuation on attaining such age at which a Government servant similarly situated superannuates.

Suits and Proceeding.

10. No suit, prosecution and other legal proceedings shall lie for anything done in good faith under this Act, except with the previous sanction of the Government.

Power of interpretation and removal of difficulties.

- 11.(1) If any difficulty arises as to the interpretation of any provision of this Act, the interpretation of the Government shall be final;
(2) If any difficulty arises in giving effect to the provisions of this Act, the Governor may, by order do anything, not inconsistent with the provisions of this Act, which appear to him to be necessary for the purpose of removing the difficulty.

Power of the Government to make Rules.

- 12.(1) Except for the purpose of payment of pension which will be governed by the Assam Services Pension Rules 1969, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
(2) All rules made by the State Government under this Act shall, as soon as may be after they are made, be laid before the State Legislature, while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and shall, unless some later date is appointed, take effect from the date of their publication in the Official Gazette subject to such modifications or annulments as the Legislature may, during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

M. K. DEKA,

Commissioner and Secretary to the Govt. of Assam,
Legislative Department, Dispur.

02/01/06

THE ASSAM COLLEGE EMPLOYEES (PROVINCIALISATION)
BILL, 2005

A bill to provide for provincialisation of the services of employees of the Non-Government Colleges in receipt of deficit grants-in-aid in the state of Assam.

Preamble Whereas it is expedient to provincialise the services of employees of the Non-Government Colleges in receipt of deficit grants-in-aid from the Government of Assam.

It is hereby enacted in the fifty sixth year of the Republic of India as follows :

Short title 1. (1) This Act may be called the Assam College Employees
extent and (Provincialisation) Act, 2005.

commencement (2) It extends to the whole of Assam except the Autonomous Council areas under the Sixth Schedule to the constitution of India :
Provided that the State Government may, in consultation with the said Autonomous Councils, extend this Act to the Autonomous Council areas by notification published in the Official Gazette.

(3) It shall be deemed to have come into force on and from the 1st day of December, 2005.

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

(a) "College" means any Non-Government College in Assam in receipt of deficit grants-in-aid from the Government and imparting general education in Arts, Commerce or Science stream in Graduate level;

(b) "employee" means an employee of a College both teaching and non-teaching appointed substantively against a sanctioned post;

(c) "existing employee" means an employee of a College both teaching and non-teaching appointed substantively against a sanctioned post and who is or has been in service on or after the 1st day of January, 2005;

(d) "Governing Body" means the body constituted by the Government in accordance with the provisions of the Assam Non-Government College Management Rules, 2001;

(e) "Government" means the Government of Assam;

(f) "provincialisation" means taking the liabilities for payment of salaries including dearness allowance, medical allowance and such other allowances as admissible to the Government employees of similar category and gratuity, pension, leave encashment, etc. as admissible, under the existing rules, to the employees of the State Government serving under the Government of Assam;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "retired employee" means an employee who has retired in attaining the age of superannuation or otherwise.

Employees
to to be
provincialised

3. Subject to the provisions of Article 30 and 309 of the constitution of India, all employees of the Colleges, save and except the employees who exercise option to continue in the existing terms and conditions of service under clause (d) below, shall be deemed to have become the employees of the Government on and from the date on which the Colleges have been brought under the deficit system of grants-in-aid, on the following terms and conditions, namely :

- (a) all rules including the rules of conduct and discipline, which are applicable to the Government servants of corresponding grade similarly situated shall be applicable ;
- (b) the existing employees will continue to receive their respective existing scales of pay and other allowances etc. as admissible to them under relevant rules and orders of the Government;
- (c) the posts in each provincialised College shall constitute an independent cadre for each category of employees. No inter-cadre transfer from one college to another including mutual transfer shall be allowed;
- (d) the existing employees who want to continue in the existing terms and conditions of service shall give an option in writing to the Director, Higher Education, Assam within a period of three months from the date of coming into force of this Act :
Provided that the option once exercised by an existing employees is final and cannot be changed afterwards ;
- (e) any existing employees who does not exercise option under clause (d) shall be deemed to have opted for provincialisation under the provisions of this Act;
- (f) the employees of the Colleges provincialised after coming into force of this Act shall have no right of option under clause (d); and
- (g) all existing employees who do not exercise option under clause (d) shall have to refund the State Government's share of the Contributory Provident Fund with interest within six months from the date of coming into force of this Act :

Provided that if any existing employee who fails to refund the State Government's share of Contributory Provident Fund with interest within the said stipulated period such employee shall be deemed to have been opted to remain under the existing terms and conditions of service applicable to them before provincialisation.

Colleges to be
known as Assam
Provincialised
Colleges

4. After coming into force of this Act the Colleges provincialised under this Act shall be known as the Assam Provincialised Colleges as distinct from the Government Colleges in Assam.

- Government to take over the services of employees 5. The services of all the employees, who do not exercise the option within the stipulated period under clause (d) of section 3 shall vest with the Government with effect from the respective date of provincialisation of the Colleges.
- Selection and appointment of employees 6. Appointments of both teaching and non-teaching posts in the Colleges shall be made by the Director of Higher Education, Assam on the basis of selection and recommendation of the Governing Body of the respective College in accordance with the Rules and procedure of the Government in force.
- Rules to be followed for settlement of pension 7. (1) The existing employees shall be governed by the existing pension Rules of the Government for the time being in force :
Provided that the employees who join on or after the 1st day of February, 2005 shall not be covered by the existing pension Rules of the Government. They shall be governed by such pension Rules or Scheme, as the case may be, as may be framed by the Government from time to time.
(2) The Director of Higher Education, Assam shall process all pension cases and send them to the Accountant general, Assam as per laid down procedure.
- Mode of pension to employees who retired/died prior to 1st January, 2005 8. Employees who retired/died, as the case may be, prior to 1st January, 2005 shall be given only superannuation pension or the family pension, as may be applicable under the existing pension Rules of the Government. They shall not be entitled to any other pensionary benefits :
Provided that the payment of such superannuation or family pension, as the case may be, are subject to refund of the Government's share of their Contributory Provident Fund within six months from the date of coming into force of this Act :
Provided further that if the Government's share of Contributory Provident Fund is not refunded in respect of a retire/deceased employee within the aforesaid stipulated period no superannuation pension or family pension shall be admissible in respect of such employee.
- Age of superannuation 9. The provincialised employees shall go on superannuation on attaining such age at which a Government servant similarly situated superannuates.
- Suits and Proceeding 10. No suit, prosecution and other legal proceedings shall lie for anything done in good faith under this Act, except with the previous sanction of the Government.
- Power of interpretation and removal of difficulties 11. (1) If any difficulty arises as to the interpretation of any provision of this Act, the interpretation of the Government shall be final;
(2) If any difficulty arises in giving effect to the provisions of this

Power of the
Government to
make Rules 12.

Act, the Governor may, by order do anything, not inconsistent with the provisions of this Act, which appear to him to be necessary for the purpose of removing the difficulty.

- (1) Except for the purpose of payment of pension which will be governed by the Assam Services Pension Rules 1969, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) All rules made by the State Government under this Act shall, as soon as may be after they are made, be laid before the State Legislature, while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and shall unless some later date is appointed, take effect from the date of their publication in the Official Gazette subject to such modifications or annulments as the Legislature may, during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

STATEMENT OF OBJECTS AND REASONS

With a view to provide for provincialisation of the services of the employees of Non-Government Colleges in receipt of deficit grants-in-aid in the State of Assam, it has been considered necessary to place a Bill The Assam College Employees (Provincialisation) Bill, 2005.

Hence the Bill ...

Sd/- Bhumidhar Barman
Minister, Higher Education, Assam

Sd/- G.P. Das
Secretary, Assam Legislative Assembly

MEMORANDUM OF DELEGATED LEGISLATION

Clause 12 of The Assam College Employees (Provincialisation) Bill, 2005 makes provisions which authorise the Government to make rules for carrying out the purpose of this Act.

Hence, in the Bill there is the provision of delegation of Legislative Powers to the Executive.

Financial Memorandum

There are provisions in the proposed Bill to entail expenditure from the consolidated fund of the State.

**MHRD Draft
The Private Professional
Educational Institutions
(Regulation of Administration and
Fixation of Fee)
Bill, 2005**

An Act to provide for the regulation of Admission and fixation of Fee in Private Professional Education Institutions and, the matters connected therewith and, incidental thereto.

Be it enacted by Parliament in the Fifty Sixth year of the Republic of India as follows :

CHAPTER-I - PRELIMINARY

1. Short title, extent and commencement

- [i] This Act may be called "The Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee] Act", 2005.
- [ii] It extends to the whole of India, except the State of Jammu & Kashmir.
- [iii] It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Applicability 2. This Act applies to :

- (a) Institutions deemed to be Universities, or constituent units thereto, other than those promoted and maintained by the Central Government; and imparting professional education.
- (b) Private aided or unaided professional educational institutions affiliated to a university established under Section 2(f) of the University Grants Commission Act, 1956 (Act 3 of 1956).

Definitions 3. In this act, unless the context otherwise requires :

- (a) "Admission and Fee Regulatory Committee" means the committee established and constituted by the Appropriate authority for the allotment of seats for admission and for the fixation of fee to be charged from candidates seeking admission in a professional institution.
- (b) "Aided Institution" means a private professional educational institution, receiving recurring financial aid or assistance in whole or in part from the Central Government or the State Government or from any body, under the control of Central or State Government disbursing grants-in-aid or financial assistance and shall include a minority institution.
- (c) "Appropriate Authority" means, the University Grants Commission in the case of an institution deemed to be a University, the affiliating Central University in the case of a private aided or unaided minority professional educational institution affiliated

to it and the State Government or the Union Territory Administration, as the case may be, in respect of Private aided or unaided professional education institution affiliated to a State University.

- (d) "Central University" means a University established or incorporated by an Act of Parliament and, includes an Institution of National Importance, so declared by the Parliament.
- (e) "Common Entrances Text" means an Entrance Test, conducted by the Appropriate Authority or an agency authorised by it for the purpose, for admission to a professional course.
- (f) "Deemed to be University" means an institution so defined under section 3 of the University Grants Commission Act, 1956; and includes a constituent unit of such institution.
- (g) "Fee" means all fees including tuition fee and development charges.
- (h) "Foreign Candidate" means a person holding a foreign passport seeking admission, in a deemed to be University imparting professional education or, in a Private aided or unaided professional educational institution in India.
- (i) "Foreign Education Provider" shall mean and imply a university or an institution duly accredited and, established under a foreign law outside the territory of India and notified as an institution deemed to be university by the Central Government under section 3 of the University Grants Commission Act, 1956.
- (j) "General Category" shall mean and imply seats from out of the sanctioned intake of an institution; not being seats in the management category, allocated to be filled by the Appropriate Authority in the manner prescribed.
- (l) "Management Category" shall mean and imply seats from out of the sanctioned intake allotted to the management of the Institution for being filled by it in a fair and transparent manner, on the basis of the inter-semerit determined by a Common Entrance Test.
- (m) "Management" means any person or body, by whatever named called, managing and controlling the private professional educational institution.
- (n) "Minority" means a minority notified under section 2(f) of the National Commission for Minority Educational Institutions Act, 2004 (Act No. 2 of 2005).
- (o) "Minority Institution" means an institution imparting professional education, established and administered by a minority.
- (p) "Person of Indian Origin" means a person of Indian origin as defined under the Indian Citizenship Act, 1955 (Act No. 57 of 1955).
- (q) "Private Professional Institution" means a professional institution not established or maintained by the Central Government; State Government or Union Territory Administration or any public body.

- (r) "Professional Institution" means, a College or a School or an Institute by whatever name called, imparting professional education approved or recognized by the competent statutory body and affiliated to a University and, includes a constituent unit of a deemed to be University imparting professional education.
- (s) "Professional Course" means a course of study notified as a "professional course" by the Appropriate Authority and shall include a course offered by a Foreign Institution leading to the award of a Degree, Diploma or Certificate by whatever name called.
- (t) "Sanctioned intake" shall mean and imply the total number of seats sanctioned by an authority notified by the Central Government for admitting students in each course of study in a professional institution.
- (u) "State University" means a university established or incorporated by an Act of the State Legislature.
- (v) "Unaided Institution" means a private professional educational institution, not being an "aided Institution".
- (w) "University Grants Commission" means the University Grants Commission established under the University Grants Commission Act, 1956.

CHAPTER-II ADMISSION AND FEE REGULATORY COMMITTEE

4. Composition, Disqualification and functions

- (1) The Admission and Fee Regulatory Committee shall be presided by a person who has been a Vice Chancellor of a Central University or a State University or an institution deemed to be University; and shall include two other Members having experience in matters of finance or administration.
- (2) The term of the Committee shall be three years from the date of its notification; and in case of any vacancy arising earlier, for any reason, the Appropriate Authority shall fill such vacancy for the remainder of the term.
- (3) No act or proceedings of the Committee shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of the Committee.
- (4) No person who is associated with a private aided or unaided institution shall be eligible for being a member of the Admission and Fee Regulatory Committee.
- (5) A member of the Admission and Fee Regulatory Committee shall cease to be so, if he performs any act, which in the opinion of the Appropriate Authority is unbecoming of a member of the Committee. provided that, so such member shall be removed from the Committee, without giving him an opportunity of being heard.
- (6) The Committee may frame its own procedure in accordance with the Regulations notified by the Appropriate Authority in this regard.
- (7) The Committee may require a Private aided or unaided professional educational institution or, a deemed to be university to furnish, by a prescribed date, information as may be necessary for enabling the committee to determine the fee that may

- 7
- be fixed by the Institution in respect of each professional course, and the fee so determined shall be valid from such period notified by the Appropriate Authority.
- (8) The Committee may, if it is satisfied that an Institution has violated any provisions of this act, recommend to the appropriate statutory body for the withdrawal of the affiliation or recognition of such institution.
 - (9) The Committee may shall ensure that the admission under the Management Category in an institution is done in a fair and transparent manner.

CHAPTER-III- ADMISSIONS

5. Eligibility

The eligibility for admission to a Private aided or unaided professional educational institution or a deemed to be University shall be as notified by the Appropriate Authority.

6. Allocation of seats

- (1) In an Aided Minority Institution, the minority community establishing and administering such institution of its choice may reserve for itself, up to fifty percent of the sanctioned intake under the Management Category.
- (2) In an Aided Professional Educational Institution, other than a minority institution, the management of such institution may reserve upto fifteen percent of the sanctioned intake under the Management Category.
- (3) In an Unaided Minority Institution, the minority community establishing and administering such institution of its choice shall reserve for itself, not less than fifty percent of the sanctioned intake under the Management Category.
- (4) In an Unaided Professional Educational Institution other than a minority institution, the management of such institution may reserve upto fifty percent of the sanctioned intake under the Management Category.
- (5) The management of Private aided or unaided professional educational institution shall declare, by the prescribed date, the extent of the Management Category from out of the sanctioned intake for each course of study; and any seat remaining thereafter, shall be treated as a seat in the General Category.
- (6) Fifteen percent of the seats from out of the General Category in a private professional institution may be filled on an All India basis in such manner as may be notified by the Central Government.
- (7) Nothing in this section shall apply to institutes which are deemed to be Universities.

7. Manner of admission

- (1) A Private aided or unaided professional institution :
 - (a) shall, subject to the provisions of sub-section (6) of Section (6) of this Act, make admission to a seat under the General Category, on the basis of one or more qualifying examinations to be notified by the Appropriate Authority or an agency

designated by it, in a manner prescribed by such Authority.

- (b) shall make admission to a seat under the Management Category in fair and transparent manner through a Common Entrance Test, conducted in the State by an Association of Private aided or unaided professional educational institutions, recognized and notified by the Appropriate Authority for the purpose. provided that, in case the institution fails to fill a seat under the management Category, through such Common Entrance Test, all or any of such seats shall be filled as seats under the General Category.
- (c) may admit foreign students against seats, not exceeding fifteen percent, over and above the sanctioned intake in a fair and transparent manner.
- (d) shall notify, on or before a date to be appointed by the Appropriate Authority, the Common Entrance Test adopted by the Institution for admission to seats under the Management Category, and the manner of admission to each category of seats.
- (2) An Institution which is deemed to be a University shall make admission in a fair and transparent manner on the basis of inter-semester to be determined through a Common Entrance Test to be conducted on an all India basis by the deemed to be University itself or, failing which by any other Agency to be notified by the Appropriate Authority. Provided that, the Common Entrance Test conducted by the deemed to be University shall have at least one examination centre located in each of the metropolitan cities, Delhi, Chennai, Kolkata and Mumbai.
- (3) The Appropriate Authority shall notify the appointed day by which a deemed to be University shall notify the schedule of the all India examination to be conducted by it.

8. Reservation of seats

- (1) A Private aided or unaided professional educational institution shall reserve seats for candidates belonging to the Scheduled Castes, the Scheduled Tribes and wherever applicable, to the socially and educationally backward classes and other economically weaker sections from out of seats in the General Category, to such extent as may be notified by the Appropriate Authority in accordance with the Regulations to be prescribed by it.
- (2) A deemed to be University shall :
 - (a) reserve fifty percent of the sanctioned intake of each constituent unit for students from the state in which such constituent unit is located.
 - (b) reserve, seats out of its sanctioned intake for candidates belonging to the Scheduled Castes, Scheduled Tribes and, wherever applicable to the socially and educationally backward classes and other economically weaker sections of the society, to such extent as shall be notified by the Appropriate Authority from time to time.

CHAPTER-IV-FIXATION OF FEE

9. Factors

- 9
- (1) Having regard to :
 - (i) the location of the professional institution,
 - (ii) the nature of the professional course,
 - (iii) the cost of land and building,
 - (iv) the available infrastructure,
 - (v) the expenditure on administration and maintenance
 - (vi) a reasonable surplus required for growth and development of the professional institution,
 - (vii) the revenues foregone on account of waiver of fee, if any, in respect of students belonging to the Scheduled Castes, Scheduled Tribes and, wherever applicable to the socially and educationally backward classes and other economically weaker sections of the society, to such extent as shall be notified by the Appropriate Authority from time to time and,
 - (viii) any other relevant factor,
 - (a) The Admission and Fee Regulatory Committee at the Centre shall determine, in the manner prescribed, the fee to be charged by a Private aided or unaided professional educational Institution affiliated to a Central University, and by deemed to be University.
 - (b) The Admission and Fee Regulatory Committee in a State or Union Territory shall determine, in the manner prescribed, the fee or fees to be charged by a Private aided or unaided professional educational institution affiliated to a State University.
 - (2) The Admission and Fee Regulatory Committee shall give the Institution an opportunity of being heard before fixing any fee or fees. Provided that, no such fee or fees, as may be fixed by Admission and Fee Regulatory Committee, shall amount to profiteering or commercialization of education.

CHAPTER V - FOREIGN EDUCATION PROVIDER

10. (1) No Foreign Institution, which is not a Foreign Education Provider under this Act, shall effect admission of any person in the territory of India or charge any fee or fees, from such person in respect of a Professional course.
- (2) Notwithstanding anything contained in the University Grants Commission Act, 1956, a Foreign Institution may seek, in the manner prescribed, to be declared as an institution deemed to be University for the purposes of the said Act; and, specifically for granting admission to its proposed programmes of study leading to the award of Degrees, Diplomas or Certificates, by whatever name called.
- (3) No Foreign Education Provider shall effect admission to any category of seats unless permitted, in writing, to do so by the University Grants Commission.

- (4) Notwithstanding anything contained in the University Grants Commission Act, 1956, the Commission may make such regulations, as it may deem fit, specifically in regard to Foreign Education Providers, with the prior approval of the Central Government and such regulations may provide, inter-alia, for :
- (i) the incorporation of the Foreign Education Provider under a Central or State law as may be applicable;
 - (ii) the creation of a Corpus Fund of such sums of money, and in such form, as maybe prescribed by way of security;
 - (iii) the period for which such permission is granted, subject to its renewal;
 - (iv) the eligibility of candidates for admission to any or all categories of seats;
 - (v) the manner in which fee or fees is to be charged by the Foreign Education Provider and determined by the Admission and Fee Regulatory Committee at the centre. Provided that the University Grants Commission shall not permit admission to any category of seats, or the charging of fees by the Foreign Education Provider in respect of a Professional Course without the consent of the appropriate statutory authority, if any, for such Professional Course.
- (5) (i) whoever, being associated with a Foreign Institution, of, other than a Foreign Education Provider, effects admission or charges fee or fees in contravention of the provisions of the foregoing sub-sections of this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years; and, in addition, shall be liable to a fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees. Provided that nothing in this clause shall apply, in the case of a foreign Institution operating in the territory of India on the date of commencement of this Act, for a period of six months from such date.
- (ii) whoever being a foreign Education Provider, contravenes the provisions of sub-sections (2), (3) or (4) of this section shall be punishable with forfeiture of the Corpus Fund referred to in sub-section (4), in whole or in part thereof and, in addition, shall be liable for action by the Admission and Fee Regulatory Committee under sub-section (8) of section 4.

CHAPTER VI - MISCELLANEOUS

11. Appeals

- (1) The Central Government shall appoint an Appellate Authority, consisting of a person who has been a judge of the Supreme Court, before which a person or a professional institution aggrieved by an order of the Admission and Fee Regulatory Committee at the Centre may file an appeal, within a period of 30 days of passing of such an order.
- (2) The state Government shall appoint an Appellate Authority, consisting of a person who has been a judge of the High Court, before which a person or a professional

institution aggrieved by an order of the Admission and Fee Regulatory Committee in the State may file an appeal, within a period of 30 days of passing of such an order.

12. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

13. Power to make Rules

The Central Government may, by notification in the Official Gazette, make Rules for carrying out the purposes of this Act.

14. Power to make Regulations

- (1) The Appropriate Authority may, by notification in the official Gazette, make Regulations consistent with this Act and the Rules made thereunder.
- (2) In particular, and without prejudice to the generality of the foregoing power, such Regulations may provide for all or any of the following matters namely:-
 - (a) Regulating the constitution and working and, items and conditions of the Admission & Fee Regulatory Committee.
 - (b) Regulating the eligibility of admission, manner of admission and, allocation of seats in a Professional Institution; including the reservation of seats referred to in subsection (1) of Section 8 of this Act.
 - (c) Regulating the manner or criteria of determination of fee or fees to be charged by a Professional Institution from the candidates.
 - (d) Regulating the fees to be charged by the professional Educational Institution from the candidates.
 - (e) Any other matter which has to be, or may be, prescribed with the Prior approval of the Central Government.

15. Rules to be laid before Parliament

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 of 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.

16. Direction by the Central Government

- (1) In the discharge of its functions under this Act, the Appropriate Authority shall be

guided by such direction on question of policy relating to national purposes, as may be given to it by the Central Government.

- (2) If any dispute arises between the Central Government and the Appropriate Authority, as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

17. Power to remove difficulties

- (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 appears to it to be necessary or expedient, for removing the difficulty.

Provided that, no such order shall be made after the expiry of a period of two years, from the date of commencement of this Act.

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

18. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government or the Appropriate Authority or any officer of the Appropriate Authority or the Appellate Authority, for anything, which is in good faith done or intended to be done under this Act. □

COMMENTS ON THE BILL

The draft (revised) bill circulated by MHRD is a far cry from the CMP Promise that nobody will be denied professional education because he or she is poor.

The draft bill is defective in the following respects :

1. The draft bill includes under its purview not only unaided professional educational institutions but aided institutions as well. This is unwarranted as there are already adequate provisions regulating aided institutions. Inclusion of the aided institutions under the purview of the Act will eventually do away with the distinction between aided and unaided streams, which has already been clearly laid down in the Supreme Court Judgement in TMA PAI Case.
2. The bill confers on minority-aided and unaided institutions undue privileges, which cannot be justified even with reference to the interests of the communities in question. Reservation of seats in minority aided and unaided institutions has been made under the "management Category" rather than "community category". While up to 50% of the seats will be available to minority aided educational institutions under the management category, "not less than 50% of the sanctioned intake" (which, by implication, could extend to 100%) may be reserved under the same category in

- unaided minority institutions.
3. The provision for identification of minorities on the basis of a Central Government notification as provided for under section 2(f) of the National Commission for Minority Educational Institutions Act, 2004 is intended to circumvent the directive in the TMA PAI judgment that minorities have to be identified state wise and that special privileges shall be conferred on minorities only to the extent required to offset any disadvantages they might have on account of their numerical shortcomings vis-a-vis the majority community. This implies that demographic and socio-economic realities peculiar to each state will be crucial in the identification of minorities and conferring of special privileges. The proposed legislation along with the earlier one on the establishment of the national commission for minority educational institutions would undo the directives of the apex court for observing federal and equitable ethos of the constitution in the confirmation of minority rights.
 4. Private unaided Deemed Universities, which run the same professional courses as run by affiliated self-financing institutions, are treated as a separate category for the purposes of admission of students. The object is to promote the growth of a few "islands of excellence" which could serve the educational needs of the offsprings of the rich and the powerful. The implications of the present practice of conferring deemed university status on new private universities which run professional courses at the undergraduate level as opposed to the earlier practice of conferring such status only on public institutions which are actively engaged in postgraduate teaching and research in rare subjects has to be understood against this back-ground. In the Islamic Academy judgment, the permission to evolve its own criteria for admission to professional courses was granted only to institutions which had been established and had been following their own admission procedure at least for the last 25 years. The new stipulation would make the privilege available to all deemed universities, old and new, irrespective of their academic and philanthropic standing. To cap it all, Vice Chancellors of Private Deemed Universities could be nominated as Chairmen of the Admission and Fee Regulatory Committees. The door has been left ajar for the capitation lobby to sneak in.
 5. The provision for holding separate entrance test for the management category in affiliated institutions will bring in capitation fee through the back door. Even the illogicality of holding two tests to prepare the merit list for the same course has not prevented the MHRD from holding out such a privilege to private institutions.
 6. Though it is not specifically stated so, different institutions will have different fee structure for the same course. This is evident from the stipulation that the fee would be fixed by taking into account such factors as the location of the institution, the cost of the land and building, the available infrastructure, the expenditure on administration and maintenance, "reasonable surplus" required for the growth and development of the institution and the revenues forgone on account of fee waiver

- for SC/ST and other backward community and economically weaker students (to the extent as shall be notified by the appropriate authority from time to time). The refusal to fix uniform fee for the same courses in the same state on the basis of expenditure calculated in accordance with the norms of minimum standards will lead to hard and unconscionable bargaining on the part of the managements for higher fixation of fee in their respective institutions. This could also introduce unhealthy classification of institutions on elitist considerations.
7. There is no specific provision for differential fee structure on the basis of the financial capacity of the parent which alone can ensure that the CMP promise that nobody will be denied the opportunity to undergo professional education because he/she is poor. Even the provision for scholarship for SC/ST economically backward sections is couched in uncertain terms and is intended to provide room for unconscionable maneuvering on the part of managements.
 8. There is hardly any reference to regulations for ensuring the quality of the content and infrastructure as also regulations to govern salary and service conditions of teachers which are essential for maintenance of standards in education.
 9. There is no penal provision to deal with defaulters, except in the case of foreign providers.

Ideally, a new central legislation should incorporate the following principles.

1. Admission should be made on the basis of merit from the rank list prepared by the agency of the state by giving equal weightage to the marks received in the Common Entrance Test (CET) conducted by the state and the marks received in the qualifying examination. Reservation should continue as per norms existing at present in each state.
2. A system of differential fee has to be introduced purely on the basis of the parent's financial status. At least 50% of the admitted students should be able to study by paying fees at rates prevailing in Government institutions in the state. The criteria for assessing financial capacity of the parent could be evolved at the state level. There should be a centralized arrangement for the collection of fees and its distribution to different institutions by an agency of the state on the basis of the number of students admitted in each institution.
3. Recurring expenditure alone should be collected from students in the form of fees. A committee as envisaged in the Islamic Academy judgment should be entrusted with the task of fixing the average of the recurring institutional expenditure for each state which could also take care of the revenue lost through differential fees. Fee thus fixed could be revised after three years. The system of fixing different fee for different institutions as proposed by seven bench judgement should not be implemented.
4. A corpus fund should be raised by the Central Government from which students should be able to borrow long-term educational loans at zero/minimal rates of interest.

5. Higher Education should be defined a "merit good" setting at rest all speculations about education beyond a certain stage as "non-merit good". The right to education should be given precedence over the right to establish educational institutions. The legislation should guarantee the right to higher education, on condition that the right will be subject to the requirements of scholastic merit and aptitude.
6. Central agencies like the UGC, AICTE, IMA and the Universities concerned should be made responsible for ensuring excellence in education. Affiliation should be given only on the basis of an assessment of the professional requirements of the nation/state in each field of study and only after the institution concerned satisfies all conditions regarding infrastructure facilities and other academic norms. Universities should fix the minimum qualification for teachers and ensure their selection on the basis of merit and payment of salary as per norms prevailing for similar placements in Government service in the state concerned. Universities should also have the power and obligation for proper monitoring of the working of the institutions and take corrective/punitive action wherever required.
7. The central legislation should provide for determination of minority status state-wise as mandated by the Supreme Court in TMA Pai Judgment and incorporate a provision for reservation of a certain percentage of seats for students belonging to the minority community which runs the institution. The minority quota should be fixed by the state government taking into account the demographic pattern and social and economic status of the minority community in question in each state. However individual minority institutions should have the freedom to admit a lesser quota of minority students than fixed by the state without surrendering their minority rights. Admission should be made through centralized counselling on the basis of inter se merit from among minority students in the common merit list prepared by the state.
8. The central law should be applicable to all self-financing institutions, whether universities or colleges, private or public institutions, minority or non-minority institutions and Indian universities collaborating with foreign institutions. Operations under the GATS regime should be strictly forbidden.
9. The central legislation should come into effect at least by the end of December this year so that complementary legislations could be made at the state level before the beginning of the next academic year.
10. Adequate provision must be made to protect the legislation from judicial scrutiny.
(All the units, are requested to study/discuss the bill in meetings and pressurise the members of parliament for suitable changes.)

— Courtesy AIFUCTO