

THE EDUCATIONAL TRIBUNALS BILL, 2010

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Bill No. 55 of 2010

THE EDUCATIONAL TRIBUNALS BILL, 2010

A

BILL

to provide for the establishment of Educational Tribunals for effective and expeditious adjudication of disputes involving teachers and other employees of higher educational institutions and other stake holders (including students, universities, institutions and statutory regulatory authorities) and to adjudicate penalties for indulging in unfair practices in higher education and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Educational Tribunals Act, 2010.
- 5 (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date or dates as the Central Government may, by notification, appoint; and different dates may be appointed for different States and any

Short title,
extent and
commencement

reference in any provision of this Act to the commencement of this Act shall be construed in relation to any State or part thereof as a reference to the coming into force of that provision in that State or part thereof.

Application
of Act

2. This Act shall apply to all higher educational institutions other than the higher educational institutions engaged mainly in agricultural education and research. 5

Definitions

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

(a) "Academic Member" means a Member appointed as such under sub-section (2) of section 22;

(b) "Administrative Member" means a Member appointed as such under sub-section (3) of section 22; 10

(c) "affiliation" together with its grammatical variations, includes, in relation to a college or institution,—

(i) recognition of such college or institution by a university; or

(ii) association of such college or institution with a university; or

(iii) admission of such college or institution to the privileges of a university;

(d) "appropriate Government",—

(i) in relation to a Union territory, means the Central Government;

(ii) in relation to a State, means the Government of the State in which the State Educational Tribunal is established under this Act; 15

(e) "appropriate State Legislature" means such Legislature of the State as has jurisdiction over the matter;

(f) "appropriate statutory regulatory authority" means any authority established under any law for the time being in force for co-ordinating or determining or maintaining the standards of higher education and research; 20

(g) "Central Educational Institution" means—

(i) a university established or incorporated by or under a Central Act; or

(ii) an institution of national importance set up by an Act of Parliament;

or

(iii) an institution, declared as an institution deemed to be University under section 3 of the University Grants Commission Act, 1956, and maintained by or receiving aid from the Central Government; or 25 of 1956

(iv) an institution maintained by, or receiving aid from,—

(A) the Central Government, whether directly or indirectly;

(B) affiliated to university referred to in sub-clause (i) or to an institution referred to in sub-clause (ii), or a constituent unit of an institution referred to in sub-clause (iii); 30

(v) an higher educational institution set up by the Central Government under the Societies Registration Act, 1860; 21 of 1860

(h) "Chairperson" means the Chairperson of a State Educational Tribunal or the National Educational Tribunal, as the case may be; 35

(i) "college" means any institution, whether known as such or by any other name which provides for a course of study for obtaining any qualification from a university and which, in accordance with the rules and regulations of such university, is recognised as competent to provide for such course of study and present students undergoing such course of study for examination for the award of such qualification; 40

(j) "contractual provisions" in relation to a teacher or an employee engaged on

contract by an higher educational institution means the provisions of the terms and conditions of the contract governing the service of such teacher or employee to such institution;

(k) "degree" means any such degree, as may, with the previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette, under section 22 of the University Grants Commission Act, 1956;

(l) "diploma" means such award, not being a degree, granted by a higher educational institution certifying that the recipient has successfully completed a course of study of not less than nine months duration;

(m) "distance education systems" means the distance education systems as defined in clause (e) of section (2) of the Indira Gandhi National Open University Act, 1985;

(n) "High Court" means the High Court of the State within whose jurisdiction the State Educational Tribunal is situated;

(o) "higher educational institution" means an institution of learning including an university, an institution deemed to be university, a college, an institute, an institution of national importance declared as such by an Act of Parliament or a constituent unit of such institution, which is imparting (whether through conduct of regular classes or distance education system) higher education beyond twelve years of schooling leading to the award of a degree or diploma;

(p) "institution deemed to be University" means an institution declared by the Central Government, as deemed to be a university under section 3 of the University Grants Commission Act, 1956;

(q) "Judicial Member" means a Member appointed as such under sub-section (1) of section 22 and includes the Chairperson;

(r) "Member" includes the Chairperson and a Member of the National Educational Tribunal or a State Educational Tribunal, as the case may be;

(s) "National Educational Tribunal" means the National Educational Tribunal established under section 20;

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

(u) "prescribed" means prescribed by rules made by the appropriate Government or the Central Government, as the case may be, under this Act;

(v) "service" means service with an higher educational institution;

(w) "service matters", in relation to a teacher or an employee of a higher educational institution means all matters relating to the conditions of their service as respects,—

(i) remuneration including pay, allowances, pension and other retirement benefits permissible in accordance with the terms and conditions of service of, such teacher or employee;

(ii) tenure including appointment, probation, confirmation, seniority, promotion, reversion, premature retirement or superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

(x) "service rules" means the rules or regulations or statutes or bye-laws or ordinances or contractual provisions, as the case may be, of the higher educational institution, governing service matters, of any teacher or any employee (whether appointed on permanent or temporary or visiting or contract basis) of such institution;

(y) "society" means a society registered under the Societies Registration Act, 1860 or under any corresponding law for the time being in force in a State: 31 of 1860

(z) "State Educational Tribunal" means a State Educational Tribunal established in a State under section 4;

(za) "Vice Chancellor" means—

(i) Chief executive of a university; or

(ii) head of a Central Educational Institution, not leaving a college.

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

CHAPTER II

STATE EDUCATIONAL TRIBUNALS

Establishment of State Educational Tribunal.

4. The appropriate Government shall, by notification, establish a Tribunal to be known as the "State Educational Tribunal" to exercise the powers conferred upon it under this Act:

Provided that an appropriate Government may notify any Educational Tribunal existing before the commencement of this Act as the "State Educational Tribunal" for the purposes of this Act and thereafter the provisions of this Act shall apply to such Tribunal. 15

Composition of State Educational Tribunal

5. Each State Educational Tribunal shall consist of a Chairperson and two other Members, of which not less than one shall be a woman, to be appointed by the appropriate Government. 20

Qualifications for appointment as Chairperson or Member of State Educational Tribunal.

6. (1) A person shall be qualified to be appointed as the Chairperson of a State Educational Tribunal, if such person is, or has been, a Judge of the High Court:

Provided that no appointment under this section shall be made except after consultation with the Chief Justice of the High Court.

(2) A person shall be qualified to be appointed as a Member of the State Educational Tribunal, if such person,— 25

(a) is not less than fifty-five years of age;

(b) is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters; 30

(c) is, or has been, a Vice Chancellor or a person who is, or has been, of the rank and equivalence of a Chief Secretary of the State Government.

(3) Out of the two Members referred to in sub-section (1) of section 5, one Member shall be chosen from amongst persons who is, or, has been, the Vice Chancellor and the other Member shall be chosen from amongst persons who is, or has been, the Chief Secretary of the State Government or equivalent rank. 35

Selection Committee.

7. (1) The Chairperson and Members of the State Educational Tribunal shall be appointed by the appropriate Government from a panel of names recommended by a Selection Committee, consisting of—

(a) the Chief Justice of the High Court or his nomineeChairperson; 40

(b) the Chief Secretary of the State Government.....Member;

(c) an officer of the State Government of the rank and equivalence of a Secretary to the Government of India with experience in dealing with educational matters.....Member.

(2) The Secretary in charge of higher education in the Department of Education or Department dealing with educational matters of the State Government shall be the convener of the meetings of the Selection Committee.

5 (3) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed by the appropriate Government:

Provided that in the case of the Selection Committee in respect of an Educational Tribunal to be established in a Union territory, the provisions of this section shall have the effect as if for the words "State Government", the words "Central Government" has been substituted.

10 (4) No appointment of the Chairperson or Member of the State Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee.

(5) Subject to the provisions of sub-sections (1) to (4), the Selection Committee may regulate its own procedure.

15 8. (1) The Chairperson and every Member of the State Educational Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that the Chairperson or other Members of the State Educational Tribunal shall not hold office as such after he has attained the age of seventy years.

20 (2) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of a State Educational Tribunal shall be such as may be prescribed by the appropriate Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson and other Member shall be varied to their disadvantage after their appointment.

25 9. The Chairperson or a Member of the State Educational Tribunal may, by notice in writing under his hand addressed to the appropriate Government, resign his office:

30 Provided that the Chairperson or a Member of the State Educational Tribunal shall, unless he is permitted by the appropriate Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

10. (1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office the Chairperson or any other Member of the State Educational Tribunal, who—

35 (a) has been adjudged an insolvent; or

(b) has engaged at any time, during his term of office, in any paid employment;

or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

40 (d) has become physically or mentally incapable of acting as such Chairperson or other Member; or

(e) is of unsound mind and stands so declared by a competent court; or

(f) has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions as such Chairperson or other Member; or

45 (g) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(h) has been guilty of proved misbehavior; or

(i) has such other disqualifications as may be prescribed by the appropriate Government.

Term of office, salaries and allowances of Chairperson and Members of State Educational Tribunal

Resignation.

Removal and suspension of Chairperson and Members of State Educational Tribunal

(2) Notwithstanding anything contained in sub-section (1), no Chairperson or a Member of the State Educational Tribunal shall be removed from his office on the grounds specified in clause (f) or clause (g) or clause (h) of sub-section (1), except by an order made by the appropriate Government after an inquiry made in this behalf by a Judge of the High Court in which such Chairperson or such Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The appropriate Government may, by rules, regulate the procedure for the inquiry referred to in sub-section (2).

Vacancies.

11. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the State Educational Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the State Educational Tribunal from the stage at which the vacancy is filled. 10

Member of State Educational Tribunal to act as its Chairperson in certain cases.

12. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the State Educational Tribunal by reason of his death or resignation, the senior-most Member of the State Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office. 15

(2) When the Chairperson of the State Educational Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties. 20

Prohibitions as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of State Educational Tribunal.

13. On ceasing to hold office.—

(a) the Chairperson or Member of the State Educational Tribunal, as the case may be, shall, subject to the provisions of this Act, be ineligible, for a period of five years from the date on which they cease to hold office, for further employment (including as consultant or expert or otherwise) in any higher educational institution within such State, whether under the Central Government or the Government of any State or any private educational institution or in any institution whose matters had been before such Chairperson or Member: 25

(b) the Chairperson or Member shall not appear, act or plead before the State Educational Tribunal in which he had been the Chairperson or Member. 30

Staff of State Educational Tribunal and their salaries and allowances.

14. (1) The appropriate Government shall, after consultations with the Chairperson of the State Educational Tribunal, determine the nature and categories of the officers and other employees required to assist the State Educational Tribunal in the discharge of its functions and provide such Tribunal with such officers and other employees as it may think fit. 35

(2) The officers and other employees of the State Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of such Tribunal.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of a State Educational Tribunal shall be such as may be prescribed by the appropriate Government. 40

Jurisdiction, powers and authority of State Educational Tribunal.

15. Save as otherwise expressly provided in this Act, the State Educational Tribunal shall exercise powers and authority in relation to.—

(a) service matters of any teacher or any other employee of a higher educational institution; 45

(b) matters relating to affiliation of any higher educational institution (not being University) with the affiliating University;

(c) matters relating to use of unfair practices, by any higher educational institution, which has been specifically prohibited under any law for the time being in force;

(d) matters as may be assigned to it by any other law for the time being in force.

5 16. Every application, for redressal of grievance or settlement of disputes relating to any of the matters specified under clauses (a) to (d) of section 15, shall be made to the State Educational Tribunal in such form and accompanied by such documents and on payment of such fee and the manner as may be prescribed by the appropriate Government.

Manner of making application before State Educational Tribunal

10 17. (1) The State Educational Tribunal shall, not admit any applications in respect of a matter under clause (a) of section 15 unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules for redressal of grievances or settlement of disputes.

Applications not to be admitted unless other remedies exhausted

15 (2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules or contractual provisions as to redressal of grievances or settlement of disputes,—

20 (a) if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance or disputes; or

(b) where no final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order with regard to the application or representation made or appeal preferred by such person, if a period of three months from the date on which such application or representation was made or appeal was preferred has expired; or

25 (c) where no service rules exist on the service matter in dispute.

Explanation.—For the purposes of this section, the words "final order" means an order passed by such final appellate authority of the higher educational institution as provided in the service rules but does not include an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act, 1996.

26 of 1996.

30 18. (1) A State Educational Tribunal shall not admit an application.—

Limitation.

(a) in a case where a final order referred to in clause (a) of sub-section (2) of section 17 has been made, unless the application is made, within a period of six months from the date on which such final order has been made;

35 (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 17 has been made and a period of three months had expired thereafter without such final order having been made, within a period of six months from the date of expiry of the said period of three months;

(c) in any other matter, within a period of six months from the date the cause of action arose.

40 (2) Notwithstanding anything contained in this section, an application may be admitted after the period of six months specified in clause (a) or clause (b) or clause (c) of this section, if the applicant satisfies the State Educational Tribunal that he had sufficient cause for not making the application within such period.

45 19. Any person aggrieved by an order made by a State Educational Tribunal in respect of any matter specified under clauses (b) to (d) of section 15, may prefer an appeal against such order to the National Educational Tribunal within a period of sixty days from the date of the order, in such form and manner and accompanied with such documents and such fees as may be prescribed by the Central Government;

Filing of appeal to National Educational Tribunal.

Provided that the National Educational Tribunal may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

CHAPTER III

NATIONAL EDUCATIONAL TRIBUNAL

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Establishment
of National
Educational
Tribunal.

20. The Central Government shall, by notification, establish a Tribunal to be known as the "National Educational Tribunal" to exercise the powers conferred upon it under this Act.

Composition
of National
Educational
Tribunal.

21. (1) The National Educational Tribunal shall consist of a Chairperson and such number of Members not exceeding eight to be appointed by the Central Government. 10

(2) Out of the eight Members to be appointed under sub-section (1) —

(a) two shall be Judicial Members;

(b) three shall be Academic Members;

(c) three shall be Administrative Members.

(3) Not less than one-third of the total number of Members appointed under sub-section (1) shall be women. 15

(4) Subject to the provisions of this Act,—

(a) the jurisdiction of the National Educational Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson consisting of three Members of which one Member shall be a Judicial Member, one Member shall be an Academic Member and one Member shall be an Administrative Member. 20

(5) Notwithstanding anything contained in sub-section (4), the Chairperson may transfer a Member from one Bench to another Bench.

(6) The National Educational Tribunal shall sit in New Delhi. 25

Qualifications
for
appointment
as
Chairperson
or Member of
National
Educational
Tribunal.

22. (1) A person shall be qualified, to be appointed as the Chairperson or Judicial Member of the National Educational Tribunal, if such person is, or has been, a Judge of the Supreme Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India. 30

(2) A person shall be qualified to be appointed as an Academic Member of the National Educational Tribunal if such person,—

(a) is not less than fifty-five years of age;

(b) is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty-five years in dealing with matters relating to higher education or administration in educational matters; 35

(c) is, or has been, a Vice Chancellor of any University, or a Director of an institution of national importance.

(3) A person shall be qualified to be appointed as an Administrative Member of the National Educational Tribunal if such person,—

(a) is not less than fifty-five years of age; 40

(b) is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty-five years in dealing with matters relating to higher education, public affairs or administration in educational matters;

(c) is, or has been, a Secretary to the Government of India or equivalent rank.

23. (1) The Chairperson and Members of the National Educational Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

Selection Committee.

(a) the Chief Justice of India or his nominee.....Chairperson;

5 (b) the Secretary in charge of higher education in the Ministry of Human Resource Development of the Government of India.....Member;

(c) the Secretary in the Ministry of Law and Justice of the Government of IndiaMember;

10 (d) the Secretary in charge of medical education in the Ministry of Health and Family Welfare of the Government of India.....Member;

(e) the Secretary in charge of the Department of Personnel and Training of the Government of India.....Member.

15 (2) The Secretary in charge of higher education in the Ministry of Human Resource Development of the Government of India shall be the convenor of the meetings of the Selection Committee.

(3) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed by the Central Government.

(4) No appointment of the Chairperson or Member of the National Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee.

20 (5) Subject to the provisions of sub-sections (1) to (4), the Selection Committee may regulate its own procedure.

24. (1) The Chairperson and every other Member of the National Educational Tribunal shall, hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Term of office, salaries and allowances of Chairperson and Members of National Educational Tribunal.

25 Provided that the Chairperson or other Member of the National Educational Tribunal shall not hold office as such after he has attained the age of seventy years.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the National Educational Tribunal shall be such as may be prescribed by the Central Government:

30 Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson and other Member shall be varied to their disadvantage after their appointment.

25. The Chairperson or a Member of the National Educational Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation.

35 Provided that the Chairperson or a Member of the National Educational Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

40 26. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office, the Chairperson or any other Member of the National Educational Tribunal, who—

Removal and suspension of Chairperson and Members of National Educational Tribunal.

(a) has been adjudged an insolvent; or

(b) has engaged any time, during his term of office, in any paid employment; or

45 (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has become physically or mentally incapable of acting as such Chairperson or other Member; or

- (e) is of unsound mind and stands so declared by a competent court; or
- (f) has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions as such Chairperson or other Member; or
- (g) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (h) has been guilty of proved misbehavior; or
- (i) has such other disqualifications as may be prescribed.

(2) Notwithstanding anything in sub-section (1), no Chairperson or a Member of the National Educational Tribunal shall be removed from his office on the grounds specified in clause (f) or clause (g) or clause (h) of sub-section (1), except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or such Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the inquiry referred to in sub-section (2).

Vacancies.

27. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the National Educational Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the National Educational Tribunal from the stage at which the vacancy is filled.

Member of National Educational Tribunal to act as its Chairperson in certain cases.

28. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the National Educational Tribunal by reason of his death or resignation, the senior-most Member of the National Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson of the National Educational Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member of the National Educational Tribunal, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Prohibition as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of National Educational Tribunal.

29. On ceasing to hold office.

(a) the Chairperson or Member, as the case may be, of the National Educational Tribunal shall, subject to the provisions of this Act, be ineligible, for a period of five years from the date they cease to hold office, for further employment (including as consultant or expert or otherwise) in any higher educational institution, whether under the Central Government or the Government of any State or any private educational institution or in any institution whose matters had been before such Chairperson or Member; and

(b) the Chairperson or Member shall not appear, act or plead before the National Educational Tribunal or the State Educational Tribunal.

Staff of National Educational Tribunal and their salaries and allowances

30. (1) The Central Government shall, after consultation with the Chairperson of the National Educational Tribunal, determine the nature and categories of the officers and other employees required to assist the National Educational Tribunal in the discharge of its functions and provide such Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the National Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of such Tribunal.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the National Educational Tribunal shall be such as may be prescribed by the Central Government.

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31. (1) Save as otherwise expressly provided in this Act, the National Educational Tribunal shall exercise powers and authority in relation to—

Powers and authority of National Educational Tribunal.

(a) any dispute between any higher educational institution and any appropriate statutory regulatory authority;

(b) any reference made to it by any appropriate statutory regulatory authority amongst statutory regulatory authorities;

(c) any matter of affiliation between any higher educational institution (other than a University) and the affiliating University, where such University is a Central Educational Institution having powers of affiliation in two or more States;

(d) any constituent unit of an institution deemed to be University or a Central Educational Institution located in a State other than the State in which such institution deemed to be university or a Central Educational Institution is located;

(e) on the matters as may be assigned to it by any other law for the time being in force.

(2) The National Educational Tribunal shall exercise appellate jurisdiction, as provided in section 19, over a matter under clauses (b) to (d) of section 15 decided by any State Educational Tribunal.

(3) The National Educational Tribunal shall have the power to call for the records and pass appropriate orders in any matter which is pending before or has been decided by any State Educational Tribunal, where it appears to the National Educational Tribunal that such State Educational Tribunal has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(4) Where cases involving the same or substantially the same issues, to the satisfaction of the National Educational Tribunal, either on its own motion or on an application made by a party to any such case, are pending before the National Educational Tribunal and one or more State Educational Tribunals or before two or more State Educational Tribunals, the National Educational Tribunal may withdraw the case or cases pending before the State Educational Tribunal or the State Educational Tribunals and dispose of all the cases itself:

Provided that the National Educational Tribunal may, after determining the said issues, return any case so withdrawn together with a copy of its order on such questions to the State Educational Tribunal from which the case has been withdrawn, and the State Educational Tribunal shall on receipt thereof, proceed to dispose of the case in conformity with such order.

32. Any person, for settlement of any dispute arising out of matters referred to in clause (a) or in clause (b) or in clause (c) or in clause (d) or clause (e) of sub-section (1) of section 31 may make an application, in such form and accompanied by such documents and on payment of such fee and the manner as may be prescribed by the Central Government, within a period of six months from the date when such dispute first arose:

Provided that the National Educational Tribunal may entertain an appeal or application after the expiry of the said period of six months, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

Filing of application for adjudication of dispute by National Educational Tribunal

33. (1) The National Educational Tribunal shall, not admit an application in respect of a service matter of any teacher or any other employee of the Constituent Unit of any Institution deemed to be a University or Central Educational Institution referred to in clause (d) of section 31 unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules for redressal of grievances.

Applications not to be admitted unless other remedies exhausted

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances.—

(a) if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order under such rules.

rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order with regard to the application or representation made or appeal preferred by such person, if a period of three months from the date on which such application or representation was made or appeal was preferred was made has expired; or

(c) where no service rules exist on the service matters raised.

Explanation.—For the purposes of this section, the words "final order" means an order passed by such final appellate authority of the higher educational institution as provided in the service rules but does not include an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act, 1996.

26 of 1996.

Limitation.

34. (1) A National Educational Tribunal shall not admit an application,—

(a) in a case where a final order referred to in clause (a) of sub-section (2) of section 33 has been made, unless the application is made, within a period of six months from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 33 has been made and a period of three months had expired thereafter without such final order having been made, within a period of six months from the date of expiry of the said period of three months;

(c) in any other matter within a period of six months from the date the cause of action arose.

(2) Notwithstanding anything contained in this section, an application may be admitted after the period of six months specified in clause (a) or clause (b) or clause (c) of this section, if the applicant satisfies the National Educational Tribunal that he had sufficient cause for not making the application within such period.

Appeal against order passed under this Chapter.

35. Any person aggrieved by an order made by the National Educational Tribunal may prefer an appeal against such order to the Supreme Court within a period of sixty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

CHAPTER IV

PENALTIES

Penalty for failure to comply with orders of Tribunal.

36. Whoever fails to comply with any order made by any State Educational Tribunal or the National Educational Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten lakh rupees, or with both.

Execution of award or order of Tribunal.

37. (1) An order made by every State Educational Tribunal and the National Educational Tribunal, under this Act shall be executable as a decree of a civil court, and for this purpose, the State Educational Tribunal and the National Educational Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may transmit to the Collector having jurisdiction over the concerned higher educational institution or against the person against whom an order had been made, and the Collector shall execute the order.

(3) Where the higher educational institution or any person, against whom the order is made by the State Educational Tribunal or the National Educational Tribunal, as the case

may be, fails to make the payment or deposit the amount as directed by such Tribunal within the period specified in the order, such amount shall be recoverable from such institution or person as arrears of land revenue.

5 38. (1) No court shall take cognizance of any offence punishable under this Chapter, save on a complaint made by the officer authorised by the National Educational Tribunal or a State Educational Tribunal, as the case may be. Cognizance of offences.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence punishable under this Chapter.

CHAPTER V
MISCELLANEOUS

10
5 of 1908. 39. (1) For the purpose of inquiring into an application, every State Educational Tribunal and the National Educational Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:— Procedure of State Educational Tribunals and National Educational Tribunal.

15 (a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872. 20 (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it *ex parte*;

25 (h) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the appropriate Government or by the Central Government, as the case may be.

30 (2) A person making an application under this Act may appear either in person or authorise one or more legal practitioners to present his case before the State Educational Tribunal or the National Educational Tribunal.

(3) Any institution may authorise one or more legal practitioners or any of its officers to present its case before the State Educational Tribunal or the National Educational Tribunal.

5 of 1908. 35 (4) The State Educational Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the appropriate Government.

5 of 1908. (5) The National Educational Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the Central Government.

40 (6) The State Educational Tribunal and the National Educational Tribunal shall conduct such proceedings as may be required for it to arrive at a conclusion provided that an opportunity of being heard and produce such evidence as may be necessary, shall be adequately offered to all the parties at issue.

45 (7) Every proceeding referred to in sub-section (6) shall be conducted, in the case of the State Educational Tribunal, by its Chairperson and at least one Member thereof sitting together:

Provided that where a Member of the State Educational Tribunal, for any reason, is unable to conduct a proceeding till it is completed, the Chairperson and the other Member

of such Tribunal shall continue the proceeding from the stage at which it was last heard by the previous Member.

(8) Every proceeding referred to in sub-section (6) shall be conducted, in the case of the National Educational Tribunal, by a bench constituted by the Chairperson of the National Educational Tribunal under clause (b) of sub-section (7) of section 21. 5

(9) On the conclusion of proceedings, the State Educational Tribunal or the National Educational Tribunal, as the case may be, shall pass such orders as it deems fit and provide such relief as may be desirable, including the award of such punitive damages, as it deems fit, to the affected party at issue:

Provided that where the proceeding is conducted by the Chairperson and one Member of the State Educational Tribunal and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other Member of such Tribunal for hearing on such point or points and the opinion of the majority shall be the order of the State Educational Tribunal. 10

Provided further that the order of the State Educational Tribunal on the matters covered under clause (a) of section 15 shall be final. 15

(10) Every order made by the State Educational Tribunal or the National Educational Tribunal, as the case may be, under sub-section (9) shall be signed by the Chairperson or Member or Members who heard the case and passed the order.

Interim orders.

40. Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order, whether by way of injunction or stay in any other manner, shall be made by a State Educational Tribunal or the National Educational Tribunal, as the case may be, on, or in any proceedings relating to, an application unless. 20

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and 25

(b) opportunity to be heard is given to such party in the matter.

Proceedings before Tribunal to be judicial proceedings.

41. All proceedings before any State Educational Tribunal and the National Educational Tribunal, shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code. 30 45 of 1860

Vacancy in State Educational Tribunals or National Educational Tribunal not to invalidate acts or proceedings.

42. No act or proceeding of any State Educational Tribunal or the National Educational Tribunal shall be questioned or be invalid merely on the ground of existence of any vacancy or defect in the establishment of the State Educational Tribunal and the National Educational Tribunal.

Members and staff of Tribunals to be public servants

43. The Chairperson and other Members of the State Educational Tribunals and the National Educational Tribunal and the officers and other employees of the State Educational Tribunals and the National Educational Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 35 45 of 1860

Administrative Control

44. The National Educational Tribunal shall have administrative control over all the State Educational Tribunals in the following matters, namely:— 40

(a) calling for periodical returns regarding the institution, disposal and pendency of cases;

(b) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the

opposite parties, furnishing of English translation of orders written in any language. speedy grant of copies of documents;

(c) generally overseeing the functioning of the State Educational Tribunals to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

45. Where a matter instituted before any State Educational Tribunal or the National Educational Tribunal, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding fifty thousand rupees, as may be specified in the order.

Dismissal of frivolous or vexatious complaints.

46. Every order of a State Educational Tribunal or the National Educational Tribunal, as the case may be, shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

Finality of orders.

47. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the State Educational Tribunal or the National Educational Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Exclusion of jurisdiction of civil courts.

48. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or against the Chairperson or any other Member or any other person authorised by the Chairperson of any State Educational Tribunal or the National Educational Tribunal, as the case may be, for anything which is done in good faith or intended to be done in pursuance of this Act or any rule or order made thereunder in the discharge of official duties.

Protection of action taken in good faith.

49. The provisions of this Act shall have overriding 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.

Act to have overriding effect.

50. 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.

Application of other laws not barred.

51. Nothing contained in this Act or the rules made thereunder shall apply to any minority institution to the extent to which they are inconsistent with the functions and powers vested upon the National Commission for Minority Educational Institutions established under the National Commission for Minority Educational Institutions Act, 2004 or provisions contained in that Act.

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

52. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power of Central Government to make rules.

(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) the form and manner in which an appeal may be preferred, the documents which shall be accompanied with it and the fee payable in respect of filing of such appeal or for the service of execution of processes under section 19;

(b) the term of the Selection Committee and the manner of selection of panel of names under sub-section (3) of section 23;

(c) the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the National Educational Tribunal under sub-section (2) of section 24;

(d) the other disqualifications for removal of the Chairperson or other Member of the National Educational Tribunal under clause (i) of sub-section (1), of section 26 and, the procedure for the inquiry referred to in sub-section (3) of that section;

(e) the salaries and allowances payable to, and other terms and conditions of, service of, the officers and other employees of the National Educational Tribunal under sub-section (3) of section 30;

(f) the form in which an application may be made, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes under section 32;

(g) the other matters under clause (i) of sub-section (1) of section 39 in respect of which the National Educational Tribunal shall have the powers under the Code of Civil Procedure, 1908 while trying a suit; 5

5 of 1908

(h) the procedure for conduct of proceedings of the National Educational Tribunal under sub-section (5) of section 39;

(i) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules. 15

Power of
State
Government
to make rules.

53. (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry 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:— 15

(a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (3) of section 7;

(b) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the State Educational Tribunal under sub-section (2) of section 8; 20

(c) the other disqualifications for removal of the Chairperson or other Member of the State Educational Tribunal under clause (i) of sub-section (1) of section 10, and the procedure for the inquiry referred to in sub-section (3) of that section;

(d) the salaries and allowances payable to, and other terms and conditions of service of the officers and other employees of, the State Educational Tribunal under sub-section (3) of section 14; 25

(e) the form in which an application may be made, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes under section 16; 30

(f) the other matters under clause (i) of sub-section (1) of section 39 in respect of which the State Educational Tribunal shall have the powers under the Code of Civil Procedure, 1908 while trying a suit; 5 of 1908.

(g) the procedure for conduct of proceedings of the State Educational Tribunal under sub-section (4) of section 39; 35

(h) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

Rules to be
laid before
Parliament
and State
Legislature.

54. (1) Every rule made by the Central Government, 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. 40

(2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House. 45

55. (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 appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties

Provided that no such order shall be made after the expiry of the period of three years from the date on which this Act receives the assent of the President.

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

STATEMENT OF OBJECTS AND REASONS

In view of rapid growth in the higher education sector, which has resulted in increased litigation involving students, teachers, employees, managements of higher educational institutions and universities and others, there is an urgent need to provide for a mechanism for speedy resolution of their disputes to maintain and to improve the quality and efficient functioning of institutions of higher education.

2. The National Policy on Education, 1986, *inter alia*, states that Educational Tribunals would be established at the national and state level. The Programme of Action, 1992 of the National Policy on Education also states that Educational Tribunals would be set up considering the large volume of legal disputes generated in the education system.

3. The goals of expansion in higher education to effectively compete with other countries can be achieved only if the regulatory regime and dispute-settlement process engender credibility and assurance. It is, therefore, proposed to establish a two-tier structure of Educational Tribunals at National and State level to adjudicate on the entire gamut of disputes that arise in the higher education system through a fast track, speedy recourse to justice delivery. Such a reform of institutional structure would enable building an effective system of checks and balances in higher education which would help the orderly growth of the sector.

4. The proposed Educational Tribunals Bill, 2010, *inter alia*, provides—

(a) for establishment of the State Educational Tribunal consisting of a Chairperson, who is or has been a Judge of the High Court and two other Members, who have the ability, integrity and standing, and have adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters or is, or has been, a Vice Chancellor or a person who is, or has been, of the rank and equivalence of a Chief Secretary of the State Government;

(b) that the State Educational Tribunal shall exercise powers and authority in relation to—

(i) service matters of any teacher or any other employee of a higher educational institution;

(ii) matters relating to affiliation of any higher educational institution (not being an University) with the affiliating University;

(iii) matters relating to use of unfair practices, by any higher educational institution, which has been specifically prohibited under any other law for the time being in force; and

(iv) matters as may be assigned to it by any other law for the time being in force;

(c) for establishment of the National Educational Tribunal consisting of a Chairperson and upto eight other Members of which two shall be Judicial Members who are, or have been, a Judge of the Supreme Court; three shall be Academic Members who are, or have been, a Vice Chancellor of any University, or Director of an institution of national importance; and three shall be Administrative Members who are, or have been, a Secretary to the Government of India or equivalent rank;

(d) that the National Educational Tribunal shall exercise powers and authority in relation to—

(i) any dispute between any higher educational institution and any appropriate statutory regulatory authority;

(ii) any reference made to it by any appropriate statutory regulatory authority amongst Statutory Regulatory Authorities;

(iii) any matter of affiliation between any higher educational institution (other than an University) and the affiliating University, where such University is a Central Educational Institution having powers of affiliation in two or more States;

(iv) matters relating to any constituent unit of an institution deemed to be University or Central Educational Institution located in a State other than the State in which such institution deemed to be university or Central Educational Institution is located; and

(v) matters as may be assigned to it by any other law for the time being in force;

(e) that the Chairperson or Members of a State Educational Tribunal and the National Educational Tribunal shall be ineligible for a period of five years from the date they cease to hold office for further employment in any higher educational institution;

(f) for imprisonment for a term which may extend to three years, or with fine which may extend to ten lakh rupees, or with both in case of failure to comply with any order made by any State Educational Tribunal or the National Educational Tribunal, as the case may be.

5. The notes on clauses explain in detail the various provisions contained in the Bill.
6. The Bill seeks to achieve the above objectives.

KAPIL SIBAL

NEW DELHI;
The 19th April, 2010.

Notes on clauses

Clause 2.—This clause specifies the institutions to which the provisions of the proposed legislation shall apply. This provides that the proposed legislation shall apply to all higher educational institutions other than the higher educational institutions engaged mainly in agricultural education and research.

Clause 3.—This clause defines certain words and expressions used in the Bill.

Clause 4.—This clause empowers the concerned State Government in case of States and the Central Government in case of Union territories to establish a Tribunal to be known as the "State Educational Tribunal" to exercise the powers conferred upon it under the proposed legislation in each State or Union territory. It also empowers the State Government to notify any Educational Tribunal existing before the commencement of the proposed legislation as the State Educational Tribunal for the purposes of the proposed legislation.

Clause 5.—This clause provides that each State Educational Tribunal shall consist of a Chairperson and two other Members, of which one shall be a woman, to be appointed by the appropriate Government.

Clause 6.—This clause specifies the qualifications for appointment as Chairperson or Members of the State Educational Tribunal. Sub-clause (1) provides that a person shall be qualified to be appointed as the Chairperson of a State Educational Tribunal, if such person is, or has been, a Judge of the High Court and the appointment of the Chairperson shall be made only after consultation with the Chief Justice of the High Court. Sub-clause (2) provides that a person shall be qualified to be appointed as a Member of the State Educational Tribunal, if such person is not less than fifty-five years of age and is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters. Sub-clause (3) states that out of the two other Members, one Member shall be chosen from amongst persons who is, or, has been, the Vice Chancellor and the other Member shall be chosen from amongst persons who is, or has been, the Chief Secretary of the State Government or equivalent rank.

Clause 7.—This clause provides for the selection of the Chairperson and other Members of the State Educational Tribunal. The Selection Committee shall comprise the Chief Justice of the High Court or his nominee as its Chairperson, the Chief Secretary of the State Government and an officer of the State Government of the rank and equivalence of a Secretary to the Government of India with experience in dealing with educational matters as its Members. It provides that the Selection Committee shall recommend a panel of names to the appropriate Government for appointment. Sub-clause (2) provides that the Secretary in charge of higher education in the Department of Education or Department dealing with educational matters of the State Government shall be the convenor of the meetings of the Selection Committee. Sub-clause (3) provides that the term of the Selection Committee and the manner of selection of panel of names may be prescribed by rules by the appropriate Government. Sub-clause (5) provides that the Selection Committee may regulate its own procedure in its deliberations. Sub-clause (4) states that no appointment of the Chairperson or Member of the State Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee.

Clause 8.—This clause provides that the Chairperson and other Member of the State Educational Tribunal shall hold office for a term of five years from the date on which they enter upon office and shall be eligible for reappointment, but shall not hold office after they have attained the age of seventy years. Sub-clause (2) provides that the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be prescribed by the appropriate Government.

Clause 9.—This clause provides the manner in which the Chairperson or a Member of the State Educational Tribunal may resign his office. This provides that the Chairperson or Member may, by notice in writing under his hand addressed to the appropriate Government, resign his office and shall, unless he is permitted by the appropriate Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

Clause 10.—This clause provides the manner of removal of the Chairperson or a Member of the State Educational Tribunal. It specifies the ground for removal of the chairperson and Member which, *inter alia*, include where the Chairperson or a Member has been is an adjudged an insolvent or has engaged at any time during his term of office in any paid employment, or has been convicted of an offence which in the opinion of the Central Government involves moral turpitude, or has become physically or mentally incapable, or is of unsound mind and stands so declared by a competent court, or has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions, or has so abused his position as to render his continuance in office prejudicial to the public interest, or has been guilty of proved misbehavior or has such other disqualifications as may be prescribed under rules made by the appropriate Government. Sub-clause (2) provides that no Chairperson or a Member of the State Educational Tribunal shall be removed from his office on the grounds specified in clause (f) or clause (g) or clause (h) of sub-clause (1) in this clause, except by an order made by the appropriate Government after an inquiry made in this behalf by a Judge of the High Court in which such Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard. Sub-clause (3) empowers the appropriate Government to regulate the procedure for the inquiry.

Clause 11.—This clause provides that if any vacancy occurs in the office of the Chairperson or a Member of the State Educational Tribunal for any reason other than temporary absence, the appropriate Government shall appoint another person to fill the vacancy and the proceedings may be continued before the State Educational Tribunal from the stage at which the vacancy is filled.

Clause 12.—This clause provides that in the event of the occurrence of any vacancy in the office of the Chairperson of the State Educational Tribunal by reason of his death or resignation, the senior-most Member of the State Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new Chairperson appointed to fill such vacancy, enters upon his office. It further also provides that when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Clause 13.—This clause provides for the prohibitions as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of State Educational Tribunal. It provides that the Chairperson or Member shall be ineligible, for a period of five years from the date on which they cease to hold the office, for further employment in, or, in matters related to, any higher educational institution within the State, whether under the Central Government or the Government of any State or any private educational institution and that the Chairperson or Member shall not appear, act or plead before the State Educational Tribunal in which they had been the Chairperson or Member.

Clause 14.—This clause empowers the appropriate Government to determine, after consultations with the Chairperson of the State Educational Tribunal, the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide such Tribunal with such officers and other employees as it may think fit. It further provides that the officers and other employees of the State Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Tribunal. It also empowers the appropriate Government to determine the salaries and

allowances payable and the other terms and conditions of service of the officers and other employees of the State Educational Tribunal.

Clause 15.—This clause specifies the jurisdiction, powers and authority to be exercised by the State Educational Tribunal in relation to service matters of any teacher or any other employee of a higher educational institution; matters relating to affiliation of any higher educational institution (not being an University) with the affiliating University; matters relating to use of unfair practices, by any higher educational institution, which has been specifically prohibited under any law for the time being in force and matters as may be assigned to it by any other law for the time being in force.

Clause 16.—This clause empowers the appropriate Government to prescribe the manner, the form, the documents required and the fees to be paid in making an application before the State Educational Tribunal for adjudication of any grievance.

Clause 17.—This clause provides that the State Educational Tribunal shall not admit an application for adjudication in disputes under sub-clause (a) of clause 15 relating to service matters of any teacher or any other employee of a higher educational institution unless it is satisfied that the applicant had availed of all the remedies available under the relevant service rules for redressal of grievances or settlement of disputes. Sub-clause (2) provides that a person shall be deemed to have availed of all the remedies available to him under the relevant service rules or contractual provisions if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order, rejecting any appeal preferred or representation made by such person in connection with the grievance or disputes; or where no final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order with regard to the application or representation made or appeal preferred by such person, if a period of three months from the date on which such application or representation was made or appeal was preferred has expired; or where no service rules exist on the service matter in dispute. It further provides that an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act, 1996 would not be subject to adjudication by the State Educational Tribunal.

Clause 18.—This clause provides for limitation. It provides that a State Educational Tribunal shall not admit an application in a case where a final order under clause (a) of sub-clause (2) of clause 17 has been made, unless the application is made within a period of six months from the date of the final order or in a case where an appeal or representation as mentioned in clause (b) of sub-clause (2) of clause 17 has been made and a period of three months had expired without any final order having been made, within a period of six months from the date of expiry of the period of three months. It further provides that in any other matter the State Educational Tribunal shall not admit an application unless it has been made within a period of six months from the date the cause of action arose. Sub-clause (2) provides that the State Educational Tribunal may admit an application after the specified period of six months if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within this period.

Clause 19.—This clause provides that any person aggrieved by an order made by a State Educational Tribunal may prefer an appeal against the order to the National Educational Tribunal within a period of sixty days from the date of the order. It further empowers the National Educational Tribunal to entertain an appeal after the expiry of the period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within this period.

Clause 20.—This clause empowers the Central Government to establish a National Educational Tribunal to exercise the powers conferred upon it under the proposed legislation.

Clause 21.—This clause provides that the National Educational Tribunal shall consist of a Chairperson and such number of Members not exceeding eight to be appointed by the Central Government. Sub-clause (2) provides that out of the eight other Members, two shall be Judicial Members, three shall be Academic Members and three shall be Administrative Members. Sub-clause (2) specifies that not less than one-third of the total number of Members shall be women. Sub-clause (4) provides that subject to the provisions of the proposed legislation, the jurisdiction of the National Educational Tribunal may be exercised by Benches with a Bench being constituted by the Chairperson consisting of three Members of which one Member shall be a Judicial Member, one Member an Academic Member and one Member an Administrative Member. Sub-clause (5) provides that the Chairperson may transfer a Member from one Bench to another Bench. Sub-clause (6) provides that the National Educational Tribunal shall sit at New Delhi.

Clause 22.—This clause specifies the qualifications for appointment as Chairperson or Members of the National Educational Tribunal. Sub-clause (1) provides that a person shall be qualified to be appointed as the Chairperson or Judicial Member of the National Educational Tribunal, if such person is, or has been, a Judge of the Supreme Court and the appointment of the Chairperson shall be made only after consultation with the Chief Justice of India. Sub-clause (2) provides that a person shall be qualified to be appointed as a Academic Member of the National Educational Tribunal, if such person is not less than fifty-five years of age and is of ability, integrity and standing, and has adequate knowledge and experience of at least twenty years in dealing with matters relating to higher education, public affairs or administration in educational matters or is or has been a Vice-Chancellor of any University or a Director of an institution of national importance. Sub-clause (3) provides that a person shall be qualified to be appointed as a Administrative Member if he is not less than fifty-five years of age and is of ability, integrity and standing having knowledge and experience of not less than twenty-five years in dealing with matters relating to higher education, public affairs or administration in educational matters and is, or has been, a Secretary to the Government of India or equivalent rank.

Clause 23.—This clause provides for the selection of the Chairperson and other Members of the National Educational Tribunal. Sub-clause (1) provides that the Selection Committee shall comprise the Chief Justice of India or his nominee as its Chairperson, the Secretary in charge of higher education in the Ministry of Human Resource Development, the Secretary in the Ministry of Law and Justice, the Secretary in charge of medical education in the Ministry of Health and Family Welfare and the Secretary in charge of the Department of Personnel and Training as its Members. Which shall recommend a panel of names to the Central Government for appointment. Sub-clause (2) provides that the Secretary in charge of higher education in the Ministry of Human Resource Development shall be the convenor of the meetings of the Selection Committee. Sub-clause (3) provides that the term of the Selection Committee and the manner of selection of panel of names shall be prescribed by rules by the Central Government. Sub-clause (4) states that no appointment of the Chairperson or Member of the National Educational Tribunal shall be invalid merely by reason of any vacancy in the Selection Committee. Sub-clause (5) provides that the Selection Committee may regulate its own procedure in its deliberations.

Clause 24.—This clause provides that the Chairperson and Member of the National Educational Tribunal shall hold office for a term of five years from the date on which they enter upon office and shall be eligible for reappointment, but shall not hold office after they have attained the age of seventy years. Sub-clause (2) provides that the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be prescribed by the Central Government.

Clause 25.—This clause provides the manner in which the Chairperson or a Member of the National Educational Tribunal shall resign office. It provides that the Chairperson or Member may, by notice in writing under his hand addressed to the Central Government,

resign his office and shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

Clause 26. This clause provides the manner of removal of the Chairperson or a Member of the National Educational Tribunal. It specifies the grounds for removal which, *inter alia*, include where the Chairperson or a Member has been is an adjudged an insolvent, has or engaged at any time during his term of office in any paid employment, or has been convicted of an offence which in the opinion of the Central Government involves moral turpitude, or has become physically or mentally incapable, or is of unsound mind and stands so declared by a competent court, or has acquired such financial or other interest as is likely to affect prejudicially the exercise of his functions, or has so abused his position as to render his continuance in office prejudicial to the public interest, or has been guilty of proved misbehavior or has such other disqualifications as may be prescribed under rules made by the Central Government. Sub-clause (2) provides that no Chairperson or a Member of the National Educational Tribunal shall be removed from his office on the grounds specified in clause (f) or clause (g) or clause (h) of sub-clause (1) in this clause, except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which the Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard. Sub-clause (3) empowers the Central Government to regulate the procedure for the inquiry.

Clause 27.---This clause provides that if any vacancy occurs in the office of the Chairperson or a Member of the National Educational Tribunal for any reason other than temporary absence, the Central Government shall appoint another person to fill the vacancy and the proceedings may be continued before the National Educational Tribunal from the stage at which the vacancy is filled.

Clause 28.---This clause provides that in the event of the occurrence of any vacancy in the office of the Chairperson of the National Educational Tribunal by reason of his death or resignation, the senior-most Member of the National Educational Tribunal shall act as the Chairperson of the Tribunal until the date on which a new Chairperson appointed to fill such vacancy, enters upon his office. It further also provides that when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Clause 29.---This clause provides for the prohibitions as to holding of offices by Chairperson or Member on ceasing to be such Chairperson or Member of National Educational Tribunal. It provides that the Chairperson or Member shall, subject to the provisions of the proposed legislation, be ineligible, for a period of five years from the date on which they cease to hold office, for further employment (including as consultant or expert or otherwise) in any higher educational institution, whether under the Central Government or the Government of any State or any private educational institution and that the Chairperson or Member shall not appear, act or plead before the National Educational Tribunal in which they had been the Chairperson or Member.

Clause 30.---This clause empowers the Central Government to determine, after consultations with the Chairperson of the National Educational Tribunal, the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide such Tribunal with such officers and other employees as it may think fit. It further provides that the officers and other employees of the National Educational Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Tribunal. The clause also empowers the Central Government to prescribe the salaries and allowances payable and the other terms and conditions of service of the officers and other employees of the National Educational Tribunal.

Clause 31.—This clause specifies the jurisdiction, powers and authority to be exercised by the National Educational Tribunal. It provides that jurisdiction of the National Educational Tribunal shall extend to matters of dispute between any higher educational institution and any appropriate statutory regulatory authority; any reference made to it by any appropriate statutory regulatory authority, disputes amongst Statutory Regulatory Authorities; any matters of affiliation between any higher educational institution (other than an University) and the affiliating University, where such University is a Central Educational Institution having powers of affiliation in two or more States: any constituent unit of an institution deemed to be University or a Central Educational institution is located in a State other than the State in which such institution deemed to be university or a Central Educational institution is located; and on matters as may be assigned to it by any other law for the time being in force. Sub-clause (2) provides that the National Educational Tribunal shall exercise appellate jurisdiction over any matter decided by any State Educational Tribunal. Sub-clause (3) provides that the National Educational Tribunal shall have the power to call for the records and pass appropriate orders in any matter which is pending before or has been decided by any State Educational Tribunal, where it appears to the National Educational Tribunal that the State Educational Tribunal has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction vested or has acted in exercise of its jurisdiction illegally or with material irregularity. Sub-clause (4) provides that the National Educational Tribunal may exercise jurisdiction in respect of matters vested in the State Educational Tribunal where cases involving the same or substantially the same issues, to the satisfaction of the National Educational Tribunal, either on its own motion or on an application made by a party to any such case, are pending before the National Educational Tribunal and one or more State Educational Tribunals or before two or more State Educational Tribunals, the National Educational Tribunal may withdraw the case or cases pending before the State Educational Tribunal or the State Educational Tribunals and dispose of all the cases itself.

Clause 32.—This clause empowers the Central Government to prescribe the manner, the form, the documents required and the fees to be paid in making an application before the National Educational Tribunal for adjudication of any grievance.

Clause 33.—This clause provides that the National Educational Tribunal shall not admit an application for adjudication in disputes relating to service matters of any teacher or any other employee of a higher educational institution or a Central Educational institution referred to sub-clause (a) of clause 3, unless it is satisfied that the applicant had availed of all the remedies available under the relevant service rules for redressal of grievances or settlement of disputes. Sub-clause (2) provides that a person shall be deemed to have availed of all the remedies available to him under the relevant service rules or contractual provisions if a final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order, rejecting any appeal preferred or representation made by such person in connection with the grievance or disputes; or where no final order has been made by the higher educational institution or other authority or officer or other person competent to pass such order with regard to the application or representation made or appeal preferred by such person, if a period of three months from the date on which such application or representation was made or appeal was preferred has expired; or where no service rules exist on the service matter in dispute. It further provides that an order passed in any arbitration or any conciliation proceedings under the Arbitration and Conciliation Act, 1996 would not be subject to adjudication by the National Educational Tribunal.

Clause 34.—This clause provides that a National Educational Tribunal shall not admit an application in a case where a final order referred to in clause (a) of sub-clause (2) of clause 33 has been made, unless the application is made within a period of six months from the date of the final order or in a case where an appeal or representation as in mentioned in clause (b) of sub-clause (2) of clause 33 has been made and a period of three months had expired without any final order having been made, within a period of six months from the date of expiry of the period of three months. The clause further provides that in any other

matter the National Educational Tribunal shall not admit an application unless it has been made within a period of six months from the date the cause of action arose. Sub-clause (2) provides that the National Educational Tribunal can admit an application after the specified period of six months if, the applicant satisfies the Tribunal that he had sufficient cause for not making the application within this period.

Clause 35.—This clause provides that any person aggrieved by an order made by a National Educational Tribunal may prefer an appeal against the order to the Supreme Court within a period of sixty days from the date of the order. The clause empowers the Supreme Court to entertain an appeal after the expiry of the period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within this period.

Clause 36.—This clause specifies the penalties for failure to comply with orders of the Tribunals under the proposed legislation. It provides that a person shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten lakh rupees, or with both if he fails to comply with any order made by any State Educational Tribunal or the National Educational Tribunal.

Clause 37.—This clause provides that an order made by every State Educational Tribunal and the National Educational Tribunal under the proposed legislation shall be executable as a decree of a civil court, and for this purpose the Tribunals shall have all the powers of a civil court. Sub-clause (2) provides that the Tribunals under the proposed legislation may transmit the order to the Collector having jurisdiction over the concerned higher educational institution or against the person against whom the order had been made, and the Collector shall execute the order. Sub-clause (3) provides that where the higher educational institution or any person against whom the order is made by the Tribunals, fails to make the payment or deposit the amount as directed by the Tribunal within the period specified in the order, the amount shall be recoverable from the institution, or person as arrears of land revenue.

Clause 38.—This clause provides that no court shall take cognizance of any offence except on a complaint made by an officer authorised by the National Educational Tribunal or a State Educational Tribunal under the proposed legislation. Sub-clause (2) provides that no court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence.

Clause 39.—This clause provides for procedure of the National Educational Tribunal or a State Educational Tribunal under the proposed legislation. Sub-clause (1) vests powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the matters specified therein. Sub-clause (2) provides that a person making an application may appear either in person or authorise one or more legal practitioners to present his case before the State Educational Tribunal or the National Educational Tribunal. Sub-clause (3) provides that an institution may authorise one or more legal practitioners or any of its officers to present its case before the Tribunals under this legislation. Sub-clauses (4) and (5) provides that the State Educational Tribunal or the National Educational Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to other provisions of the proposed legislation and of any rules made by the appropriate Government or the Central Government respectively in case if the State Educational Tribunal and the National Educational Tribunal. Sub-clause (6) provides that the Tribunals shall conduct its proceedings as may be required for it to arrive at a conclusion provided that an opportunity of being heard and produce evidence is adequately offered to all the parties at issue. Sub-clause (7) provides that every proceeding before the State Educational Tribunals shall be conducted by its Chairperson and at least one Member sitting together. However, where a Member for any reason is unable to conduct a proceeding till it is completed, the Chairperson and the other Member of the Tribunal shall continue the proceeding from the stage at which it was last heard by the previous Member. Sub-clause (8) provides that every proceeding in case of National Educational Tribunal shall be conducted by its benches. Sub-clause (9) provides that on

the conclusion of proceedings, the Tribunals shall pass such orders as it deems fit and provide such relief including the award of such punitive damages, as it deems fit, to the affected party at issue. It further provides that where the proceeding is conducted by the Chairperson and one Member of the State Educational Tribunal and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other Member of the said Tribunal for hearing on the points of difference and the opinion of the majority shall be the order of the said Tribunal. Sub-clause (10) provides that every order made by the State Educational Tribunal or the National Educational Tribunal shall be signed by the Chairperson and Member or Members who heard the case and passed the order.

Clause 40.—This clause provides the power of the Tribunal relating to interim orders while hearing the matter. It provides that no interim order, whether by way of injunction or stay in any other manner, shall be made by a State Educational Tribunal or the National Educational Tribunal in any proceedings unless copies of the application and of all documents in support of the plea for the interim order are furnished to the party against whom the application is made and opportunity to be heard is given to the opposing party in the matter.

Clause 41.—this clause provides that all proceedings before the Tribunal shall be deemed to be judicial proceedings with the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Clause 42.—This clause provides that no act or proceeding of any State Educational Tribunal or the National Educational Tribunal shall be questioned or be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Tribunal.

Clause 43.—This clause provided that the Chairperson, other Members and the officers and other employees of the State Educational Tribunals or the National Educational Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

Clause 44.—[§]This clause provides for administrative control of the National Educational Tribunal over the State Educational Tribunals in the matter of calling for periodical returns regarding the institution, disposal and pendency of cases and issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of orders written in any language, speedy grant of copies of documents and generally overseeing the functioning of the State Educational Tribunals to ensure that the objects and purposes of the legislation are best served without in any way interfering with their quasi-judicial freedom.

Clause 45.—This clause provides for dismissal of frivolous or vexatious complaints filed before the Tribunals and imposition of penalty. It provides that where a matter instituted before any State Educational Tribunal or the National Educational Tribunal is found to be frivolous or vexatious, the concerned Tribunal shall, for reasons to be recorded in writing, dismiss the application and make an order that the applicant shall pay to the opposite party the cost, not exceeding fifty thousand rupees, as may be specified in the order.

Clause 46.—This clause provides for finality of the orders of the State Educational Tribunal or the National Educational Tribunal in case no appeal is filed against the order.

Clause 47.—This clause ousts the jurisdiction of the Civil Courts to exercise the jurisdiction, power or authority in relation to such matters as are exercisable by the Tribunals under the proposed legislation.

Clause 48.—This clause seeks to provide the protection to the Central Government, the State Government, the Chairpersons and any other Members of the State Educational Tribunals or the National Educational Tribunal or any other person against suit, prosecution or other legal proceeding for the action taken in good faith or in discharge of the official duties.

Clause 49. - This clause provides that the provisions of the proposed legislation shall have an overriding effect on any other law for the time being in force or any instrument having the force of law.

Clause 50. - This clause provides that the provisions of this legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 51. This clause provides that nothing contained in the proposed legislation or the rules made thereunder shall apply to any minority institution to the extent to which they are inconsistent with the functions and powers vested upon the National Commission for Minority Educational Institutions established under the National Commission for Minority Educational Institutions, 2004 or provisions contained in that Act.

Clause 52. - This clause provides for power of the Central Government to make rules. It provides that the Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of the proposed legislation. Sub-clause (2) specifies matters for which such rules may be made by the Central Government.

Clause 53. - This clause provides for power of the State Government to make rules. It provides that the appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of the proposed legislation. Sub-clause (2) specifies matters for which such rules may be made by the appropriate Government.

Clause 54. - This clause provides that every rule made by the Central Government shall be required to be laid before each House of Parliament and every rule made by the State Government shall be required to be laid before the appropriate State Legislature.

Clause 55. - This clause empowers the Central Government to make, by order published in the Official Gazette, provisions for removal of difficulties in giving effect to the provisions of the proposed legislation. Such orders could be made only within two years from the commencement of the proposed legislation. Sub-clause (2) provides that every order issued under this clause is required to be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 20 of the Bill provides that the Central Government shall establish as the National Educational Tribunal to exercise the powers conferred on it by or under the proposed legislation. Clause 21 of the Bill provides that the Tribunal shall consist of a Chairperson and, two judicial Members, three Academic Members and three Administrative Members. Sub-clause (2) of clause 24 of the Bill provides that the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be determined by the Central Government. Sub-clause (1) of clause 30 of the Bill empowers the Central Government to determine after consultation with the Chairperson the nature and categories of officers and other employees required to assist the Tribunal. Sub-clause (3) of said clause provides the salaries and allowances payable to, and the other terms and conditions of service, of the officers and other employees of the Tribunal.

2. On a representative basis, the recurring annual expenditure on salary of the Chairperson, Members, officers and other staff of the National Educational Tribunal and other administrative expenses is estimated to be one crore and twenty-five lakh rupees and the one-time capital investment is estimated to be about ten crore rupees.

3. Clause 4 of the Bill provides that the Central Government shall establish the State Educational Tribunal in each Union territory to exercise the powers conferred on it by or under the proposed legislation. Clause 5 of the Bill provides that the Tribunal shall consist of a Chairperson and two other Members. Sub-clause (2) of clause 8 of the Bill provides that the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be determined by the Central Government. Sub-clause (1) of clause 14 of the Bill empowers the Central Government to determine after consultation with the Chairperson the nature and categories of officers and other employees required to assist the Tribunal. Sub-clause (3) of said clause provides for the salaries and allowances payable to, and the other terms and conditions of service, of the officers and other employees of the Tribunal.

4. On a representative basis, the recurring annual expenditure on salary of the Chairperson, Members, officers and other staff of each State Educational Tribunal and other administrative expenses is estimated to be one crore rupees and the one-time capital investment is estimated to be about ten crore rupees. For the seven Union territories, the annual recurring expenditure is estimated to be seven crore rupees and the one-time capital investment of seventy crore rupees.

5. The manpower requirement and the total financial implication in terms of recurring and non-recurring expenditure as well as the modalities involved would however, be determined after appointment of the Chairperson and Members of the proposed State Educational Tribunal. Hence, it would be difficult to work out the exact expenditure, both recurring and non-recurring at this stage.

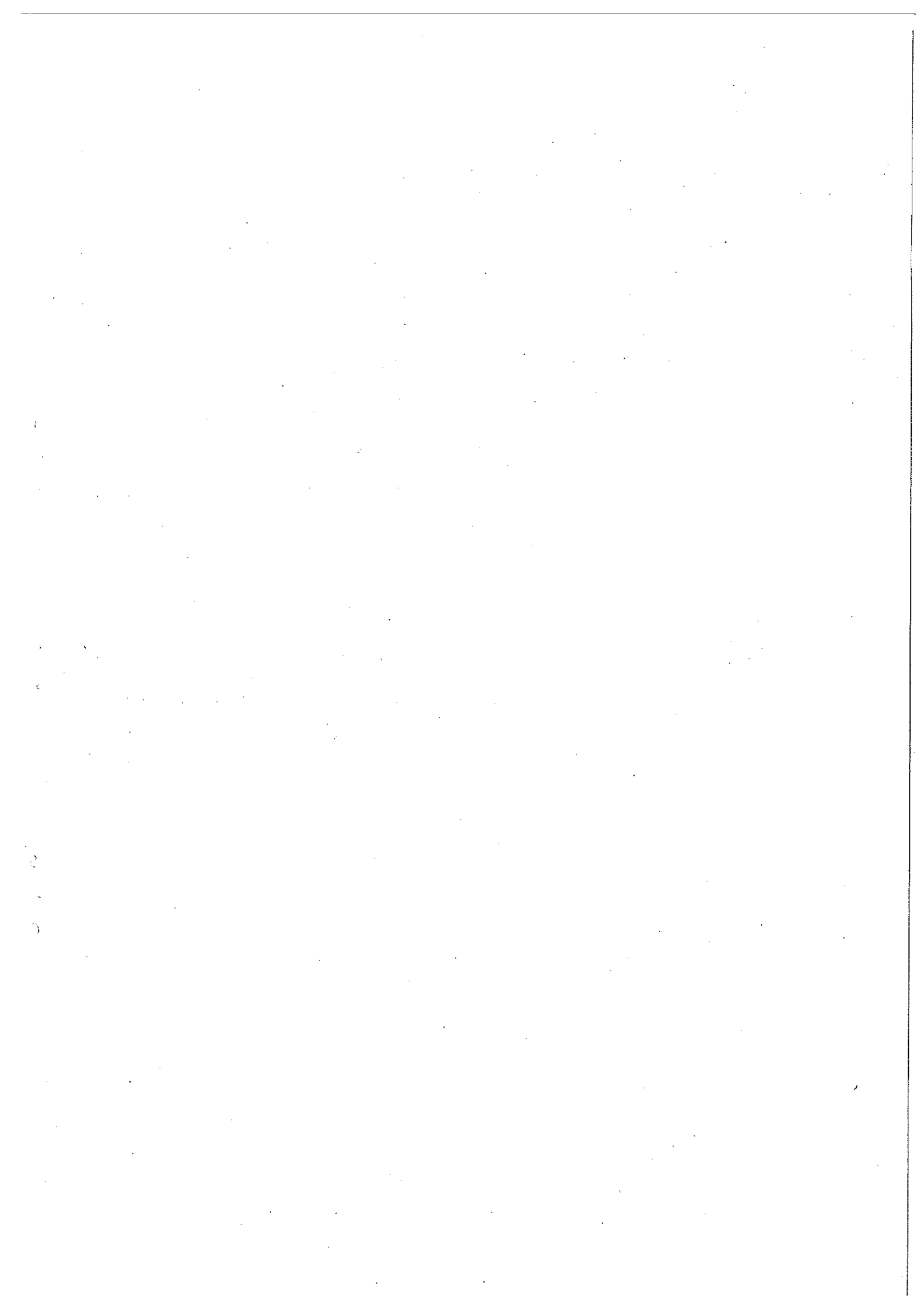
MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 52 empowers the Central Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) includes—(a) the matters in respect of which such rules may be made. These matters, *inter alia*, specifies the form and manner in which an appeal may be preferred, the documents which shall be accompanied with it and the fee payable in respect of filing of such appeal or for the service of execution of processes under clause 19; (b) the term of the Selection Committee and the manner of selection of panel of names under sub-clause (3) of clause 23; (c) the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the National Educational Tribunal under sub-clause (2) of clause 24; (d) the procedure for the inquiry referred to in sub-clause (3) of clause 26; (e) the salaries and allowances payable to, and other terms and conditions of service of the officers and other employees of the National Educational Tribunal under sub-clause (3) of clause 30; (f) the form in which an application may be made, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes under clause 32; (g) the other matters under clause (i) of sub-clause (1) of clause 39 in respect of which the National Educational Tribunal shall have the powers under the Code of Civil Procedure, 1908 while trying a suit; (h) the procedure for conduct of proceedings of the National Educational Tribunal under sub-clause (5) of clause 39.

2. Sub-clause (1) of clause 53 empowers the State Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include—(a) the term of the Selection Committee and the manner of selection of panel of names under sub-clause (3) of clause 7; (b) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the State Educational Tribunal under sub-clause (2) of clause 8; (c) the procedure for the inquiry referred to in sub-clause (3) of clause 10; (d) the salaries and allowances payable to, and other terms and conditions of service of the officers and other employees of, the State Educational Tribunal under sub-clause (3) of clause 14; (e) the form in which an application may be made, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes under clause 16; (f) the other matters under clause (i) of sub-clause (1) of clause 39 in respect of which the State Educational Tribunal shall have the powers under the Code of Civil Procedure, 1908 while trying a suit; (g) the procedure for conduct of proceedings of the State Educational Tribunal under sub-clause (4) of clause 39. In so far as it relate to a Union territory, the Central Government shall make rules for the purposes of this clause.

3. Clause 54 provides that every rule made by the Central Government are required to be laid before each House of Parliament and every rule made by the State Government are required to be laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

4. The matters in respect of which rules may be made relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.



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to provide for the establishment of Educational Tribunals for effective and expeditious adjudication of disputes involving teachers and other employees of higher educational institutions and other stake holders (including students, universities, institutions and statutory regulatory authorities) and to adjudicate penalties for indulging in unfair practices in higher education and for matters connected therewith or incidental thereto.

(Shri Kapil Sibal, Minister of Human Resource Development)