

# Legislative Brief

## The Educational Tribunals Bill, 2010

The Bill was introduced in the Lok Sabha on May 3, 2010 by the Ministry of Human Resource Development. The Bill was referred to the Standing Committee on Human Resource Development (Chairperson: Shri Oscar Fernandes), which submitted its report on August 20, 2010.

### Related Briefs:

The National Accreditation Regulatory Authority for Higher Educational Institutions Bill, 2010

The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010

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

**Kaushiki Sanyal**  
kaushiki@prsindia.org

**August 25, 2010**

### Highlights of the Bill

- ◆ The Bill seeks to set up Educational Tribunals at the national and state level to adjudicate disputes involving teachers and other employees of higher educational institutions and other stakeholders such as students, universities and statutory regulatory authorities.
- ◆ The state tribunals shall adjudicate cases related to service matters of teachers and other employees of higher educational institution; dispute over affiliation of a higher educational institution with an affiliating university and unfair practices of a higher educational institution prohibited by any law.
- ◆ The national tribunal shall adjudicate cases of dispute between higher educational institutions and statutory authorities; higher educational institution and affiliating university (in case of central universities), and any reference made to it by an appropriate statutory authority. It shall have appellate jurisdiction on orders of the state tribunals.
- ◆ An order of the tribunal shall be treated as decree of a civil court. If orders of the national or state tribunal are not complied with, the person shall be liable to imprisonment for a maximum of three years or with fine of upto Rs 10 lakh or with both.

### Key Issues and Analysis

- ◆ The composition of the tribunals may not be in conformity with certain broad principles laid down in a recent Supreme Court judgement.
- ◆ In the state educational tribunals, only the Chairperson is a judicial member. However, the Bill allows the two members to hear cases if the chairperson's seat is vacant. This provision leaves the possibility of cases being heard without a judicial member.
- ◆ The Bill requires members of both tribunals to be at least 55 years old. This is higher than the minimum age required for other high offices.
- ◆ One of the stated purposes of the Bill is to provide for speedy resolution of disputes because of increased litigation. However, no data on the number of pending cases is available in the public domain.
- ◆ The Standing Committee has made several recommendations. They suggest that there should be flexibility in the number of tribunals in each state, and each such tribunal should have five members.

## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

Presently, disputes between educational institutions and students or staff are adjudicated by internal dispute redressal mechanisms. Most universities have set up such a mechanism.<sup>2</sup> Some states such as Gujarat, Maharashtra and Jharkhand have enacted laws to set up tribunals for adjudicating teacher-management disputes.<sup>3</sup> These tribunals generally have appellate jurisdiction. From the tribunals, cases can be appealed in the High Courts and Supreme Court.<sup>2</sup>

The idea of setting up educational tribunals to adjudicate education related disputes was first mooted by the National Policy on Education, 1986.<sup>4</sup> The Law Commission of India's 123<sup>rd</sup> Report in 1988 made a detailed study and concluded that a three-tier structure of tribunals is necessary to effectively handle disputes in the education sector.<sup>2</sup> The Supreme Court in the 2002 T.M.A. Pai judgment and the Yash Pal Committee Report of 2009 also recommended setting up educational tribunals.<sup>5</sup>

### Key Features

- The Bill seeks to set up educational tribunals at the national and state level to adjudicate disputes related to higher education. Disputes may be between universities and teachers or students, universities and statutory regulatory authorities. The law shall not be applicable to minority educational institutions to the extent of the powers of the National Commission for Minority Educational Institutions.
- The Bill bars the jurisdiction of civil courts on any matters that the state or national educational tribunal is empowered to determine.

### State and National Educational Tribunals

**Table 1: Composition and jurisdiction of the State and National Educational Tribunals**

	State Educational Tribunal	National Educational Tribunal
<b>Establishment</b>	To be established by the state government	To be established by the central government
<b>Composition</b>	A Chairperson and two other members (one of whom should be a woman).	A Chairperson and a maximum of eight members (2 shall be judicial, 3 shall be academic and 3 shall be administrative).
<b>Mode of Appointment</b>	To be appointed by the state government on the recommendation of a Selection Committee.	To be appointed by the central government on the recommendation of a Selection Committee.
<b>Eligibility</b>	The Chairperson shall be a current or former Judge in the High Court.  A member shall be at least 55 years old, with knowledge and experience in higher education or public affairs for 20 years, and who has been the Vice Chancellor or the Chief Secretary in the state government.	The chairperson and the judicial members shall be a current or former Judge of the Supreme Court, to be appointed in consultation with the Chief Justice of India.  Academic and administrative members shall be at least 55 years old with experience in higher education or public affairs for 25 years. An academic member shall be a current or former Vice Chancellor or Director of an institution of national importance. An administrative member shall be current or former Secretary to the government of India.
<b>Jurisdiction</b>	Jurisdiction shall be over service matters of teacher and other employees of higher educational institution; dispute over affiliation of a higher educational institution with an affiliating university and unfair practices of a higher educational institution prohibited by any law.  No acceptance of application related to service matters unless the tribunal is satisfied that the applicant has availed of all remedies available to him under the relevant service rules.	Jurisdiction shall be over cases of dispute between higher educational institutions and statutory authorities; higher educational institution and affiliating university (in case of central universities), and any reference made to it by an appropriate statutory authority. It shall have appellate jurisdiction on orders of the state tribunals. Orders of the national tribunal can be appealed in the Supreme Court.  The jurisdiction of the tribunal may be exercised by benches consisting of three members. The benches, to be constituted by the Chairperson, shall include one judicial member, one academic member and one administrative member.

### Penalties

- An order of the tribunal shall be treated as decree of a civil court. If orders of the national or state tribunal are not complied with, the person shall be liable to imprisonment for a maximum of three years or with fine of upto Rs 10 lakh or with both. The Collector may be informed of an order against a higher educational institution or person. The amount shall be recoverable as arrears of land revenue if payment is not made.
- No court shall take cognizance of an offence except on the complaint of an officer authorised by the national or state tribunals.

## PART B: KEY ISSUES AND ANALYSIS

### Non-Conformity with Supreme Court Judgement

#### Composition of tribunals

Statement  
of Objects  
and  
Reasons  
and Clauses  
5, 12, 21

In a recent judgment (*R. Gandhi vs Union of India*<sup>6</sup>), the Supreme Court examined issues such as the difference between courts and tribunals, independence of the judiciary and separation of powers. This case addressed the constitution of National Company Law Tribunal and the National Company Law Appellate Tribunal.

The Court made certain general observations and certain observations specific to the NCLT. Some of the general observations of the Supreme Court were (a) tribunals should be treated as judicial tribunals, i.e., its members should be of similar rank and capacity as the court which was dealing with the matter; (b) if a matter has been shifted to the tribunal solely to reduce pendency, the tribunal should not have technical members; (c) technical members are required if there is a technical aspect. Some of the specific observations on NCLT were: (a) two-member benches of the Tribunal should have a judicial member; (b) for larger benches, the number of technical members should not exceed that of judicial members.

Certain provisions of the Bill may not be in conformity with the broad principles laid down in the judgment in three respects.

First, the Statement of Objects and Reasons of the Bill states that Tribunals are required for speedy resolution of disputes. However, the Tribunals constitute judicial, academic and administrative members. This may not be in conformity with the observations of the Supreme Court which state that if tribunals are constituted only to expedite cases, technical members are not required.

Second, both the national and state tribunals, in addition to judicial members, have members with academic and administrative experience, presumably because they can bring technical expertise. In both the state tribunal as well as each bench of the national tribunal, the number of technical members exceeds that of judicial members. This provision is again in conflict with the Supreme Court's direction on the composition of NCLT.

Third, the Bill states that if the chairperson of a state education tribunal resigns or dies, the senior most member of the tribunal shall act as the chairperson till a new chairperson is appointed. The Bill also allows the two members (who are non-judicial members) to hear cases if the chairperson's seat is vacant due to absence or illness. Both these provisions leave the possibility of cases being heard without a judicial member.

The Standing Committee<sup>7</sup> which examined the Bill also stated that the above provisions of the Bill are not in conformity with the Supreme Court judgment. Also, a 1988 Law Commission of India report also recommended that state educational tribunals should consist of five members: Chairman (sitting or retired High Court Judge); 2 judicial members (eligible for appointment as a High Court judge), and 2 members (former Vice Chancellor or an eminent professor). It further stated that tribunals could sit in benches but one of the members of the bench should be a judicial member.<sup>8</sup>

#### Minimum Age Requirement for Tribunal Members

Clauses  
6(2)(a),  
22(2)(a)  
& (3)(a)

The Bill requires members of the National and State Tribunals to be at least 55 years old. This is higher than the minimum age required for other high officer. For example, the minimum age for a Member of Parliament is 25 years for Lok Sabha and 30 years for Rajya Sabha and for the post of President it is 35 years.<sup>9</sup> An advocate with 10 years experience in a High Court is eligible to be appointed as a judge in a High Court or the Supreme Court. This implies that a person who is below the age of 55 years may become a High Court or Supreme Court judge.

The Standing Committee recommended that competent people with adequate knowledge and experience, irrespective of age, should be considered.<sup>7</sup>

#### Lack of Data on Pending Cases Related to Higher Education

Statement  
of  
Objects  
and  
Reasons

The Statement of Objects and Reasons of the Bill does not mention any data with regard to the number of matters related to the higher educational sector pending in courts at various levels, the time spent in litigating processes, and the cost involved in processing the litigation. A 1988 Law Commission of India report also pointed out the inadequacy of data available on the magnitude of litigation.<sup>2</sup> It mentioned that a study<sup>10</sup> was conducted between 1969 and 1980 to assess the magnitude of litigation. However, the study covered only four universities. The Standing Committee also recommended that before setting up tribunals, the magnitude of cases and costs incurred in litigation should be assessed.<sup>7</sup>

#### Dispute settlement mechanisms in other countries

Various countries have mechanisms to settle disputes among stakeholders in the higher education sector.

**USA:** Both private and public universities have internal grievance settlement mechanisms for students and staff. If not satisfied with the internal mechanism both have the right of recourse to courts.<sup>11</sup>

**UK:** UK's Higher Education Act, 2004 states that student complaints may be reviewed by a body corporate to be designated by the Secretary of State (Britain) and National Assembly for Wales. Each higher education institution has a formal procedure for addressing complaints of students. In case the issue is not resolved, the student can take the complaint to the Office of the Independent Adjudicator (England and Wales) or Office of the Ombudsman (Scotland). For staff, after exhausting internal procedure, they can approach the courts.<sup>12</sup>

**Australia:** In case a student has a complaint, he can use the internal grievance redressal procedures in the first instance. After that, the students may contact the relevant Commonwealth, state or territory Ombudsman or the government accreditation authority (in case the university is non-self-accrediting). The staff has the option to explore internal complaint procedure through trade unions and certain external mechanisms (Equal Opportunity Commission or Employee Assistance Programme) before approaching the courts for redressal.<sup>13</sup>

**Sweden:** Sweden's Higher Education Act, 1992 (modified in 2006) states that a joint board shall decide on the expulsion of a student. The student and the institution may appeal to general administrative courts against decisions of the board. The Equal Treatment of Students at Universities Act, 2001 promotes equal rights of students and applicants in higher education institutions. The university's decision can be appealed to the University Appeals Board on the grounds that the decision is against prohibition of discrimination.<sup>14</sup>

### Other Key Recommendations of Standing Committee

The Standing Committee<sup>7</sup> submitted its report on the Bill on August 20, 2010. Some of its recommendations are: (a) a minimum court fee should be fixed to ensure viability of the tribunals; (b) instead of three member state educational tribunal, the number should be increased to five; (c) since number of educational institutions vary from state to state, one tribunal per state should not be uniformly applicable; (d) "unfair practices" should be defined in the Bill; (e) the national tribunal with three persons of the rank of secretaries to the government may lead to bureaucratization of tribunals; and (f) there should be adequate representation of the academia in the selection committee.

#### Notes

1. This Brief has been written on the basis of the Educational Tribunals Bill, 2010, which was introduced in the Lok Sabha on May 3, 2010. The Bill was referred to the Standing Committee on Human Resource Development (Chairperson: Shri Oscar Fernandes), which submitted its report on August 20, 2010.
2. "Decentralisation of Administration of Justice: Disputes Involving Centres of Higher Education," 123<sup>rd</sup> Report of the Law Commission of India, January 1988.
3. The Gujarat Affiliated Colleges Services Tribunal Act, 1982; the Maharashtra Universities Act, 1994 (Sections 58 to 70); the Jharkhand Education Tribunal Act, 2005.
4. National Policy on Education, 1986.
5. T.M.A. Pai Foundation and Others vs State of Karnataka and others, Writ Petitions (C) No. 317 of 1993, Nov 25, 2002 and Yash Pal Committee Report, 2009.
6. Union of India vs R. Gandhi, Madras Bar Association, Civil Appeal No. 3067 of 2004, Supreme Court Judgment on May 11, 2010.
7. 225<sup>th</sup> Report on the 'Educational Tribunals Bill, 2010,' Standing Committee on Human Resource Development, August 20, 2010.
8. "Decentralisation of Administration of Justice: Disputes Involving Centres of Higher Education," 123<sup>rd</sup> Report of the Law Commission of India, January 1988.
9. Constitution of India.
10. Elizabeth C. Wright, "Courts and Universities: Impact of Litigation on University Autonomy," 1985 Vol 27, Journal of Indian Law Institute, p. 35.
11. U.S. Department of Education & various individual universities websites.
12. The Higher Education Act, 2004.
13. Australian Department of Education, Employment and Workplace Relations.
14. The Higher Education Act, 1992, The Equal Treatment of Students at Universities Act, 2001.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.