

Comparative Analysis of Education Laws in Kerala, Maharashtra, Karnataka and Andhra Pradesh

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I. INTRODUCTION

Education is the activity in which we have several participants, the one who provides education, the one who receives education and the one who is legally responsible for the one receives education. In this activity teacher plays pivotal role in nourishing the career, character and aptitude of young children. Teacher when well-equipped can change the life of the student. A good teacher is feather in the cap of institution. However, in present days the teacher working in private, primary, secondary and higher secondary schools are facing plethora of problems like service conditions, interpretation of executive orders etc. Catena of litigations to curb there menace are pending for years together. To curb this issue various states including Maharashtra, Kerala, Karnataka and Andhra Pradesh have enacted laws. With an objective of regulating the recruitment and conditions of service and ensuring public interest by laying down the duties and functions of the employees of school these Acts proved to be beneficial. However, when we come to Maharashtra in spite of enactment available new issues pertaining to the Act have cropped up and litigation instead of showing a descending number has increased because of the lacunas present in the legislation of Maharashtra. This can be because of ambiguity, inconsistency of the act. Therefore, with an aim of doing comparative study of the state legislations in Kerala, Maharashtra, Karnataka and Andhra Pradesh the researcher points out the provisions for improving management of schools, conditions of service of teaching community and to resolve the problems of parents and children, the present researcher in this article sheds light on comparative analysis of the provisions, practices and limitations of the Acts and provides a legal solution for Maharashtra legislation.

II. LITERATURE REVIEW

A number of literatures were studied in order to understand the level of research done on the MEPS Act, importance of education etc

Amongst books, Abhay Shelkar¹ in his book showcases problems of school teachers ranging from pay scale to pension.

Justice DamaSrshadri Naidu in three volumes has sheded light on educational laws in Andhra Pradesh. The details in these volumes are very useful for comparative study of Maharashtra and Andhra Laws. Dr Dighe S.D. and Godha J. K² in their book has made detail analysis of education laws in Maharashtra in two volumes of their book. Volume II contains detail analysis of circulars and rules relating to education laws.

Plethora of judgments of Hon'ble SC and HC were also referred by the researcher.

Research Gaps:

No researcher has been done on comparative analysis of the education laws in Kerala, Maharashtra and Andhra state. Tilldate, there are some studies based on local implications but lag in comparative analysis and therefore keeping in view these research gaps researcher has chosen this topic for research wherein researcher will be comparatively analyzing the provisions of education laws in Maharashtra, Kerala and Andhra Pradesh and suggesting legal solution for the menace.

III. OBJECTIVES

1. To make comparative study of education laws in Maharashtra, Kerala, Karnataka and Andhra Pradesh.
2. To critically analyze MEPS Act, 1977
3. To suggest legal solution to curb the lacunas in MEPS Act

¹Abhay Shelkar, Guide book for school Tribunal

²Dr Dighe S.D. and Godha J. K., Educational Laws in Maharashtra

HYPOTHESIS

There are plethora of lacunas in 1977 MEPS Act and new problems have erupted due to change in circumstances in these 35 yrs. Sustainance and Success to combat such menace in systematic ways is directly related to legal framework.

Research Methodology:

Researcher has chosen a combination Doctrinal Method of research. The researcher has referred to primary as well as secondary sources. Amongst primary sources Bare Acts, various judgments of the Judiciary, various commission reports and amongst secondary sources reference books, research articles from various journals, News paper Clippings and information available on various websites is referred for the study and the conclusion.

MAHARASHTRA EMPLOYEES OF PRIVATE SCHOOLS (CONDITIONS OF SERVICE) REGULATION ACT, 1977

The MEPS Act, 1977 consists of 16 sections. Section 1 deals with the title, extent and commencement of the Act. Section 2 deals with definitions. Section 3 deals with application.

Section 4 empowers the state to make rules providing for minimum qualification, duties, pay, allowance and other benefits. The said provision is enacted to serve the object to provide security and stability of service to employees working in private schools.

Section 5 imposes statutory obligation on management to follow procedure before appointment and also contains provisions relating to termination of service. In this provision, provision regarding surplus employee has been incorporated.

Section 7 throws light on procedure for resignation of employees.

Section 8 empowers the state to constitute school tribunals at various places.

Section 9 encompasses right to appeal. As per the said provision employees of private school may question the orders of management in respect of dismissal, or removal or otherwise termination of services etc.

Section 10 says that power of school tribunal are at par with appellate courts powers provided under Civil Procedure Code.

Section 13 lays down the provision punishing the management staff for non compliance of tribunal's decision without reasonable cause.

In a nutshell the Act imposes obligations on the management to follow the procedure and provisions before appointment. The Act for providing security and stability in service contains adequate provisions for regulating powers of management. The Act has provided forum to air out the grievances of an employee by establishing school tribunal. The state government has made rules to give effect to the provisions of this Act and these are known as MEPS Rules.

THE KERALA EDUCATION ACT

Kerala Education Act was passed in Kerala Assembly in 1958. The Soul of this Act lies in Section 3 i.e. establishment and recognition of schools.

As per the said Act, state government is statutorily empowered to regulate the primary and other stages of the education.

Section 7 appoints manager . the Section says that any educational agency may appoint any person to be the manager of an aided school under this Act.

Section 9 and 10 deals with the salary of the teachers. It says that salary of the teachers shall be distributed by Headmaster. There is no provision of establishing permanent non grant school in Kerala.

Section 12 deals with the conditions of service of teachers in aided schools, including conditions relating to pay, pension, PF, insurance etc.

Disciplinary power of state government is yet again a second key factor in Kerala State Act. The Government is empowered to take disciplinary action against employees working in aided schools, through educational officer and may impose penalties specified in the rules.

Section 13 of the Act lays down provision of absorption on retrenchments.

Section 14 lays down the procedure of taking over management of schools. This provision in Kerala Act is unique feature in its own.

Rules are framed u/s 36 of the Act. The Act also empowers the state to take action against manager in the event of mismanagement. It carries provision of not appointing persons connected with management.

ANDHRA PRADESH EDUCATION ACT, 1982

Andhra Pradesh though is divided into two states yet the education for both states is governed by Andhra Pradesh Education Act, 2013. The silent features of the Act are as under:

Section 15 of the Act says that no fees shall be levied in respect of any child for attending an approved school which is under the management of government or the local authority in that area.

Section 21 lays down the power of state government to grant or withdraw the grant of recognition of institutions imparting education.

Section 24 lays down the procedure of appointment of manager in private institution. Section 21 provides the power of inspection of educational institutions.

Section 60 of the Act lays down the procedure of taking over the management of educational institutions in Public Interest.

Section 79 empowers the government to take disciplinary action against the employees of private institutions.

The Section 80 provides right to appeal against orders of punishment imposed on employees of private institutions.

The Act provides clear directions for healthy functioning of private schools. Section 85 states that no employee shall be removed except inquiry.

KARNATAKA EDUCATION ACT, 1983

Karnataka is a progressive state and has ever remained in the field of education. This has been due to rigorous efforts by state government. Karnataka education Act was passed in the year 1983. The Act consists of 146 sections. Silent features of the Act are:

Section 4 prohibit private tuition by employees of the private schools. Section 5 deals with provisions for promoting the education to weaker and handicapped sections of the society.

Section 11 empowers the state government to direct notification making primary education compulsory. Section 18 prohibits employment of children.

Section 36 empowers state government to recognize private institutions and section 39 empowers it to derecognize the recognized schools.

Section 67 provides procedure of taking over of the management of educational institution. Section 87 provides the terms and conditions of services of employees in private educational institutions.

Section 94 provides appeal provision to education tribunal. Section 96 empowers the state government to establish Educational Appellate tribunal for adjudication of appeal provided under this Act.

Section 97 provides procedure for resignation of teacher. Section 134 empowers the government to inspect the school and section 135 prescribes penalty for the person who is obstructing the officer while performing duty.

COMPARATIVE ANALYSIS OF KERALA EDUCATION ACT, ANDHRA PRADESH EDUCATION ACT, KARNATAKA EDUCATION ACT AND MEPS ACT

The modern socio legal research is a complex phenomenon which requires comparative approach. Comparative analysis can help to highlight pros and cons of the MEPS Act with adjoining states. Therefore, the researcher is doing comparative analysis of the Acts of adjoining states.

Kerala Education Act has provision of state advisory board which is missing in MEPS Act. KEA has provision to appoint manager, accord approval to each and every appointment of employees, procedure for taking over management. But all these provisions are missing when we come to MEPS Act. MEPS Act has provision for establishment of School Tribunal. Whereas, no provision of adjudication of disputes is available in KEA. In KEA prior to suspension, dismissal or reduction in rank and at the time of accepting resignation, prior permission of education officer is a required condition. But MEPS Act is silent on this aspect.

The above discussion makes it clear that KEA is a complete code. Maharashtra can adopt many provisions from this Act.

Coming to comparison between Andhra and Maharashtra laws, APE Act has a provision of free and compulsory education. The same is not included in MEPS Act. MEPS has established School Tribunals in various districts. However, no provision of School Tribunal is found in APE Act.

APE Act has welfare approach which is missing in MEPS Act. AP Act consists provision regarding roles and responsibilities of manager, power of educational agency to advertise posts for recruitment, selection of employee through staff selection committee, inquiry before suspension, distinction between aided and non aided schools, inspection of school and provision for appeal. These all provisions are missing in MEPS Act.

From these provisions it is clear that APE Act has established superior edge over MEPS Act. After 1977, APE Act was passed in 1982. This clearly shows that after the changed conditions in education, APE Act was passed. The AP Act has greater relevance of social justice through means of education and provision of compulsory education.

Comparing provisions of MEPS Act with Karnataka Education Act, we come to know that provisions of compulsory education which is present in Karnataka Act is absent in MEPS Act. Other provisions like inspection, taking over of management, resignation procedure, subject expert in selection committee, compulsory retirement are absent in MEPS Act.

Karnataka Act prescribes reservation for BC candidates. MEPS Act also prescribes 52% reservation wherein provisions of MEPS Act are more adequate. When we compare both the Acts Karnataka has made amendments to live up to the stakeholders while MPES Act on other hand has not amended with the changing circumstances.

CRITICAL ANALYSIS OF MAHARASHTRA EMPLOYEES OF PRIVATE SCHOOLS (CONDITIONS OF SERVICE) REGULATION ACT, 1977

The Researcher is of view that there are catena of lacunas in the present MEPS Act. The lacunas present in the Act are:

1. Inadequate Definition:

The definition of Director does not include various authorities. The most important authority to be included in the definition is Director of Social Welfare.

2. No provision of transferring management:

The Act contains no provision for taking over or transferring of management of school to another management of school.

3. No provision of incorporating Art 21:

There is no provision in the said Act for implementing constitutional goal of free and compulsory education up to 14 yrs.

4. No Provision of withdrawal:

There is no provision of withdrawal of recognition granted to institution imparting education.

5. No provision regarding inspection:

There is no provision empowering education officer to inspect the school.

6. No provision for redressal of certain grievances:

There is no provision of grievance redressal of private employee like to claim unpaid salary, challenge suspension order, non payment of prescribed pay scale, refusal to grant approval, inter seniority disputes, non application of roster etc.

7. No independent inquiry officer:

There is no provision of appointment of independent inquiry officer. As per rule 36 out of three members two members are of management.

8. No provision as to temporary employees:

There is no provision curtaining management to appoint candidates as temporary candidates against permanent employees.

9. No provision for promotion of B C Candidates:

There is no provision in MEPS Act promoting B C Candidates as Head Master in case if private management runs only two schools.

10. No Provision of absorption:

There is no provision of absorption of unaided school to another aided or unaided school.

11. No machinery for implementation:

There is no effective mechanism for implementing orders of Hon'ble School Tribunal and therefore, the orders of School Tribunal are not effective.

12. Illegal Employment:

There are no provisions wherein employees, management can challenge illegal appointment made by rival group of management or by the school committee.

13. Absence of provisions for extension of probationary period.

14. No provision empowering education officer to accord an approval after verifying record.

15. No provision for questioning of an educational institution.

16. There is no subject expert or government nominee on school committee.

IV. CONCLUSION AND RECOMMENDATIONS

Educational laws are evolved to coordinate and control educational system in healthy manner. In this article a critical study has been done of MEPS Act so as to enable the growth of the educational system in healthy manner. The researcher also makes a comparative study of MEPS Act and Karnataka Education Act, Kerala Education Act, Andhra Pradesh Education Act so as to know the flaws of MEPS Act. The passing of this MEPS Act has paved way to regulating certain provisions regarding to appointments, service conditions etc. However, this Act with regulating certain provisions has created menace by undressing certain matters, wrongly addressing certain matters and therefore, it has not proved to be a successful code when it comes to school service jurisprudence thus violating the rights of school teachers.

In an effort to provide guidance to policymakers and other agents of change addressing the representation challenge, the researcher concludes by highlighting some suggestions that would guide future reform efforts.

- New strategies must be adopted to face different challenges in the post globalization period to meet various problems created by market driven economy in educational system.
- The provisions regarding the process of enquiry findings and implementations strategies must be changed.
- A new complete code of MEPS Act, 1977 can be developed like Kerala State Act.
- An agency for controlling coaching classes shall be developed to regulate these classes which are affecting regular school performances.
- Act can be more widened by making school committee and NGOs to frame policies in process of decision making.
- District and State level boards must be established to monitor the appointments.
- Powers of transfer shall be redefined.
- The absorption of surplus teachers shall be clarified.
- The employment exchanges shall be involved for ensuring selection of qualified teachers so that employment opportunities can be ensured.
- A well defined implementation agency of judgments on tribunal decisions shall be developed.
- Provision regarding appointment, inquiry, suspension and reinstatement shall be amended.

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