

THE KERALA PROFESSIONAL COLLEGES (PROHIBITION OF CAPITATION
FEE, REGULATION OF ADMISSION, FIXATION OF NON-EXPLOITATIVE
FEE AND OTHER MEASURES TO ENSURE EQUITY AND
EXCELLENCE IN PROFESSIONAL EDUCATION)

BILL, 2006

(As Passed by the Assembly)

A

BILL

to provide for prohibition of capitation fee, regulation of admission, fixation of non exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education and for matters connected therewith or incidental thereto;

Preamble.—WHEREAS, the Hon'ble Supreme Court has held that where there is more than one minority or non-minority institution or similarly situated institution in the State imparting education in any one discipline, then a single common entrance test followed by centralized counselling or in other words single window system of admission is necessary in order to achieve the twin objectives of transparency and merit and further has held that the State can take over the admission procedure to ensure that it is fair, transparent and non-exploitative;

AND WHEREAS, it is considered that in the light of the past experiences of mal-administration of the entrance test held by the Consortium/Association of Private Professional Colleges in the State, all institutions of the same or similar type, whether minority or non-minority shall be required to fill their seats on the basis of merit determined through a single common entrance test followed by centralised counselling by the State Commissioner for Entrance Examinations;

AND WHEREAS, in the Constitution (Ninety-third Amendment) Act, 2005, a provision has been made under clause 5 of Article 15 as follows:—

“(5) Nothing in this article or in sub clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30” ;

AND WHEREAS, the Supreme Court has further held that linguistic and religious minorities are covered by the expression “minority” under Article 30 of the Constitution;

AND WHEREAS, the reorganization of the States in India has been made on linguistic lines for the purpose of determining the minority, the unit shall be the State and not the whole of India and therefore, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise;

AND WHEREAS, it has been further held by the Supreme Court that Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice and secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country;

AND WHEREAS, it has been further held that the principles of equality must necessarily apply to the enjoyment of such rights and no law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions and any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by others, will have to be struck down and at the same time, there also cannot be any reverse discrimination;

AND WHEREAS, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions and no one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another, since laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions;

AND WHEREAS, keeping in mind the above formulation of the Supreme Court on minority rights and also the unique socio-economic and demographic complexion of the State in the context of the need and commitment to protect and strengthen the secular ethos and the long tradition of equitable sharing of the opportunities for education among different communities prevailing in the State, it is necessary to ensure that the benefits that accrue from minority rights be equitably shared among different sections, including weaker sections, within the minority community to which the particular college or institution belongs;

AND WHEREAS, it is necessary to provide freeship and scholarship to a large number of economically weaker students to protect and strengthen the State's long tradition of providing equitable opportunities for education at all levels of learning, and to promote social justice in accordance with the directive principles of the Constitution, it is necessary to apply the principle of using the excess funds generated from Non-Resident Indian seats for benefiting students such as students from economically weaker sections of society as enunciated by the Supreme Court as one of the considerations for the fixation of fee by the competent authority appointed for the purpose and to set up a Higher Education Scholarship Fund for providing scholarship to the socially and economically weaker students;

BE it enacted in the Fifty-seventh Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006.

(2) It shall come into force at once.

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

(a) 'Admission Supervisory Committee' means the Committee constituted under section 4 for regulating admission in unaided professional colleges or institutions ;

(b) 'Aided College' means a professional college or an institution receiving recurring financial aid or grant-in-aid from any State or Central Government and includes minority and non-minority professional college or institution, as specified by the Government;

(c) 'Capitation Fees' means any amount by whatever name called whether in cash or in kind paid or collected or received directly or indirectly in addition to the fees determined under this Act ;

(d) 'common entrance test' means the entrance test conducted for determination of merit of the candidates followed by centralised counselling for the purpose of merit based admission to professional colleges or institutions through a single window procedure by the State Commissioner for Entrance Examinations ;

(e) 'fee' means all fees including tuition fee, development fee and any other fee fixed by the Fee Regulatory Committee ;

(f) 'Fee Regulatory Committee' means the Committee constituted under section 6 for determining the fee for admission to unaided professional colleges or institutions ;

(g) "Freeship" means full or partial remission of tuition fee awarded to Scheduled Caste and Scheduled Tribe and other socially, educationally and economically backward students on merit-cum-means basis by an unaided Professional College or institution as may be prescribed ;

(h) "general merit seats" means seats other than specified seats, minority seats and Non-Resident Indian seats and notified as such by Government or any agency authorised by it ;

(i) 'Government' means the Government of Kerala ;

(j) 'Higher Education Scholarship Fund' means the fund for providing scholarship to socially and economically backward students on merit-cum-means basis ;

(k) 'management' means any person or body by whatever name called, under whose administration any unaided professional college or institution is functioning ;

(l) 'minority' for the purpose of this Act means a community belonging to a religious or linguistic minority as may be determined by Government taking the State as a unit ;

(m) 'minority professional college or institution' means a professional college or institution established and maintained by a minority that fulfills the non-discriminatory criteria as laid down in this Act and determined as such by the Government ;

(n) 'minority seats' means seats reserved for students who belong to the community that runs the minority unaided professional college or institution and filled up on the basis of *interse* merit in the manner as may be prescribed from the rank list prepared by the Commissioner for Entrance Examinations ;

(o) 'Non-Resident Indian seats' means seats reserved for children or wards or dependents of Non-Resident Indians to whom admission is given by the management in a fair, transparent and non-exploitative manner on the basis of fees as may be prescribed ;

(p) 'prescribed' means prescribed by rules made under this Act ;

(q) 'privilege seats' means seats filled up through the single window system from the common merit list prepared by the Commissioner for Entrance Examinations through the Common Entrance Test, on the basis of *interse* merit from the applications submitted by the management of each unaided professional college or institution, as may be prescribed ;

(r) 'professional college or institution' means a college or institution aided or unaided imparting professional courses in any of the following disciplines, namely:—

(a) Engineering and Technology ;

(b) Medicine, Dentistry, Pharmacy, Ayurveda, Homoeopathy, Siddha and Nursing ;

(c) Teacher education or any other discipline as may be declared by the Government by notification in the Gazette ;

(s) 'qualifying examination' means the examination as may be prescribed as qualifying for the purpose of appearing for the Common Entrance Test ;

(t) 'single window system' means the centralized system for admission administered by the State Commissioner for Entrance Examinations to professional courses in both aided and unaided, minority and non-minority colleges or institutions ;

(u) 'Specified seats' means seats earmarked under sub-section (1) of Section 10 ;

(v) 'State' means the State of Kerala ;

(w) 'unaided professional college or institution' means professional college or institution which is not receiving aid or grant-in-aid from any State or Central Government and includes minority and non-minority professional colleges or institutions ;

(x) 'University' means a University established under any law made by the Legislature of the State ;

3. *Method of admission in Professional Colleges or Institutions.*— Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any Court or any other authority, admission of students in all professional colleges or institutions to all seats except Non-Resident Indian seats shall be made through Common Entrance Test conducted by the State followed by centralised counselling through a single window system in the order of merit by the State Commissioner for Entrance Examinations in accordance with such procedure as may be specified by the Government from time to time.

4. *Admission Supervisory Committee.*—(1) The Government shall constitute an Admission Supervisory Committee to supervise and guide the process of admission of students to unaided professional colleges or institutions consisting of the following members, namely:—

- (i) a retired Judge of the Supreme Court or a High Court : Chairperson
- (ii) the Secretary to Government Higher Education Department (*ex-officio*) : Member Secretary
- (iii) the Secretary to Government Health and Family Welfare Department (*ex-officio*) : Member
- (iv) the Secretary to Government Law Department (*ex-officio*) : Member
- (v) the Commissioner for Entrance Examinations, Kerala (*ex-officio*) : Member
- (vi) an educational expert belonging to the Scheduled Caste or Scheduled Tribe Community : Member

(2) The Admission Supervisory Committee may adopt its own procedure for the conduct of its business.

(3) The terms and conditions of service of the Chairperson and the members of the Admission Supervisory Committee shall be as may be prescribed.

(4) No person who is associated with any unaided professional college or institution shall be eligible for being a member of the Admission Supervisory Committee.

(5) A member of the Admission Supervisory Committee shall be removed if he or she does any act, which in the opinion of the Government, is unbecoming of a member of the Committee. The member so removed shall not be renominated to the Committee.

Provided that no such member shall be removed from the committee without giving him or her an opportunity of being heard.

(6) The Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional colleges or institutions with a view to ensure that the process is fair, transparent, merit-based and non-exploitative under the provisions of this Act.

(7) The Admission Supervisory Committee may hear complaints with regard to admission in contravention of the provisions contained herein. If the

Admission Supervisory Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing a fine upto rupees ten lakhs and the Government may on receipt of such recommendation, fix the fine and collect the same in the case of each such violation or any other course of action as it deems fit and the amount so fixed together with interest thereon shall be recovered as if it were an arrear of public revenue due on land. The Admission Supervisory Committee may also declare admission made in respect of any or all seats in a particular college or institution to be *de-hors* merit and therefore invalid and communicate the same to the concerned University. On the receipt of such communication, the University shall debar such candidates from appearing for any further examination and cancel the results of examinations already appeared for.

(8) The Admission Supervisory Committee may if satisfied that any unaided professional college or institution has violated any of the provisions of this Act, recommend to the University or statutory body for withdrawal of the affiliation or recognition of such college or institution or any other course of action it deems fit.

5. *Collection of capitation fee prohibited.*—(1) No capitation fee shall be collected by or on behalf of an unaided professional college or institution or by any person who is in charge of or is responsible for the management of such college or institution from or in relation to any candidate in consideration of his or her admission to or continuance in any course of study or his or her promotion to a higher class in such college or institution under the management.

(2) Where the Admission Supervisory Committee on receipt of any complaint or is otherwise satisfied that the management of an unaided professional college or institution or any person who is in charge of it or is responsible for the management of such college or institution has violated the provisions of sub-section (1), the Admission Supervisory Committee may after due enquiry recommend to the Government for taking penal action against the management.

(3) The Admission Supervisory Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions, and shall, for the purpose of making any enquiry under this Act, have all the powers of a Civil Court under the Code of Civil Procedure 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any witness and examining him on oath ;
- (b) requiring the discovery and production of any document ;

- (c) receiving evidence on affidavit ; and
- (d) issuing commissions for the examinations of witnesses and for local inspections

and any proceeding before such committee shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purposes of section 196 of the Indian Penal Code (Central Act 45 of 1860).

6. *Fee Regulatory Committee.*—(1) The Government shall constitute a Committee called the Fee Regulatory Committee for determination of the fee for admission to the unaided professional colleges or institutions consisting of the following members, namely :—

- (i) a retired Judge of the Supreme Court or High Court : Chairperson
- (ii) the Secretary to Government either in charge of Health and Family Welfare or Higher Education, as the case may be, depending on the course of study : Member Secretary
- (iii) a Chartered Accountant nominated by the Government in consultation with the Chairperson : Member
- (iv) a representative of either the Medical Council of India or the All India Council for Technical Education, as the case may be, depending on the course of study : Member
- (v) an educational expert nominated by the Government in consultation with the Chairperson : Member

(2) The Fee Regulatory Committee shall adopt its own procedure for the conduct of its business.

(3) The terms and conditions of service of the Chairperson and other members of the Fee Regulatory Committee shall be as may be prescribed.

(4) The Fee Regulatory Committee shall have power to:—

(a) require each unaided professional college or institution to place before the Committee the proposed fee structure of such college or institution with all relevant documents and books of accounts for scrutiny well in advance of the commencement of the academic year i.e. not later than 31st December of the previous academic year ;

(b) verify whether the fee proposed by each college or institution is justified and it does not amount to profiteering or charging of capitation fee ;

(c) approve the fee structure or determine some other fee which can be charged by the college or institution.

(5) The fee determined by the Committee shall be binding on the unaided professional college or institution for a period of three years. The fee so determined shall be applicable to a candidate who is admitted to a college or institution in that academic year and shall not be revised till the completion of his course in the said college or institution. No unaided professional college or institution shall collect a fee amounting to more than one year's fee from a candidate in an academic year. Collection of more than one year's fee in an academic year shall be construed as collection of capitation fee and shall be liable to be proceeded against.

(6) No person who is associated to any unaided professional college or institution shall be eligible for being a member of the Fee Regulatory Committee.

(7) A member of the Fee Regulatory Committee shall cease to be so if he performs any act, which in the opinion of the Government, is unbecoming of a member of the Committee :

Provided that no such member shall be removed from the Committee without giving him an opportunity of being heard.

(8) The Fee Regulatory Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions, and shall, for the purpose of making any enquiry under this Act, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any witness and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses and for local inspections

and any proceeding before such Committee shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (Central Act 45 of 1860).

7. *Factors for determination of fee.*—The Fee Regulatory Committee shall determine and fix the fee or fees to be charged by an unaided professional college or institution taking into consideration the factors, such as,—

(a) the obligation on the part of all unaided professional colleges or institutions to provide freeship to a minimum of fifty percent of the students admitted and the additional expenses, if any, required for the same over and above the excess funds generated from Non-Resident Indians, charity on the part of managements and contribution by the Government for providing freeship for scheduled caste or scheduled tribe students ;

(b) the nature of the professional course ;

(c) the available infrastructure ;

(d) the expenditure on administration and maintenance ;

(e) a reasonable surplus required for the growth and development of the college ;

(f) any other factor as the Committee may deem fit.

8. *Determining factors for according recognition and conferring status as un-aided minority professional college or institution.*—A minority unaided professional college or institution established and maintained by any linguistic or religious minority shall be accorded recognition and conferred status as an un-aided minority professional college or institution only if it satisfies all the following conditions of demographic equivalence between the minority community to which the college belongs and the non-minority community of the State, taken as a single unit, namely:—

(a) the population of the linguistic or religious minority community in the State which runs the professional college or institution shall be lesser than fifty percent of the total population of the State.

(b) the number of professional colleges or institutions run by the linguistic or religious minority community in the State to which the college or institution belongs shall be proportionately lesser than the number of professional colleges or institutions run by the non-minority community in the State.

(c) the number of students belonging to the linguistic or religious minority community to which the college or institution belongs undergoing professional education in all professional colleges or institutions in the State shall be proportionately lesser than the number of students belonging to the non-minority community undergoing professional education in all professional colleges or institutions in the State.

9. *Fees not to be collected excessively.*—(1) No unaided professional college or institution shall collect any fee by whatever name called from the candidate for admission over and above the fee determined by the Fee Regulatory Committee and the fee prescribed by the University concerned:

Provided that the Fee Regulatory Committee shall fix the fee for Non-Resident Indian seats and the amount so collected over and above the fee fixed for other students in the College or institution in such seats shall be utilised for providing freeship to socially and economically backward students.

(2) All unaided professional colleges or institutions shall provide freeship to the extent prescribed for a minimum of fifty per cent of the students admitted.

(3) Any officer of the State or Central Government or any other public officer or authority who issues an income certificate which conceals the actual income of the person to whom the certificate is issued and any recipient of such certificate who by making use of the certificate claims any benefit with regard to freeship or scholarship shall be liable for penalty under section 15 of the Act.

(4) Notwithstanding anything contained in any other provisions of this Act, the fixation and levy of fees at the rates fixed by the Committee constituted before the date of coming into force of this Act shall be deemed to be validly fixed and collected.

10. *Allotment of seats.*—(1) In every professional college or institution other than a minority college,—

(a) ten per cent of the total number of sanctioned seats shall be earmarked for the Scheduled Castes and Scheduled Tribes ;

(b) twenty-five per cent of the total number of sanctioned seats to the Other Socially and Educationally Backward Classes ;

(c) three per cent of the total number of sanctioned seats shall be earmarked for physically challenged persons ; and

(d) twelve per cent of the total number of sanctioned seats shall be earmarked for the other sections of society not covered under items (a), (b) and (c) of this sub-section on merit-cum-means basis :

Provided that in an unaided professional college or institution the provisions in item (c) and (d) shall apply in accordance with the consensus based on mutual agreement arrived at between the unaided professional college or institution and the Government and following such principles and in such manner as may be prescribed:

Provided further that the admissions contemplated in items (b), (c) and (d) above shall be in compliance with the rules as may be prescribed.

(2) In an unaided professional college or institution belonging to both minority and non-minority, upto fifteen per cent of the total number of sanctioned seats may be filled by candidates under the category of Non-Resident Indian seats. Seats not filled up under Non-Resident Indian seats shall be filled up from general merit seats.

(3) In an unaided professional college or institution belonging to both minority and non-minority community, upto fifteen per cent of the total number of sanctioned seats may be filled by candidates under the category of privilege seats in the manner as may be prescribed. Seats not filled up under privilege seats shall be filled up from general merit seats.

(4) In an unaided non-minority professional college or institution eighteen per cent of the total number of sanctioned seats shall be filled up from general merit seats.

(5) In an unaided non-minority professional college or institution two per cent of the total number of sanctioned seats shall be filled up by students who have made outstanding contribution in the field of culture or sports, on the basis of criteria as may be prescribed. Seats not so filled up shall be filled up from general merit seats.

(6) Where students of specified categories surrender the seats after selection, the same shall be filled by the candidates belonging to the same category from the merit list of the Common Entrance Test.

(7) Where the seats specified for the Scheduled Castes or Scheduled Tribes and other socially and economically backward classes are left unfilled due to non-availability of candidates from the same category, the seats shall be filled up by rotation from other categories within the specified seats as may be prescribed. Provided that any spill over thereafter arising shall be filled up from the general merit seats.

(8) A Minority unaided professional college or institution shall admit not less than fifty per cent of the students from within the State from the minority community to which the college or institution belongs. Fifty per cent of such seats may be filled up from among the socially and economically backward sections from within the minority community on merit-cum-means basis with the consent of the minority educational college or institution as prescribed and the rest in the order of merit in accordance with *interse* merit, both from the rank list prepared by the Commissioner for Entrance Examinations, based on the common application prescribed in the appropriate prospectus published by the State Government.

(9) A minority unaided professional college or institution may surrender upto eighteen per cent of the seats to be filled up by the Commissioner for Entrance Examinations from the specified seats and general merit seats in equal proportion. The first portion shall be filled up on the basis of merit-cum-means basis as prescribed. The second portion shall be filled up from the general merit seats. Any seats not surrendered shall also be treated as minority seats and filled up as such.

(10) A minority unaided Professional College or Institution may surrender upto two per cent of the total number of sanctioned seats to be filled up by students who have made outstanding contribution in the field of culture or sports, on the basis of criteria as may be prescribed. Seats not so filled up shall be filled up from general merit seats.

11. *Invalidation of admissions.*—Any admission made in violation of the provisions of this Act or the rules made thereunder shall be invalid.

12. *Higher Education Scholarship Fund.*—(1) The Government may by notification in the Gazette constitute a Fund called the Higher Education Scholarship Fund for providing scholarship to socially and economically backward students admitted in professional colleges or institutions on merit cum means basis.

(2) The corpus of the fund shall be the contribution from the Government, the amount of fine levied under this Act and the funds raised from any other source including Non-Resident Indians.

(3) The fund shall be administered by an Administrator appointed by the Government. The administration of the fund including the corpus shall be in such manner as may be prescribed.

(4) The accounts of the Fund shall be audited annually by the Accountant General.

(5) The Administrator shall before such date, in such form and at such interval as may be prescribed submit a report to the Government and the Government shall cause a copy of such report to be laid before the Legislative Assembly.

13. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against any member of the Admission Supervisory Committee or Fee Regulatory Committee or any other officer of the Government for anything which is done in good faith or intended to be done in good faith under this Act.

14. *Power of the Government to issue directions.*—(1) The Government may give such directions to any professional college or institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or give effect to any of the provisions contained therein or in any rules or orders made thereunder and the management of the college or institution shall comply with every such direction.

(2) The Government may also give such directions to the officers or authorities under its control which in its opinion are necessary or expedient for carrying out the purposes of this Act.

15. *Penalties.*—(1) Whoever contravenes the provisions of this Act or the rules made thereunder shall, on conviction be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than rupees fifty lakhs.

(2) A penalty under this section may be imposed without prejudice to the penalty specified in any other law for the time being in force.

16. *Cognizance of offence.*—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by an officer authorised by the Government in this behalf by notification published in the Gazette.

17. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, as occasion requires, but not later than two years from the date of commencement of this Act, do anything not inconsistent with the provisions of this Act which appears to them necessary for removing the difficulty.

(2) Every order issued under sub-section (1) shall be laid, as soon as may be after it is issued, before the Legislative Assembly.

18. *Special provisions for admissions and fixation of fee for the academic year 2006-07.*—Notwithstanding anything contained in sub section (4) of section 6, the Fee Regulatory Committee shall have the power to extend the date of submission of documents and books of accounts for scrutiny for the determination and fixation of fee for the year 2006-07 in such a way as to facilitate admissions in accordance with the provisions of this Act during the academic year 2006-07. The Fee Regulatory Committee shall be competent to fix the fee provisionally for the academic year 2006-07 subject to final adjustments later.

19. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any

modification to the rule or decides 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.

20. *Repeal.*—The Kerala Self-Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004 (17 of 2004) is hereby repealed.
