

RECOMMENDATIONS FOR AMNEDMENTS IN THE BIHAR CONDUCT OF EXAMINATIONS ACT, 1981 (BIHAR ACT I OF 1981)

The phenomenal explosion in population of the country has by necessity given rise to a corresponding recession in the availability of employment opportunities thereby making the job market economically advantageous and viciously competitive. Resultantly, compelled by the lure of the prospect of fanciful job, gift wrapped money and competitiveness in securing employment, the bee-line of people seeking admission into educational institutions or appearing even at recruitment examinations or interviews or participating in the process of recruitment has registered an accelerative boom. Consequently, there has arisen a corresponding burgeoning growth in the use of malpractices and adoption of unfair means ranging from leakage of question papers to copying, changing answer sheets, impersonation, misconduct at examination centres, approaching or threatening the invigilators or examiners, making false entries, issuing false degrees and certificates, use of electrical and digital gadgets etc. and indulgence in dubious trickery. A grim message was writ large on the horizon for the future.

In serious pursuit of remedies for this palpable malaise the Government of Bihar promulgated Bihar Ordinance no.106 of 1981 the life whereof was subsequently extended by Bihar Ordinance no.176 of 1981. As a follow up measure the subsequent Ordinance was repealed to usher in the Bihar Conduct of Examinations Act, 1981 (Bihar Act I of 1981) (hereinafter referred to as “the Act”) which having received the assent of the Governor on 21.01.1982 was published in the Bihar Gazette Extra-Ordinary dated 23.01.1982 and came into force with immediate effect. The rationale behind the enactment is succinctly advocated in its Preamble which reads- “An Act to provide for penal action for adoption of unfair means at certain Examinations held in the State and matters connected therewith”.

The enforcement of the Act at the initial stage wielded a deterrent effect on the peddlers propagating use of unfair means and malpractices.

However, notwithstanding the benevolences of the legislation, the curative measures enshrined therein gradually appears to have lost most of its sheen with the rapid development and new inventions in the field of electrical, electronic and digital appliances. New ways and means through use of electronic, electrical and digital gadgets were derived to negate the pious aims and objectives of the benevolent legislation so as to give a fillip to the adoption of unfair means and resorting to malpractices in examinations, interviews etc. The daily reports in the newspaper bear ample testimony to the rampant use of malpractices and unfair means during examinations, interviews and recruitment process.

To control the prevailing scenario, appropriate amendments in the Act including its Schedule as it presently stands, has become a dire necessity. In this view of the, matter the Commission is inclined to make the following recommendations:-

SECTION 2(I)

Section 2(I) defines “Recognized examination” so as to include “any of the examinations enumerated in the Schedule as also examination held under the authority of the State Government or any body constituted under the State enactment...”

The definition, as would be apparent, is restrictive in nature and limits the field of application of the Act exclusively to examinations only and that too such examinations as are specified in its Schedule as also those held under the authority of the State Government or by any body constituted under State enactments and includes evaluation, tabulation, publication of results and all matters connected therewith. In effect, the Act clearly excludes all other examinations held within the territories of the State of Bihar including those conducted by the Union Government and its agencies, Union Public Service Commission and the entrance tests by many Educational Institutions as also such examinations and interviews as are conducted in connection with recruitment process

wherein too the dubious adoption of malpractice and use of unfair means are prominently evidenced.

In the circumstances, since the principal aim and objectives of the Act is to put a check on and prevent the adoption of unfair means and resort to malpractices in matters connected with examinations in the State it would be a profitable exercise **to include within the definition of “Recognized examination” all such examinations, entrance tests and interviews in connection with the recruitment process conducted within the territories of the State as are shown in the preceding paragraph as having been excluded by giving a more expanded definitions and not restricting it in its application** and the Commission recommends accordingly.

SECTION 2(II)

Section 2(II) defines “Unfair means” in relation to any examination as “taking or giving or attempting to take or give help from any material written or printed or from any person in any form whatsoever.”

But can we be insensitive to or ignore factual position as is in existence at present. With the rapid and systematic development in the field of mass communication, growth of sophisticated electronic and electrical appliances and invention of high-definitions gadgets and devices, new avenues have evolved to give a fresh and renewed impetus to the surreptitious use of unfair means or indulging in malpractices. The frequent newspaper reports in this context reveals corroborative testimony in this regard.

The situation calls for the requirement of suitable amendments in the Act to overcome the intrusion of items of mass communication, electronic and electrical gadgets and devices to propagate use of unfair means and resort to malpractices at examinations, entrance tests and recruitment process etc.

The Commission is inclined to recommend **for insertion of the words “including the use of any electrical or electronic or digital**

devices or gadgets, means of mass communication, dematerialization instruments or laying claim of eligibility to sit at examination with false or fabricated documents and/or by way of impersonation” after the word “ whatsoever” in Section 2(II).

SECTION 3

In view of the recommendations made in connection with the provisions of section 2(I) so as to give it an expanded definition, **it would only be appropriate and gainful to introduce corresponding amendments in Section 3 by adding the words "or conducted within the territories of Bihar" in between the words "State enactments" and "or in any evaluation" in order to give the prohibitory provisions an expanded ambit and scope** and the Commission recommends accordingly.

Addition of a New Section 3A

The alarming trend of resorting to the nefarious *modus operandi* of impersonation at examinations, entrance tests, interviews and/or recruitment process etc., though of recent origin, is being put into use with unceasing regularity. Unfortunately such acts confer an unfair and illegal advantage to the person impersonated and conversely puts the remaining others at a distinct disadvantage.

In view of the intensity and frequency of its use a dire necessity arises to curb such acts of illegality **by adding/inserting a new Section 3A in the Act making “impersonation” a distinct offence** and the Commission recommends accordingly.

Addition of a New Section 3B

Another petrifying activity which has recently raised its hydra-head in connection with examinations, interviews, entrance tests etc. is that of extending threats, with arms or otherwise or by means of resorting to vandalism, to question-setters, examiners, invigilators and/or persons associated in any manner with the holding of examinations, interviews etc., thereby putting their lives and property in peril.

The situation demands immediate action directed at demoralizing the activists thereof.

The Commission, accordingly, is inclined to recommend **for insertion of "threatening" as a distinct offence by adding a new section 3B in the Act.**

SECTION 4

Section 4 of the Act is in respect of aiding, abetting or conspiring in use of unfair means. Such aiding, abetting or conspiracy can both be direct or indirect.

To make the provisions more stringent and give it meaningful clarity, the Commission is inclined to recommend **for insertion of the words "directly or indirectly, as the case may be" in between the words "cheating" and "at any" appearing in section 4 of the Act.**

SECTION 5 (1)

Section 5 (1) is with respect to "procure, attempt to procure or possess, such question paper or a portion of such paper or a copy thereof".

With the amazing development in the field of electronics and mass communication, a copy of any document, written or otherwise can be made available either in hard or in soft copy.

In this situation, it would be in the interest of justice to give a clarificatory meaning to the provisions **by incorporating the words "either in hard or in soft format" in between the words "copy thereof" and "or" as appearing in section 5(1) of the Act** and the Commission is inclined to recommend in those terms.

SECTION 7

For identical reasons as assigned for insertions in respect with the provisions of section 5(1), the Commission is inclined to recommend **for insertion of the words "either in hard or soft format" in between the**

words “question paper” and “as being” appearing in section 7 of the Act.

SECTION 10

Section 10 of the Act deals with the penal provisions for contravention of any of the provisions of sections 3 to 9 of the Act.

Interestingly, although the offences have been made triable by following the process of summary trial, the offences committed under the Act have been made cognizable and non-bailable in nature. This only goes to indicate that a certain degree of criminality and heinousness have been attached to the offences under the Act.

Considering the nature assigned to the offences under the Act the penalty prescribed for them in section 10 appears to be rather incongruous.

Section 2(a) of the Code of Criminal Procedure, 1973 defines “bailable offence” as an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and ‘non-bailable offence’ as “an offence for which...., a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant”. In view of the specific reference to the Schedule as made in Section 2(a) and 2(c) Cr. P.C. one may look at the First Schedule.

A perusal of the First would reveal that all such offence under the Indian Penal Code, 1860, which are cognizable and non-bailable, viz. Sections 121 to 128, 130, 131 to 134, 153A, 153B, 170, 174A, 195A, 222(part), 225(part), 227, 229A, 231 to 258, 267, 295, 295A, 302 to 308 (except 304A), 311, 313 to 316, 324, 326 to 329, 331 to 333, 353, 363A to 369, 371 to 373, 376(part), 377, 379 to 384, 386, 387, 392 to 402, 406 to 414, 420, 436 to 439, 449, 450, 452 to 461, 467(part), 468, 489A,489B,489D, 505(part), and 511(part), provide for sentence of not less than one year and/or fine.

In view of what has been discussed hereinabove the Commission is inclined to recommend **for enhancement of imprisonment to a fixed period of one year by substituting the existing provision of “imprisonment which may extend to six months but shall not be less than one month”**

The Schedule

Section 14 of the Act, in explicit terms, empowers the State Government to amend the Schedule in as much as it can add to or exclude therefrom any examination in terms of section 2(1) of the Act. However, due care is required to be taken for implementation of such amendments only through notification.

It is worth notice that ever since the enforcement of the Act there has been a sustained growth with corresponding change not only in the administrative and socio-economic milieu but also at the cultural and educational level. New enactments, administrative reforms, recruitment Boards or Commissions, educational and technical entities have come to the fore which from their very nature necessitates amendments to be made in the Schedule. Accordingly, the Commission is inclined to recommend, in terms thereof, amendments in the Schedule as hereunder:-

(a) In item 3 of the Schedule

Item 3 refers to the examination conducted by the Bihar Public Service Commission whose primary function is to recommend names of suitable candidates, in terms of the procedure statutorily laid down, for appointment in the cadre of gazette officers in the State as also for other instrumentalities as is required of them to be done.

On the patterns of the Bihar Public Service Commission the State Government enacted the Bihar Staff Selection Commission Act, 2002(Bihar Act VII of 2002) for recruitment/appointment of non-gazette staff and for proper implementation thereof also framed the Bihar Staff Selection Commission Conduct of Examination Rules, 2010.

Since examinations for recruitment in the cadre of non-gazette staff is conducted by a body constituted under a State enactment, the Commission is inclined to recommend **for insertion of the words "as also by the Bihar State Staff Selection Commission" after the words "Service Commission" in item 3 of Schedule.**

(b) In item 6 of the Schedule

Item 6 makes a mention of Medical and Engineering Admissions Test Examinations.

It may gainfully be noticed that now examinations are also being conducted for admission into Law Schools which is of parallel significance.

The Commission, accordingly, is inclined to recommend **for insertion/addition of the words "or Medical" after the word "Engineering" in item 6 of Schedule.**

(c) In item 7 of the Schedule

Public Sector Undertakings, Corporation or Co-operatives, both of the State as also the Center, do conduct examinations for recruitment to the services.

Since, in relation to the provisions of section 2(1), recommendations have been made to give to the definition of "Recognized examinations a wider and expanded meaning, the Commission is inclined to recommend **for inserting the words "whether by the State or the center, as the case may be," after the word "Co-operative" and before the words "for recruitment" as appearing in item 6 of the Schedule.**

(d) Item 9 of the Schedule

The reference herein is to "Examinations Conduct by Board".

The employment of the word "Board" without qualifying it with clear specification to indicate which is the Board meant thereby presents a very indefinite and unclear picture.

The Commission is inclined to recommend **for a clarification herein so as to indicate which is the "Board" that has been taken into consideration.**

(e) Item 11 of the Schedule

The reference herein is to the "Entrance Examination for Netarhat Public School".

With the enactment of the Bihar Reorganization Act, 2000 (Act XXX of 2000) providing for the reorganization of the State of Bihar and carving out a new State of Jharkhand from the territories included in the erstwhile State of Bihar, Netarhat has now fallen to the lot of Jharkhand. In consequence thereof, the State of Bihar has established its own residential public school at Simultala in the district of Jamui.

In the circumstances the Commission recommends **for substitution of the name "Netarhat" with the name "Simultala" in item 11 of the Schedule.**

(Justice Abhijit Sinha)
Chairman
Bihar State Law Commission

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