

RGICS LEGISLATIVE BRIEF

BACKGROUND PAPER (15th December, 2013)

EDUCATIONAL TRIBUNALS BILL, 2010

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The Educational Tribunals Bill, 2010

Summary of the Bill

- The Educational Tribunals Bill, 2010 (ETB)¹ aims at establishing educational tribunals to perform the role of providing independent, enforceable, speedy, fast track adjudication of disputes in a quasi-judicial manner with regard to students, teachers and other employees, between institutions and between institutions and the regulator.² The bill proposes to establish a two-tier structure of Educational Tribunals at National and State level to adjudicate on the entire range of disputes that arise in the higher education system.
- Disputes relating to service matters of employees and teachers, unfair practices of managements, issues relating to affiliation with universities, regulation and overlapping of statutory bodies would fall under the domain of the Bill.
- The state educational tribunals (SET) shall consist of Chairperson and two other members. It shall adjudicate cases related to: (a) service matters of teachers and other employees of higher educational institution;³ (b) dispute over affiliation of a higher educational institution with an affiliating university and (c) use of unfair practices by a higher educational institution prohibited by any law and (d) matters assigned to it by any other law. The SET shall not admit applications unless the applicant has availed of all the remedies available under relevant service rules of the higher educational institution for redressal of grievances or settling of disputes.⁴
- The national educational tribunal shall consist of Chairperson and a maximum of eight members. It shall adjudicate cases related to: (a) dispute between higher educational institutions and statutory regulatory authorities; (b) any reference made to it by an appropriate statutory regulatory authority, and (c) dispute between higher educational institution and the affiliating university (in case of central universities). It shall exercise appellate jurisdiction over matters decided by any state educational 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 a fine upto Rs 10 lakh or both.

¹ The bill was introduced in Lok Sabha on 3rd May, 2010. It was referred to the Standing Committee on Human Resource Development which submitted its report on August 20, 2010. The bill was passed by Lok Sabha on 26th August, 2010.. It was introduced in the Rajya Sabha on 31st August, 2010 where it is still pending. On August 6, 2013 the notice of amendments to the bill, to be moved at a sitting of the Raya Sabha was published by the secretary General of Rajya Sabha.

The bill as passed in Lok Sabha: <http://164.100.24.219/BillsTexts/LSBillTexts/PassedLoksabha/Education%20Tribunal-%2055%20of%202010-%20As%20passed%20LS.pdf>

Notice of Amendments:

<http://www.prsindia.org/uploads/media/Educational%20Tribunals%20Bill%202010/Official%20amendments%20Educational%20Tribunals%20Bill.pdf>

² Report of the Working Group on Education for the XIIth five year plan, September 2011. Accessed from:

http://planningcommission.nic.in/aboutus/committee/wrkgrp12/hrd/wg_hedu.pdf. Accessed on : 22 August, 2012

³ Clause 3(w) of the ETB defines “Service matters” as all matters related to remuneration, tenure, leave, disciplinary matters and any other matter whatsoever.

⁴ Clause 15, 16, 17 of the ETB

POLICY CONTEXT AND BACKGROUND

About Tribunals:

A tribunal is a generic term for any body acting judicially, whether or not it is called a tribunal in its title. For example, an advocate appearing before a Court on which a single Judge was sitting could describe that judge as 'their tribunal'.⁵ In the context of the Educational Tribunals Bill, it is better to understand tribunals as alternatives to courts, which contribute to increasing the access to grievance redressal as well as to adjudication of disputes.⁶

Origin of the Educational Tribunals Bill

Originally, the issue of setting up of Educational Tribunals came up as a recommendation made many years ago under *the National Policy on Education, 1986* and then *the Programme of Action, 1992*. *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.⁷ The Supreme Court, in the TMA Pai Judgment (2002), suggested the establishment of Educational Tribunals at district level so that teachers did not suffer through substantial costs in litigation. The Law Commission in its 123rd Report on "Decentralisation of Administration of Justice: Disputes involving Centre of Higher Education" recommended that "in the larger interests of the justice system as well as in the interest of the centres of education and in public interest, a separate and specific model for resolution of disputes arising in the field of education is the felt need of the time."

Current Context for introduction of the bill:

i. Limitations of existing laws:

The rationale behind bringing about the proposed Bill is the limitations of the Administrative Tribunals Act and other existing laws. Both the jurisdiction and scope of the Administrative Tribunals Act is limited. Five State Administrative Tribunals for the entire country have proved to be too inadequate leading to overcrowding and delays in disposal of cases. The other existing laws like those dealing with consumer protection, powers of the regulatory bodies in education, the industrial disputes, and the

⁵ Accessed from: <http://indiancourts.nic.in/sitesmain.htm>. Accessed on : 03 September, 2012

⁶ Accessed from: http://www.lawnotes.in/Tribunalization_in_India Accessed on : 03 September, 2012

⁷ "Statement of Objects and Reasons", *The Educational Tribunals Bill 2010* p.18

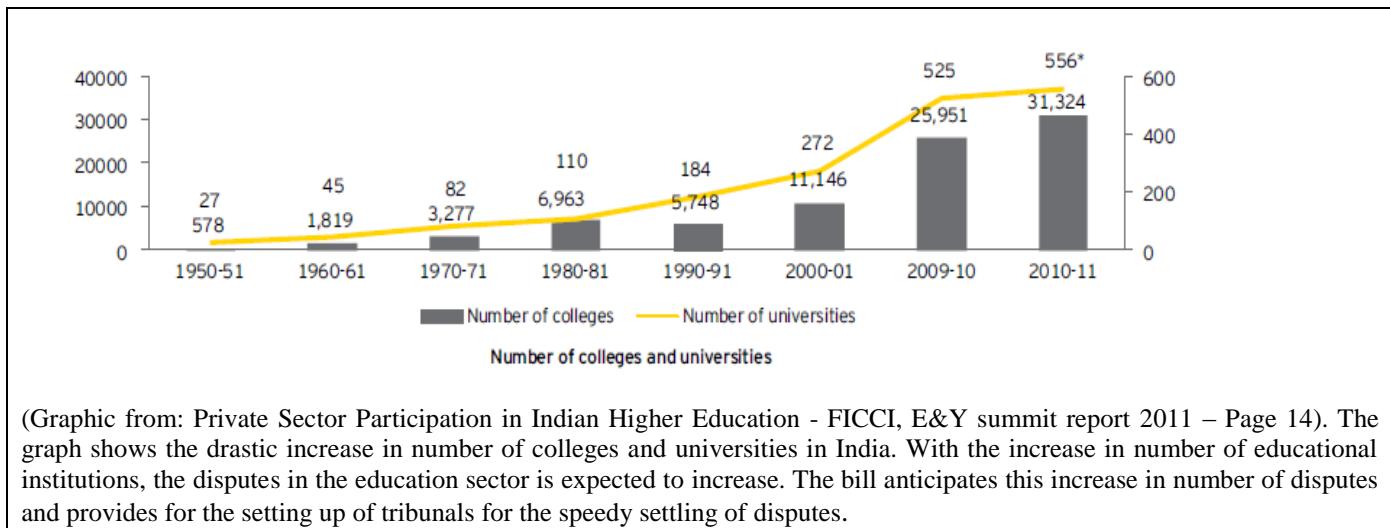
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arbitrations under Universities Act have their own limitations. In such a scenario, the proposed Bill sought to cover all categories of higher educational institutions with the exception of institutions dealing with education on agriculture.⁸

ii. Increase in number of disputes due to increase in Gross Enrolment Ratio and increase in number of educational institutions:

India's Gross Enrolment Ratio (GER) is only around thirteen per cent. It is the lowest in the world for a country of its global significance as against developed countries average of 55% and above, and Asian countries average of 22%.⁹

It is for this reason that the Right to Education Act was passed. As we implement the Right to Education Act, the GER will increase. With the increase of the GER, there will be a larger number of children going to the university system and a larger number of children moving towards vocational education. Also, the number of colleges and universities has increased drastically in the last ten years.



The rapid growth in higher education sector and the entry of a large number of private institutions therein over the years had resulted in proliferation in litigation involving various stakeholders in higher

⁸ "Two Hundred Twenty - Fifth Report on the *Educational Tribunals Bill*". Department – Related Parliamentary standing Committee on Human Resource Development. August 2010. Para. 1.4 Accessed from:

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20HRD/225.pdf> Accessed on: 21 August, 2012

⁹ The United Nations Educational, Scientific and Cultural Organization (UNESCO), defines 'Gross Enrollment Ratio' as "the total enrollment within a country...in a specific level of education, expressed as a percentage of the population in the official age group corresponding to this level of education."

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education like students, teachers, employees, managements of institutions, universities, etc. Therefore, as the regulatory structure evolves, a lot of disputes will emerge.

iii. Absence of a system for speedy disposal of justice

Presently, the only option available with the teachers and students for seeking justice is the court. The Standing Committee Report on the bill sates that “as per the limited information shared by the Department, 305 cases pertaining to eleven Central universities were pending in high courts alone in the year 2009 which meant on an average 28 cases pending per university. At this rate, about 15,000 cases could be reasonably estimated to be pending in only the High Courts of the country.”¹⁰ Therefore, the time has come to move away from the normal court system and set up Tribunals at the State level and at the national level to deal with all those disputes. The establishment of tribunals at national and state level is expected to help victims get justice in shorter time.

iv. To build credibility and assurance

To achieve the goals of expansion in higher education and to effectively compete with other countries, such a regulatory regime and dispute-settlement process is required, that engender credibility and assurance. It is keeping this in view, that the bill proposes to establish a two-tier structure of Educational Tribunals at National and State level to adjudicate on the entire range of disputes that arise in the higher education system. According to the minister for Human Resource Development, Shri Kapil Sibal, this particular regime will help a more expeditious and more efficient resolution of disputes.¹¹

¹⁰ “Two Hundred Twenty - Fifth Report on *the Educational Tribunals Bill*”. Department – Related Parliamentary standing Committee on Human Resource Development. August 2010. Para. 1.9 Accessed from:

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20HRD/225.pdf> Accessed on: 21 August, 2012

¹¹ “Debate on *The Educational Tribunals Bill, 2010*” 31 August, 2012. p. 39 Accessed from:

<http://164.100.47.5/newdebate/220/31082010/Fullday.pdf> Accessed on: 21 August, 2012

POLITICS: Issues raised by various political parties

The Bill, though passed in the Lok Sabha, was opposed in the Rajya Sabha not only by the BJP and the Left, but by some members of the Congress party too.

Some of the concerns raised by members of the parliament, across all the political parties, were:

- (a) The bill was pushed through in a hasty manner.
- (b) Standing Committee recommendations were not accepted and incorporated.
- (c) Student rights are missing in the bill

While the bill mentions “students” as a stakeholder, it is not clear whether the student can approach the tribunal directly. Also, none of the clauses mention the nature of student grievances which will be admitted before the tribunal.

However, majority of these issues will be addressed by the amendments to be moved at the sitting of the Rajya Sabha. (Refer pg.8 for the list of issues resolved by the amendments)

Apart from these, some of the concerns raised by various political parties that have not been addressed by the amendments are as follows:

i. Communist Party of India (Marxist)

Some flaws have been pointed out by Dr. Vijender Sharma in an article published in the *People's Democracy*, a weekly publication of the CPI (M.).¹² Most of the issues mentioned in the article are those already pointed out by the Standing Committee. The article says: “The bill seeks to set up an alternative dispute redressal mechanism at the state and national levels by **depriving all the concerned people of their constitutional right to move a court of law...** This bill, in fact, has been designed to keep the teachers, other employees and students away from courts of law.¹³ This is probably designed to provide the foreign educational institutions and private players an environment in which they do not have to bother much about litigation.”

ii. Bharatiya Janata Party (BJP)

Shri Bal Apteji, member of BJP, in his speech in Parliament on The Educational Tribunal Bill, 2010, pointed out the following flaws: He said that the “efficacy of establishment of these tribunals itself is a matter of doubt, is questionable and, therefore, why a tribunal is needed is a question which ought to be answered.” He also

¹² Sharma, Vijender. (2010). “The Educational Tribunals Bill: Creating a Judicial System Suited to Private Sector” *People's Democracy*, Vol. XXXIV, No. 46, November 14, 2010. Accessed from: http://pd.cpim.org/2010/1114_pd/11142010_9.html Accessed on: 22 August, 2012.

¹³ Clause 38.(I) of the ETB, 2010 states: “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.”

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raised concerns about fairness of procedure of the tribunals and exclusion of minority institutions from the purview of the bill. He said:

(a) The tribunal is not within the clutches of the procedure of laws like the Civil Procedure Code and the Evidence Act

Explanation:

Clause 39.(4) of the ETB states: “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.”

(b) “**Minority institutions are excluded** from such a vital structure of tribunals”. ¹⁴

Response:

Clause 51 of the ETB states that non- applicability of the bill to minority institutions is only when anything contained in the Act or the rules made thereunder “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.”

¹⁴ Press Release: “ Shri Bal Aptaji speech in Parliament on The Educational Tribunal Bill, 2010” Bharatiya Janata Party 01 September, 2010 Accessed from: http://www.bjp.org/index.php?option=com_content&view=article&id=3699&catid=68:press-releases&Itemid=494

ISSUES IN THE BILL ADDRESSED BY THE RECENT AMENDMENTS

On August 6, 2013, the Rajya Sabha Secretary General published the Notice of Amendments to the Educational Tribunals Bill 2010, to be moved at the sitting of the Rajya Sabha. The amendments address some of the key issues that have been raised by the Standing Committee and political parties. The following are the list of such issues and the amendments made in response to them:

- **Students' rights**

Issue raised by Standing Committee: The Committee noted that the word “student” is absent in the main body of the bill. It should be made clear that students themselves can seek justice under the Bill.

Amendment in Response: Clause 15 has been amended to make it clear that the State Educational Tribunal shall exercise powers and authority in relation to matters relating to use of unfair practices “including such practices against students and applicants for admission”.¹⁵

- **Definition of the term “unfair practices”**

Issue raised by Standing Committee: The term “unfair practices” need to be properly defined to avoid interpretation by courts.

Amendment in Response: The above mentioned amendment to Clause 15 that stresses on students rights also brings in better clarity to the term “unfair practices” by specifying that it includes “such practices against students and applicants for admission”.

- **Minimum Age Requirement for members of Education Tribunal:**

Issue raised by Standing Committee: The rationale for fixing the minimum age of members of National and State Education Tribunals at 55 years could lead to ineligibility of otherwise competent people.

Amendment in Response: As per the new amendment, the minimum age of a person to be appointed as a member of the National and State Education Tribunals has been lowered from 55 to 45.¹⁶

¹⁵ Amendment to Clause 15, page 7, line 1.

¹⁶ Amendments to Clauses 6 and 7: for the word “fifty-five” the word “forty –five” be substituted.

- Lack of academic representation in Selection Committee

Issue raised by Standing Committee: Only Secretaries are members of the Selection Committee which shall recommend a panel for appointment of the Chairperson and Members of the National Educational Tribunal. This indicates an imbalance between academic and administrative domains. The Standing Committee recommended that there should be adequate representation of the academia in the Selection Committee.

Amendment in Response: As per the new amendment, the Selection Committee will also include: a Vice Chancellor to be nominated by the Central Government in the case of National Educational Tribunal, and nominated by the appropriate Government in the case of State Educational Tribunals.¹⁷

¹⁷ Amendment to clauses 7 and 23

<http://www.prsindia.org/uploads/media/Educational%20Tribunals%20Bill%202010/Official%20amendments%20Educational%20Tribunals%20Bill.pdf>

OTHER ISSUES IN THE BILL

1. Issues raised by the *Parliamentary Standing Committee*:

The following are the key issues pointed out by the Standing Committee on the bill and the response given by honourable minister of Human Resource Development, Shri Kapil Sibal to some of these issues:¹⁸

i. Segment of stakeholders not consulted

Issue: The Department-related Parliamentary Standing Committee on Human Resource Development — in its report on The Educational Tribunals Bill 2010 tabled in Parliament on August 2010 — said a segment of the stakeholders had not been consulted at all, adding that it was very necessary to involve stakeholders of private institutions in the consultation process. Though it has jurisdiction over institutions in medical discipline, there was no direct consultation with regulatory bodies, including the Medical Council of India and the Dental Council of India. Representatives of private institutions too have not been engaged in the process of consultations.

Response: Though the Standing Committee pointed out flaws in the consultation process, the Committee itself took steps to rectify the flaw. “In order to fill the vacuum with respect to consultation with the States, the Committee tried to facilitate wider consultations by issuing a Press Release on the Bill inviting suggestions from the general public. In response, the Committee received memoranda from a good number of organizations/individuals on the proposed legislation.”¹⁹

Shri. Kapil Sibal too, during the debate on the bill in the Rajya Sabha, said that **the Standing Committee had sent notices to the various stakeholders**. He said: “There is not a single person recommending that this should not be passed. There is no stakeholder who has ever said so.”

¹⁸ The source for response from Mr. Kapil Sibal is the debate in the Rajya Sabha on the Educational Tribunals Bill, 2010, dated 31 August, 2010.

¹⁹ “Two Hundred Twenty - Fifth Report on *the Educational Tribunals Bill*” Department – Related Parliamentary standing Committee on Human Resource Development. August 2010. Para 2.6 Accessed from:

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20HRD/225.pdf> Accessed on: 21 August, 2012

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ii. One tribunal per state cannot be applied uniformly

Issue: Since the number of educational institutions vary from state to state, the Committee felt that one educational tribunal per state cannot be made uniformly applicable.²⁰

Response by the HRD minister: "After one year, if we feel that there are more tribunals required, we will set them up."²¹

iii. District level tribunals needed:

Issue: The standing committee recommended setting up of district level tribunals in 230 districts having a higher concentration of educational institutions.

Response by the HRD Minister: "We discussed these issues with the State Governments. We sent this Bill to the Education Secretaries of all State Governments, we had discussions with them and we called them even to Delhi. In the course of those discussions, it was suggested by them, 'it is not appropriate for us to set up Tribunals in every district as it is a very expensive proposition. It is better for us to see the experience of the Tribunals before we move forward quickly in that directions.'"²²

iv. Composition of the tribunals:

- Number of members:

Issue: The state educational tribunal shall be composed of three members. The Committee observed that it would be difficult for a three member tribunal to take up sizeable number of cases. It recommended that there should be a five member state educational tribunal.

Response by the HRD Minister: "The recommendation of the Standing Committee, certainly, will be taken into account by us as we move forward and, as and when we feel that it is necessary for us to enlarge the Tribunals like having 5-Member Tribunal or have more number of Tribunals, we

²⁰ "Two Hundred Twenty - Fifth Report on the *Educational Tribunals Bill*" Department – Related Parliamentary standing Committee on Human Resource Development. August 2010. Accessed from:

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20HRD/225.pdf> Accessed on: 21 August, 2012

²¹ "Debate on *The Educational Tribunals Bill, 2010*" 31 August,2012. p. 157 Accessed from:
<http://164.100.47.5/newdebate/220/31082010/Fullday.pdf> Accessed on: 21 August, 2012

²² Sibal, Kapil "Debate on *The Educational Tribunals Bill, 2010*" 31 August, 2012. pf.40 Accessed from:
<http://164.100.47.5/newdebate/220/31082010/Fullday.pdf> Accessed on: 21 August, 2012

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are not averse to that. We will move forward in that direction as and when the need becomes necessary.”²³

- **Bureaucratisation:**

Issue: As per the bill, the national educational tribunal shall have three Secretaries to the Government of India as members.

Recommendation by the Standing Committee: Reducing the number of official representatives in the National Education Tribunal can prevent its bureaucratisation.

Response: The National Education Tribunal also includes three academic members and two judicial members.

- **Clause 12(2) - on ‘Non-judicial member chairing the bench in the event of absence of chairperson’- is a violation of Supreme Court judgement:**

Issue: A recent recommendation of the Supreme Court states that every two member bench of the Tribunal should always have a judicial member. Whenever any large or special benches are constituted, the number of technical members shall not exceed the judicial member. The Committee finds that Clause 12 (2) violates the judgment of the Supreme Court as in the event of vacancy of the seat of Chairperson, the non-judicial member would chair the bench.

Response by the HRD Minister: The non-judicial member “would not chair the bench for judicial matters but for administrative matters; he will have to clear those things. If a judge falls ill for a day, somebody has to be the chairperson to clear the administrative matters. The law has to be consistent with the Supreme Court judgment. Therefore, there is no doubt. I can say on the floor of the House that such a chairperson will not exercise judicial powers. I will clarify it in the rules.”

- v. The Committee recommended that separate mechanisms needed to be devised to ensure justice in case of public and private institutions. Also, SC/STs should be duly represented in the tribunals.
- vi. The Committee proposed that the government needs to identify the lacunae of the existing tribunal systems and ensure that orders of the tribunals have some force.

²³ Ibid. p.41

2. Issues raised by various interest groups/ stakeholders:

a) Private Institutions

Issue:

Increase in government control over private institutions

Private institutions criticise the bill, saying that it is an attempt on Government's part to enhance control over them.

Response:

Higher Education Secretary Vibha Puri Das has said that **the purpose of the new legislation (Education Tribunal Bill) is not for the government to be a regulator, but to have a transparent and accountable education system.**²⁴

Private sector has a critical role in meeting the demand for higher education as about 63% of the total higher education institutions are private unaided institutions. Government, through this bill, is in the process of streamlining the regulatory framework to make higher education more accessible and improve the quality of education delivery.²⁵

b) The Bar Council of India:

Issue: Attempt to sideline advocates and statutory bodies in the legal arena. Legal education and the Advocates Act, 1961 should be removed from the purview of the bill.²⁶

The Joint Meeting of the members of the Bar Council of India along with Chairmen, Vice-Chairmen of all the State Bar Councils and other representatives of the Bar Associations of the NCR was held on 19.05.2012. In the meeting, a unanimous resolution was taken to oppose the Educational Tribunals Bill, 2010.

²⁴ "Government dismisses fears over education bill" *education insights.in* 23 December, 2010

²⁵ <http://www.educationinsight.in/2010/education-news/policywatch/government-dismisses-fears-over-education-bill/#>

²⁶ http://www.ficci.com/sector/11/Project_docs/FICCI-sector-profile-Education.pdf

²⁶ Note: The Bar Council of India is a statutory body that regulates and represents the Indian bar. It was created by Parliament under the Advocates Act, 1961. It prescribes standards of professional conduct and etiquette and exercises disciplinary jurisdiction. It sets standards for legal education and grants recognition to Universities whose degree will serve as a qualification for students to enrol themselves as advocates upon graduation.

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Members of the Bar Council of India expressed concern on the way in which the HRD Ministry is ‘clandestinely’ trying to sideline and to harm the advocates of the country and their elected statutory bodies in the matter of legal education and legal profession (p.4) The meeting also resolved to oppose the Bill till legal education and the Advocates Act, 1961 is removed from the purview of this “anti people” bill. (p. 5)²⁷

c) *The Association of Self-Financing Universities*

Issue: Tribunal lacks power to pass interim orders. Hence, there is no immediate relief.

The *Association of Self-Financing Universities* president Mr. Viswanathan, who is also the founder-chancellor of VIT University, said the Educational Tribunals Bill, if enacted, would mean that aggrieved institutions, teachers and students could not go to the High Court for immediate relief, but only to the tribunal. He said: “The State tribunal has no powers to pass interim orders, so we will have to wait till the judgment is pronounced. And even after that, one can go only to the national tribunal, which also has no powers for granting interim orders.”²⁸

Response

The bill does give tribunals the power to make interim orders in certain cases. Clause 40 of the ETB states 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.

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²⁷ <http://www.barcouncilofindia.org/wp-content/uploads/2012/06/0005-Minutes-of-Joint-Meeting.pdf> Date Accessed: 18 August, 2012

²⁸ “Higher education bills unconstitutional” *The Hindu*. 29 December, 2012.
<http://www.thehindu.com/education/issues/article2755813.ece> Date Accessed: 18 August, 2012