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The Gujarat Government Gazette

EXTRAORDINARY

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PART IV

Acts of the Gujarat Legislature and Ordinances promulgated
and Regulations made by the Governor.

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The following Act of the Gujarat Legislature having been assented to by the Governor on the 14th November, 1961, is hereby published for general information.

M. G. MONANI,
Secretary to the Government of Gujarat,
Legal Department.

GUJARAT ACT No. XLI OF 1961

(First published, after having received the assent of the Governor in the "Gujarat Government Gazette" on the 24th November, 1961.)

An Act to provide for free and compulsory primary education for children in the State of Gujarat.

It is hereby enacted in the Twelfth Year of the Republic of India as follows :—

1. (1) This Act may be called the Gujarat Compulsory Primary Education Act, 1961.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of the State of Gujarat.

(3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint,

Definitions.

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

(a) “academic year” means the year beginning on such date as a local authority may specify with respect to any area of compulsion or with respect to approved school generally or any approved school or class of any approved schools in particular within its jurisdiction ;

(b) “approved school” means any school in any area of compulsion within the jurisdiction of a local authority imparting primary education which—

(i) is under the management of the State Government or the local authority, or

(ii) being under any other management, is recognised by the local authority, or the State Government or an officer authorised by it in this behalf as an approved school for the purposes of this Act ;

(c) “area of compulsion” means any area in which primary education is declared to be compulsory under section 4 or 16 ;

(d) “attendance authority” means any person appointed to be an attendance authority under section 7 ;

(e) “to attend an approved school” means to be present for instruction at an approved school on so many days in an academic year and at such time or times on each one of those days as may be fixed by the local authority concerned ;

(f) “child” means a boy or girl within such age-group not being less than six or more than fourteen years, as may be specified in a declaration made under section 4 or 16 ;

(g) “Director” means an officer appointed by the State Government as the Director of Education and includes any officer who may be authorised by the State Government to perform all or any of the functions of the Director under this Act ;

(h) “local authority” means a District School Board, a Municipal Corporation, an authorised Municipality, a cantonment Board or an authority constituted by or under any law for the time being in force, or any person or body of persons empowered by the State Government to control primary education in any area specified by the State Government ;

(i) “parent” in relation to any child includes a guardian and every person who has the actual custody of the child ;

(j) “prescribed” means prescribed by rules made under this Act ;

(k) “primary education” means education in such subjects and upto such standard not beyond the seventh standard as may by general or special order from time to time be determined by the State Government ;

(l) “special school” means any institution which imparts such primary education as in the opinion of the State Government or the local authority is suitable for children suffering from any physical or mental defect ;

(m) words and expressions used but not defined in this Act shall, have the meanings respectively assigned to them under the Bombay Primary Education Act, 1947 or as the case may be, the Saurashtra Primary Education Act, 1956.

3. (1) It shall be the duty of every local authority to provide for compulsory primary education for children ordinarily resident within its jurisdiction, and for this purpose it shall, from time to time, submit to the State Government proposals in the form of a scheme in respect of the whole or such part of the area within its jurisdiction and for children of such ages and upto such standard as the local authority deems fit.

Schemes for
primary
education.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, at any time, direct a local authority to submit to it within a specified time a scheme for compulsory primary education in any area within the jurisdiction of the local authority for children of such ages and ordinarily resident therein, and upto such standard as the State Government may specify.

(3) Every scheme shall be submitted in such form as the Director may specify and shall contain the following particulars, namely :—

- (a) proposed area of compulsion ;
- (b) the census of children of the age to which the scheme shall apply classified according to age and languages spoken by the children ;
- (c) a list of existing approved schools and the schools, if any, proposed to be opened or recognised for the purpose, classified by languages in which instruction is or is proposed to be imparted ;
- (d) a schedule of existing and proposed teaching and non-teaching staff including clerks and inferior servants ;
- (e) the recurring and non-recurring cost of the scheme ;
- (f) a copy of the resolution of the local authority agreeing to bear its share of the additional recurring and non-recurring cost ;
- (g) such other particulars as may be prescribed.

(4) The State Government may, after making such inquiry as it considers necessary, sanction with or without modifications any scheme submitted.

4. (1) On receipt of sanction under sub-section (4) of section 3 the local authority shall make a declaration in accordance with the sanctioned scheme to the effect that on and from a date to be specified by the State Government, primary education shall be compulsory in the area specified in the declaration for children ordinarily resident in that area and within such age-group and upto such standard as may be specified in the declaration.

Primary
education to
be compuls-
ory in areas
covered by
schemes.

(2) Every declaration under sub-section (1) shall be published in the *Official Gazette* and in such other manner as the local authority may decide.

(3) Such date shall be specified by the State Government under sub-section (1) as shall be not earlier than sixty days after the date of publication of the declaration.

5. The State Government shall in respect of every scheme sanctioned under sub-section (4) of section 3 or prepared under sub-section (1) of section 16, bear such part of the recurring and non-recurring cost as it may from time to time determine.

Grants-in-
Aid.

Local authority to prepare list of children. 6. It shall be the duty of the local authority to cause, as early as possible after the publication of a declaration under section 4, to be prepared a list of children in the area of compulsion in such manner as may be determined by the Director, and the local authority shall cause the list to be revised at such intervals as may be prescribed.

Attendance authorities. 7. (1) The local authority may appoint as many persons as it thinks fit to be attendance authorities for the purpose of this Act, and may also appoint as many persons as it considers necessary to assist the attendance authorities in the discharge of their duties.

(2) Any person appointed under sub-section (1) may in the exercise of any of the powers conferred by or under this Act put such questions to any parent and require of him such information about his child as he considers necessary; and every such parent shall be bound to answer such questions and furnish such information to the best of his knowledge or belief.

Attendance authority to notify parents. 8. It shall be the duty of the attendance authority to notify the parent of each child to whom the declaration under section 4 or 16 applies that he is under an obligation to ensure the attendance of such child at an approved school on and from the date specified in the notice.

Parent to cause child to attend school. 9. In every area of compulsion, save as provided in section 12 the parent of a child to whom a scheme applies shall, if such parent and child ordinarily reside in such area, cause the child to attend an approved school unless there be a reasonable excuse for his non-attendance within the meaning of section 10.

Reasonable excuse for non-attendance. 10. For the purposes of this Act, any of the following circumstances shall be deemed to be a reasonable excuse for the non-attendance of a child at an approved school :—

(a) that there is no approved school within the prescribed distance from his residence in which instruction is given in the language spoken by the child ;

(b) that the child is receiving instruction in some other manner which is declared to be satisfactory by the State Government or by the local authority or has received a certificate from the attendance authority of having completed primary education upto the standard included in the scheme applicable to him ;

(c) that the child suffers from physical or mental sickness or defect which prevents him from attendance ;

(d) that after due application, entrance to an approved school has been refused to the child and there is no other approved school to which he can be admitted within the prescribed distance, until such time as the parent is notified by the attendance authority that the child can be admitted ;

(e) that there is no approved school in the locality to which the parent can send the child without exposing him to religious instruction to which the parent objects ;

(f) that there is any other compelling circumstance which prevents the child from attending school, provided the same is certified as such by the attendance authority ;

(g) such other circumstances as may be prescribed.

11. If there be a special school within the prescribed distance from the residence of a child suffering from a physical or mental defect, the attendance authority may, if it is satisfied that the child is not receiving any instruction in some other manner considered by it to be satisfactory, by order require the child to attend the special school ; and it shall be the duty of the parent of such child to cause the child to attend the special school unless there be a reasonable excuse for the non-attendance of the child within the meaning of clause (f) of section 10.

Special schools for physically or mentally deficient children.

12. (1) Where the attendance authority is satisfied that a child due to the economic or other circumstances of its family is unable to attend an approved school in the manner required by or under this Act, it may, by order, and subject to such conditions, if any, as it may impose, permit the child to attend any approved school established as a part-time institution or in which primary education is imparted on a part-time basis.

Special provision for part - time education in certain cases.

13. (1) Whenever the local authority has reason to believe that the parent of a child has failed to cause the child to attend school in accordance with the provisions of this Act and that there is no reasonable excuse for the non-attendance of the child within the meaning of section 10, it shall hold an inquiry in the prescribed manner.

Attendance orders

(2) If as a result of the inquiry the local authority is satisfied that the child is liable to attend school in accordance with the provisions of this Act and that there is no reasonable excuse for his non-attendance within the meaning of section 10, it shall pass an attendance order in the prescribed form directing the parent to cause the child to attend school accordingly with effect from the date specified in the order.

(3) An attendance order passed against a parent in respect of a child under sub-section (2) shall, subject to the provision of sub-section (6), remain in force so long as this Act continues to apply to the child.

(4) If any parent against whom an attendance order has been passed in respect of his child under sub-section (2) transfers the custody of the child to any other person during the period in which the attendance order is in force, such parent shall be bound immediately to give intimation thereof in writing to the local authority.

(5) An attendance order made under this section, against a parent in respect of a child shall have effect in relation to every other person to whom the custody of the child may be transferred during the period in which the order is in force as if he were the parent, and the provisions of sub-section (4) shall apply accordingly to such person—

(6) A parent may at any time apply to the authority passing an attendance order for cancellation of the attendance order on the ground

(i) that he is no longer the parent in respect of the child ; or

(ii) that circumstances have arisen which provide a reasonable excuse for non-attendance of the child in accordance with the order ;

and thereupon the authority passing an attendance order may after holding an enquiry in the prescribed manner, cancel or modify the attendance order.

(7) Any parent aggrieved by an order made under sub-section (2) or sub-section (6) may, within a thirty days from the date of such order, appeal to the prescribed authority who may confirm, modify or rescind the order as it deems fit.

Penalty for employing child to whom scheme applies.

14. Whoever knowingly takes into his employment, either on his own behalf or on behalf of any person, any child in respect of whom the provisions of section 9 apply, so as to interfere with the education or instruction of such child shall, subject to the provisions of section 20, on conviction, be punished with a fine not exceeding twenty-five rupees and in the case of a continuing contravention with an additional fine not exceeding rupee one for every day during which such contravention continues after conviction for the first of such contraventions.

Primary education to be free.

15. (1) When a scheme for compulsory primary education has been sanctioned, no fees shall be charged within the area of compulsion in any school maintained by the State Government or the local authority, as the case may be in respect of any child for attending in the standards included in the scheme.

(2) Where, in respect of any child an attendance order has been passed under section 13 and the only school which he can attend is an approved school under private management falling within sub-clause (ii) of clause (b) of section 2 the local authority shall take such steps as it may think fit for the purpose of ensuring that the primary education which the child is to receive is free.

Failure of local authority to prepare or implement scheme.

16. (1) If any local authority when called upon to submit a scheme under sub-section (2) of section 3 fails so to do or after a scheme has been sanctioned under sub-section (4) of section 3 fails to give effect to a scheme so sanctioned, whether wholly or in part, the State Government may, after making such inquiry as it considers necessary and after giving an opportunity to the local authority to be heard in the matter, appoint any person to prepare the scheme or to give effect to it, as the case may be, and may direct that such part of the expenses as the State Government may determine shall be defrayed out of the funds belonging to the local authority. The person so appointed shall perform all the functions of a local authority under this Act in respect of the scheme.

(2) Where any such direction as is referred to in sub-section (1) is issued, any person who has for the time being the custody of any moneys on behalf of the local authority, either as a banker or in any other capacity, shall, notwithstanding anything contained in any law for the time being in force be bound to comply with such direction. Every payment made pursuant to such direction shall be sufficient discharge to such person from all liability to the local authority in respect of any amount so paid by him out of the money of the local authority so held by him.

17. (1) If any parent fails to comply with an attendance order made under section 13 unless such order is rescinded in an appeal made under sub-section (7) of that section, he shall, on conviction, be punished with a fine not exceeding two rupees ; and in the case of a continuing contravention, with an additional fine not exceeding *fifty naye paise* for every day during which such contravention continues after conviction for the first of such contraventions :

Penalty for contravention of section 13.

Provided that the amount of fine payable by any one person in respect of any child in any one academic year shall not exceed fifty rupees.

(2) If any person fails to furnish any information as required by sub-section (4) of section 13, he shall on conviction, be punished with fine which may extend to twenty-five rupees.

18. A sanctioned scheme may, with the sanction of the State Government, be withdrawn or from time to time modified or temporarily suspended by a local authority or may, by an order published, with the reasons for making it, in the *Official Gazette*, be modified, cancelled or temporarily suspended by the State Government.

Power to withdraw, modify or suspend scheme of compulsion.

19. (1) For the purpose of taking cognizance of an offence under section 14 or section 17,—

Courts competent to try offences under sections 14 and 17.

(a) if the accused resides in a town or village where a judicial Magistrate holds his court, the court of such Magistrate :

(b) if the accused resides within the limits of the jurisdiction of a *nyaya panchayat* which has been empowered to take cognizance of and try such offence under clause (d) of section 75 read with sub-sections (3) and (5) of section 64 of the Bombay Village Panchayats Act, 1958, such *nyaya panchayat* ; and

(c) if the accused resides else where, the primary schools panchayat constituted under section 24 within the limits of the jurisdiction of which the accused resides

shall be the court competent to take cognizance of such offence.

(2) A court of a Judicial Magistrate taking cognizance of any offence under clause (a) of sub-section (1) shall try the case summarily in the manner provided in section 263 of the Code of Criminal Procedure, 1898.

Cognizance of offences.

20. No court shall take cognizance of an offence under this Act except on a complaint presented in person or sent by registered post by the attendance authority or any other person authorised in this behalf by the local authority by general or special order. Before making any complaint under section 14 of this Act, against any person, the attendance authority or the person authorised by the local authority to make a complaint shall, unless such person has been previously convicted under that section, cause a warning to be given to such person.

21. Every person appointed under sub-section (1) of section 7 and every person authorised under section 20 to make complaints shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be public servants.

Protection of action taken in good faith. 22. No suit, prosecution or other legal proceeding shall lie against the State Government or any authority or person in respect of anything which is in good faith done or intended to be done under this Act.

Delegation of powers. 23. (1) The State Government may, by notification in the *Official Gazette* and subject to such conditions, if any, as may be specified in the notification, authorise any officer or authority subordinate to it to exercise all or any of the powers conferred on the State Government by or under this Act.

(2) A local authority may by general or special order authorise any of its members or any officer or authority subordinate to it to exercise all or any of the powers conferred on the local authority by or under this Act.

(3) A local authority which is an authorised Municipality as defined in clause (6) of section 2 of the Bombay Primary Education Act, 1947 or a Municipal Corporation, may delegate the powers conferred on it by or under this Act to its School Board under sub-section (2) ; and such School Board may in turn delegate all or any of such powers to its Administrative Officer or any other of its officers or to any of its members.

Bom.
LXII
of
1947.

Constitution powers and procedure of primary schools panchayat. 24. (1) The State Government may by notification in the *Official Gazette* constitute a Primary Schools Panchayat for the trial of offences punishable under this Act in the areas referred to in clause (c) of sub-section (1) of section 19.

(2) The Primary Schools Panchayat constituted under sub-section (1) shall consist of three members appointed by the State Government one of whom shall be the Chairman. The qualifications of the members shall be such as may be prescribed. The members so appointed shall hold office during the pleasure of the State Government.

(3) Two members shall form a quorum for the disposal of the business of the Primary Schools Panchayat.

(4) Any vacancy of a member of the Primary Schools Panchayat shall be filled as early as practicable :

Provided that, during any such vacancy the remaining members may act as if no vacancy had occurred.

(5) The Primary Schools Panchayat shall, except as otherwise provided in this Act, in respect of cases relating to an offence punishable under section 14 or section 17, have the same powers and shall follow the same procedure as is followed by a *nyaya panchayat* in respect of such offence under Chapters VI, VII, and VIII of the Bombay Village Panchayats Act, 1958, and the provisions of the said Chapters shall *mutatis mutandis* apply in respect of such cases.

Bom.
III of
1959.

(6) A Primary Schools Panchayat constituted under sub-section (1) of section 36B of the Bombay Primary Education Act, 1947 and which is functioning immediately before the commencement of this Act shall be deemed to have been constituted under this Act.

Bom.
LXI
of
1947.

(7) Every local authority shall, with the approval of the State Government, maintain an adequate staff for enabling a Primary Schools Panchayat to discharge its functions under this Act.

25. Where the parent of a child has failed to comply with an order made under sub-section (2) or as the case may be, such order as modified under sub-section (6) of section 13, unless such order has been rescinded by a competent authority under sub-section (7) of that section, the head teacher of such school shall issue a certificate to the effect that such parent has failed to cause the child to attend school in compliance with such direction and such certificate shall, until the contrary is proved, be presumed to be conclusive evidence of such failure in a prosecution against the parent under section 17. Certificate of Head Teacher to be conclusive evidence of parent's failure to comply with section 17.

26. Every prosecution under section 14 or 17 pending before any court in any area on the date on which a Primary Schools Panchayat is constituted for such area under section 24 and all proceedings arising from or incidental to any such prosecution shall be tried, heard and determined by such court or any other court having jurisdiction to try, hear and determine the same, as if no such Primary Schools Panchayat had been constituted for such area. Saving of pending proceedings.

27. (1) The State Government may, by notification in the *Official Gazette* and subject to the condition of previous publication make rules to carry out the purposes of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made to provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) All rules made under this section shall be laid before the State Legislature as soon as may be after they are made and shall be subject to such modifications as the State Legislature may make during the Session in which they are so laid or the session immediately following. The modifications so made shall be published in the *Official Gazette* and shall take effect on and from the date of their publication.

Bom. LXI of 1947. Sau. XXX. III of 1956. 28. (1) On the commencement of this Act, those provisions of the Bombay Primary Education Act, 1947 and the Saurashtra Primary Education Act, 1956 which relate exclusively to compulsion of primary education shall be subject to the provisions of sub-sections (2), (3) and (4) stand repealed. Repeal and savings.

(2) Every scheme of compulsion sanctioned under any of the provisions so repealed and in force immediately before the commencement of this Act shall be deemed to be a scheme sanctioned under this Act and shall be executed in accordance with the provisions of this Act.

(3) Any right, privilege, obligation or liability acquired, accrued or incurred under any such scheme or under any other provisions so repealed shall continue as if acquired, accrued or incurred under this Act and it may be enforced in accordance with the provisions of this Act :

Provided that where any act committed prior to the commencement of this Act was an offence punishable under sub-section (1) of section 36 of

the Bombay Primary Education Act, 1947, or as the case may be, sub-section (1) of section 30 of the Saurashtra Primary Education Act, 1956, any proceeding in respect thereof may be instituted, continued or disposed of as if this Act had not been passed.

Bom.
LXI of
1947.
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III of
1956.

(4) Any proposal, appointment, notification, order, rule, notice, report or delegation made or issued under any of the provisions so repealed shall, in so far as it is not inconsistent with the provisions of this Act, continue to be lawful until it is altered or superseded by a proposal, appointment, notification, order, rule, notice, report or delegation made or issued under this Act.

Act to over-
ride cer-
tain other
Acts.

29. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in the provisions relating to primary education in the Bombay Primary Education Act, 1947 or, as the case may be, the Saurashtra Primary Education Act, 1956.

Bom.
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PART IV

Acts of the Gujarat Legislature and Ordinances promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature having been assented to by the Governor on the 17th October, 1980 is hereby published for general information.

N. B. PATEL.
Secretary to the Government of Gujarat,
Legal Department.

GUJARAT ACT NO. 24 OF 1980.

(First published after having received the assent of the Governor in the "Gujarat Government Gazette" on the 22nd October, 1980).

An Act further to amend the Gujarat Compulsory Primary Education Act, 1961.

It is hereby enacted in the Thirty-first Year of the Republic of India as follows :—

1. This Act may be called the Gujarat Compulsory Primary Education Short title. (Amendment) Act, 1980.

Guj. 2. In the Gujarat Compulsory Primary Education Act, 1961, in section 27, for Amendment
XLI of sub-section (3), the following sub-sections shall be substituted, namely:— of Section 27
1961. of Guj. XLI
of 1961.

"(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any rescission or modifications so made by the State Legislature shall be published in the *Official Gazette* and shall thereupon take effect."

EXTRAORDINARY
PUBLISHED BY AUTHORITY

PART IV

N. B. PATIL

Secretary to the Government of Gujarat,
Gandhinagar, Gandhinagar

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