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Bihar And Orissa Primary Education Act, 1919**1 of 1919****[26 February 1919]**

An Act to provide for the extension of primary education in the Province of Bihar [and Orissa]. Whereas it is expedient to provide for the extension of primary education in 2[the States] of Bihar [and Orissa]; And whereas the previous sanction of the Governor-General has been obtained under Section 79 of the Government of India, Act 1915, to the passing of this Act: It is hereby enacted as follows:- 1. For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1918, Pt.V.p.6. 2. Substituted by A.L.O.

1. Short Title And Extent :-

(1) This Act may be called the Bihar and Orissa Primary Education Act, 1919.

(2) It extends to the whole of 1[the States] of Bihar [and Orissa].

1. Substituted by A.L.O.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context.-

(1) to "attend" a recognized primary school means to be present for instruction at such school on such days and at such time or times on each day as may be required by the school committee with the approval of the prescribed educational authority;

2[(1a) "basic education" means such a system of instruction as is for the time being recognised as basic education-by the 1[State] Government;

3[(2) "Child" means a boy or a girl who is not less than six and not more than eleven years of age or, in an area especially notified by the State Government in this behalf, boy or a girl not less than six and not more than fourteen years of age;]

4[(3) "local authority" means-

(a) in an area constituted, or deemed to be constituted, a municipality under the Bihar and Orissa Municipal Act, 1922, the Municipal Commissioners;

(b) in an area constituted a Union under Section 38 of the Bihar and Orissa Local Self Government Act of 1885, the Union Committee of such Union, subject to the control of the District Board;

(c) in area constituted a Union under the Bihar and Orissa Village Administration Act, 1922, the Union Board of such Union subject to the control of the District Board;

5[(d) in Patna, as defined in clause (gg) of Section 4 of the Patna Municipal Corporation Act, 1951 (Bihar Act 13 of 1952), the Patna Municipal Corporation; and]

(e) in an area specified in a notification issued under sub-section (1) of Section 388 of the Bihar and Orissa Municipal Act, 1922, the Committee constituted under clause (c) of Section 389 of that Act, for such area;

(4) "parent" includes a guardian and any person who is liable to maintain or has actual custody of a child;

(5) "prescribed" means prescribed by Rule made by the 6[State] Government under this Act;

(6) "Primary education" means such instruction in reading, writing and arithmetic and other subjects (if any) as is for the time being recognized as such by the 6[State] Government 7[and includes] basic education;

8[(6a) "recognized basic school" means a school in which basic education is given and which is recognized as such by the Bihar Basic Education Board constituted under Section 2A or by an officer of the Education Department of the 6[State] Government not below the rank of a District Inspector of Schools authorized by the Bihar Basic Education Board;]

(7) "recognized primary school" means a school in which primary education is given, and which is for the time being recognized by the prescribed educational authority 9[and in area in respect of which a declaration under sub-section (4) of Section 3 has been made by the 6[State] Government, includes a recognised basic school];

(8) "school committee means a committee constituted under Section 4 of this Act.

1. substituted by A.L.O.

2. Inserted by Bihar Act 17 of 1946.

3. Substituted by Bihar Act 4 of 1959, for the original CI. (2).

4. Substituted by Bihar Act 16 of 1939 for the original CI. 9.

5. Substituted by Bihar Act 4 of 1959 for the original sub-clause (d).

6. Substituted by A.L.O.

7. Inserted by Bihar Act 17 of 1946.

8. Inserted by *ibid*.

9. Inserted by *ibid*.

2A. Creation Of Basic Education Board :-

1[The 2[State] Government shall, by notification in the Official Gazette, constitute a Board to be known as the Bihar Basic Education Board to exercise the powers conferred by this Act and such other powers as may prescribed, and may, by like notification, vary the constitution of the said Board].

1. Inserted by Bihar Act 17 of 1946.

2. Substituted by A.L.O.

3. Issue Of Notification Declaring Primary Education Of Children Compulsory :-

(1) The local authority 3[or the State Government] may by notification declare that from a date specified therein the primary education of children ordinarily residing in the area within its jurisdiction or in any portion of such area shall be compulsory.

(2) No such notification 4[shall be issued by the local authority]:-

(a) unless the local authority has so determined by resolution passed at a general meeting specially called in this behalf and such resolution has been supported by at least two-thirds of the members present at the meeting;

(b) unless the local authority has satisfied the 2[State] Government that it is in a position to make and intends to make adequate provision in schools maintained or aided or to be provided and maintained or aided by it for primary education of all children for whom such education will become compulsory upon the issue of such notification;

(c) except with the previous sanction of the 2[State] Government.

(3) Every notification under sub-section (1) shall be published in the 5[Official Gazette] and a copy thereof shall be posted at the office of the local authority and at such other places, if any, as the local authority may direct.

1(4) In a notification issued under sub-section (1), the 2[State] Government may declare that the primary education to be provided in the area shall be basic education, and in such a case may constitute a basic education authority for the said area. In the said area, while such notification is in force-

(a) the powers of the local authority under this Act shall be in abeyance;

(b) sub-sections (3) of Section 3, Section 4, 11, 15, 16 and 17 and clause (d) of sub-section (2) of Section 18 of this Act shall have effect as if for the expression the local authority, wherever it occurs in those sections, the expression the basic education authority were substituted.

Explanation.-The 2[State] Government may in any case, if it thinks fit, constitute the Bihar Basic Education Board as the basic education authority for any area in respect of which a declaration under this sub-section is made.

1. Inserted by Bihar Act 17 of 1946.

2. Substituted by A.L.O.

3. Inserted by Bihar Act 17 of 1946.

4. Inserted by *ibid*.

5. Substituted by A. O. for "Gazette".

4. Appointment, Constitution And Functions Of School Committee :-

(1) Where a notification under Section 3 has been issued in respect of any area, the local authority may appoint a school committee for the said area or separate school committees for separate portions of the said area in accordance with Rules prescribed.

(2) Every school committee shall be constituted in such manner and for such period as may be prescribed.

(3) The school committee shall have to the extent prescribed the direction of education in, and the regulation of, primary school in the area for which it is appointed and shall also enforce the provision of this Act respecting the attendance at school and the employment of children.

5. Duty Of Parent To Cause Children To Attend School :-

Where a notification under Section 3 is in force in any area, the parent of every child shall, in the absence of reasonable excuse as hereinafter provided, and if such child ordinarily resides in such area, cause such child to attend a recognised primary school in such area.

6. Meaning Of Reasonable Excuse :-

A parent shall be deemed to have a reasonable excuse within the meaning of section 5 for failure to cause a child to attend a recognized primary school in any of the following cases:-

(a) where the child is prevented from attending school on account of sickness, infirmity, domestic necessity, the seasonal needs of agriculture or other sufficient cause;

(b) where the child is receiving, otherwise than in a recognized primary school, instruction which in the opinion of the school committee is efficient or has already completed his primary education;

(c) where there is no recognized primary school within a distance of one mile by the nearest route from the residence of the child.

7. Issue Of Attendance Order By Magistrate :-

(1) Where the school committee is satisfied that a parent being bound under the provisions of Section 5 to cause a child to attend a recognized primary school has, after due warning by or at the

instance of the school committee, failed to do so, the school committee may apply to a Magistrate for an order directing such parent to cause such child to attend a recognized primary school and the Magistrate shall fix a day for hearing the application and cause notice thereof to be given to the parent.

(2) On the day fixed for the hearing of the application or on any subsequent day to which it may be adjourned, and after hearing the parent or at the direction of the Magistrate any other person on his behalf, the Magistrate may pass an order directing the parent to cause such child to attend a recognized primary school on and from a date which shall be specified in the order.

8. Penalty For Failure To Obey Attendance Order :-

(1) Any parent who fails without reasonable excuse to comply with an order under section 7 shall on conviction before a Magistrate be punished with fine which may on the first conviction extend to two rupees and on a subsequent conviction to ten rupees.

(2) No court shall take cognizance of an offence under sub-section (1), except on the complaint of the school committee.

9. Penalty For Employing Child In Contravention Of The Act :-

(1) Whoever knowingly employs either on his own behalf or on behalf of any other person, any child to whom the provisions of Section 5 apply, so as to interfere with the attendance of such child at a recognized primary school shall, on conviction before a Magistrate, be liable to fine which may extend to twenty-five rupees.

(2) No court shall take cognizance of an offence under sub-section (1) except on the complaint of the committee and before making any complaint under sub section (1) against any person, the school committee shall, unless such person has previously been convicted under sub-section (1) in respect of the same child, cause a warning to be given to such person.

10. School Committee May Authorize Member To Appear :-

An application to a Magistrate under Section 7 and a complaint to a Magistrate under Section 8 or Section 9 may be made on behalf of the school committee by such person as may be authorized by the committee in this behalf.

11. Exemption From Compulsory Education :-

The 1[State] Government of its own motion or on the application of the local authority by notification exempt the children of any class of persons or any community residing in the area of any specified part of the area under the control of the local authority from the operation of this Act or may direct the local authority to make such separate provision for the education for the children of such class of persons or such community as to the 1[State] Government may seem fit.

1. Substituted by A.L.O.

12. Free Primary Education Cess :-

1[The State Government may, by notification.-

(a) declare that from a date specified therein the primary education of child ordinarily residing in any area shall be free; and

(b) impose in such area with effect from the same date a cess to be called free primary education cess.

1. Substituted by Bihar Act 4 of 1959 for original Sections 12 and 13.

13. Rate Of Free Primary Education Cess :-

1[(1) The free primary education cess shall,-

(a) in any municipality constituted under the Bihar and Orissa Municipal Act, 1922, and in any area specified in a notification issued under sub section (1) of Section 388 of that Act, be 2[fifty per cent] of the tax on holding under clause (b) of sub-section (1) of Section 82 or under clause (b) of Section 389, as the case may be, of that Act and shall be recoverable in the same manner as if it were such tax;

(b) in the area to which the Patna Municipal Corporation Act, 1951, applies, be 2[fifty per cent] of the tax on a holding under clause (a) of Section 123 of that Act and shall be recoverable in the same manner as if it were such tax; and

(c) in any other area, other than a Cantonment, be 2[fifty per cent] of the total rent which is payable by raiyat, or if no rent is actually payable, would, on a reasonable assessment, be payable, during the year, for land by raiyat or by any other person in actual use or occupation thereof and shall be recoverable in the manner as if it were such rent.]

(2) The proceeds of the free primary education cess realised under

clause (a) or (b) of sub-section (1) shall, after deducting ten per cent, thereof as collection charges, he deposit in the Government Treasury and shall form part of the consolidated Fund of State.

(3) The proceeds of the free primary education cess realised under clause (c) of sub-section (1) shall, after deducting such collection charges as may be prescribed by the State Government from time to time, be deposited in the Government Treasury and shall form part of the Consolidated Fund of the State.

(4) The nett proceeds of the primary education cess shall be applied wholly to the provision of free primary education and purposes connected therewith (including the provision of school accommodation) in the State.

1. Substituted by Bihar Act 4 of 1959 for original Sections 12 and 13.

2. Substituted by Bihar Act, 28 of 1976, vide Section 2 thereof (w.e.f. 1st Oct. 1974).

14. Liability To Pay School Fees :-

1[The parent of every child attending a recognized primary school shall be liable to pay such fees as may be fixed by the local authority:

Provided that in any area where free primary education cess has been imposed under this Act, no tuition fees shall be payable:

Provided further that in any area, where primary education cess has not been imposed but in respect of which a notification under Section 3 of this Act has been issued, the parent of a child liable to pay fees under this Section may apply to the School Committee for remission of such fees and the School Committee shall hold an enquiry into the application and on being satisfied that the applicant is unable to pay the fees, remit such fees wholly or in part.]

1. Substituted by Bihar Act 3 of 1959 for original Section 14.

15. Schools To Be Opened To Inspection :-

All primary schools maintained by a local authority in any area in which this Act is in force shall be open to inspection by any officer appointed in this behalf by the 1[State] Government.

1. Substituted by A.L.O.

16. Withdrawal Of Notification Under Section 3, On Default :-

If the 1[State] Government is of opinion that a local authority has made default in any of the. requirement of this Act, the 2[State] Government may by notification stating the grounds of such order cancel any notification which has been issued under Section 3, or may make such other order as to the 3[State] Government may seem fit.

1. Substituted by Bihar Act 27 of 1982, (w.e.f. 1st April, 1980).
2. Substituted by A.L.O.
3. For Rules made under this Section see B.O.R.O. Vol. 1, pt. VII.

17. Local Authority To Take The Place Of A School Committee If No School :-

committee appointed

If the local authority does not appoint a school committee under the provision of this Act, the local authority shall itself exercise all the powers conferred and perform all the duties imposed by or under this Act upon a school committee so appointed.

18. Rules :-

(1) The 1[State] Government may by notification make Rules]2 to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such Rules may-

(a) Prescribe the educational authority referred to in Section 2, sub section (1) and (7);

3[(aa) prescribe the. powers of the Bihar Basic Education Board;]

(b) determine generally what shall be considered to be adequate provision for primary education under Section 3, sub-section (2) (b);

(c) prescribe the manner in which application shall be made for the sanction referred to in Section 3, sub-section (2) (c), and the particulars to be furnished with such application;

(d) prescribe the manner in which the school committee shall be constituted, the number of members and the period of office of members of the school committee, its duties and powers in respect of the direction of education in, and the regulation of, primary schools, the manner in which it shall transact its business, its relations with the local authority and with the prescribed educational authority 4[or the Bihar Basic Education Board, as the case may be] and the circumstances in which separate school committees may be appointed for separate portions of an area in

respect of which a notification under Section 3 has been issued;
5[and]

6[(e) prescribe the authority by whom the free primary education cess shall be assessed and collected, the terms subject to which such authority shall function and the manner in which accounts, registers and records shall be maintained by such authority.

(3) All Rules made under this Section shall, as soon as may be after they are made, be laid for not less than fourteen days before both Houses of the State Legislature and shall be subject to such modification as the State Legislature may make during the session in which they are so laid].

1. Substituted by A.L.O.

2. For Rules made under this Section see B.O.R.O. Vol. 1, pt. VII.

3. 7ns. by Bihar Act 17 of 1946.

4. Inserted by *ibid*.

5. Added by Bihar Act 5 of 1959.

6. Inserted by *ibid*.