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PART V GOVERNMENT OF MIZORAM

Acts of Parliament and ordinances promulgated by the President;
Bills introduced in the Parliament of India; Bills published before introduction in the Parliament, and Reports of Selection Committees presented or to be presented in the Parliament.

THE CARRIAGE BY AIR ACT 1972

AN

ACT

to give effect to the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 and to make provision for applying the rules contained in the said Convention in its original form and in the amended form (subject to exceptions, adaptations and modifications) to non-international carriage by air and for matters connected therewith.

Enacted by Parliament in the Twenty-third Year of the Republic of India as follows :—

1. (1) This Act may be called the Carriage by Air Act, 1972.

(2) It extends to the whole of India.

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

Short title,
extent
and com-
mence-
ment.

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

(i) "amended Convention" means the Convention as amended by the Hague Protocol on the 28th day of September, 1955.

Defini-
tions.

(ii) "Convention" means the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929.

Applica-
tion of
Conven-
tion to
India.

3. (1) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Central Government may, by notification in the Official Gazette, certify who are the High Contracting Parties to the Convention, in respect of what territories they are parties and to what extent they have availed themselves of the provisions of rule 36 in the First Schedule and any such notification shall be conclusive evidence of the matters certified therein.

(3) Any reference in the First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.

(4) Any reference in the First Schedule to agents of the carrier shall be construed as including a reference to servants of the carrier.

(5) Every notification issued under sub-section (2) of section 2 of the Indian Carriage by Air Act, 1934 and in force immediately before the commencement of this Act shall be deemed to have been issued under sub-section (2) of this section and shall continue to be in force until such notification is superseded.

20 of 1934

Applica-
tion of
amended
Conven-
tion to
India.

4. (1) The rules contained in the Second Schedule, being the provisions of the amended Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Central Government may, by notification in the Official Gazette, certify who are the High Contracting Parties to the amended Convention and in respect of what territories they are parties, and any such notification shall be conclusive evidence of the matters certified therein.

(3) Any reference in the Second Schedule to the territory of any High Contracting Party to the amended Convention shall be construed as a reference to all the territories in respect of which he is a party.

(4) Any reference in the Second Schedule to agents of the carrier shall be construed as including a reference to servants of the carrier.

Liability
in case
of Death.

3. (1) Notwithstanding anything contained in the Fatal Accidents Act, 1855 or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule and in the Second Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger.

(2) The liability shall be enforceable for the benefit of such of the members of the passengers family as sustained damage by reason of his death.

Explanation—In this sub-section, the expression "member of a family" means wife or husband, parent, step-parent, grand-parent, brother, sister, half-brother, half-sister, child, step-child and grandchild.

Provided that in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

(3) An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under sub-section (2) enforceable, but only one action shall be brought in India in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in India or not being domiciled there express a desire to take the benefit of the action.

(4) Subject to the provisions of sub-section (5), the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportion as the Court may direct.

(5) The Court before which any such action is brought may, at any stage of the proceedings, make any such order as appears to the Court to be just and equitable in view of the provisions of the First Schedule or of the Second Schedule, as the case may be, limiting the liability of a carrier and of any proceedings which have been or are likely to be commenced outside India in respect of the death of the passenger in question.

6. Any sum in francs mentioned in rule 22 of the First Schedule or of the Second Schedule, as the case may be, shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

Conversion
of
francs.

7. (1) Every High Contracting Party to the Convention or the amended Convention, as the case may be, who has not availed himself of the provisions of the Additional Protocol thereto, shall, for the purposes of any suit brought in a Court in India in accordance with the provisions of rule 28 of the First Schedule, or of the Second Schedule, as the case may be, to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908.

Provisions
regarding
suits aga-
inst High
Contract-
ing Parties
who under-
take carri-
age by air.

(2) The High Court may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorise any Court to attach or sell any property of a High Contracting Party to the Convention or to the amended Convention.

Application
of Act to
carriage by
air which
is not in-
ternational

8. (1) The Central Government may, by notification in the Official Gazette, apply the rules contained in the First Schedule and any provision of section 3 or section 5 or section 6 to such carriage by air, not being international carriage by air as defined in the First Schedule, as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) The Central Government may, by notification in the Official Gazette, apply the rules contained in the Second Schedule and any provision of section 4 or section 5 or section 6 to such carriage by air, not being international carriage by air as defined in the Second Schedule as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.

(3) Every notification issued by the Central Government under section 4 of the Indian Carriage by Air Act, 1934 and in force immediately before the commencement of this Act shall be deemed to have been issued under sub-section (1) and shall continue to be in force until such notification is superseded.

20 of 1934.

Repeal

9. The Indian Carriage by Air Act, 1934 is hereby repealed.

20 of 1934.

THE FIRST SCHEDULE

(See section 3)

RULES

CHAPTER I

SCOPE—DEFINITIONS

1. (1) These rules apply to all international carriage of persons, luggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) In these rules, "High Contracting Party" means a High Contracting Party to the Convention.

(3) For the purposes of these rules the expression, "international carriage" means any carriage in which according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to the Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of these rules.

(4) A carriage to be performed by several successive air carriers is deemed, for the purpose of these rules, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) These rules do not apply to carriage performed under the terms of any international postal Convention.

CHAPTER II

DOCUMENTS OF CARRIAGE

Part I—Passenger ticket

3. (1) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars :—

- (a) the place and date of issue ;
- (b) the place of departure and of destination ;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character ;

(d) the name and address of the carrier or carriers ;

(e) a statement that the carriage is subject to the liability contained in this Schedule.

(2) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to these rules. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part II.—Luggage ticket

4 (1) For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.

(2) The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The luggage ticket shall contain the following particulars :—

- (a) the place and date of issue ;
- (b) the place of departure and of destination ;
- (c) the name and address of the carrier or carriers ;
- (d) the number of the passenger ticket ;
- (e) a statement that delivery of the luggage will be made to the bearer of the luggage ticket ;
- (f) the number and weight of the packages ;
- (g) the amount of the value declared in accordance with rule 22(2) ;
- (h) a statement that the carriage is subject to the rules relating to liability contained in the Schedule

(4) The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to these rules. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (d), (f) and (h) of sub-rule (3), the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part III.—Air consignment note

5. (1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note" ; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of rule 9, be none the less governed by these rules.

6. (1) The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier" and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign an acceptance of the goods.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed subject to proof to the contrary, to have done so on behalf of the consignor.

7. The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

8. The air consignment note shall contain the following particulars :—

(a) the place and date of its execution ;

(b) the place of departure and of destination ;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character ;

(d) the name and address of the consignor ;

(e) the name and address of the first carrier ;

(f) the name and address of the consignee, if the case so requires ;

(g) the nature of the goods ;

(h) the number of the packages, the method of packing and the particular marks or numbers upon them ;

(i) the weight, the quantity and the volume or dimensions of the goods ;

(j) the apparent condition of the goods and of the packing ;

(k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it ;

(l) if the goods are sent for payment on delivery, the price of the goods, and if the case so requires, the amount of the expenses incurred ;

(m) the amount of the value declared in accordance with rule 22(2) ;

(n) the number of parts of the air consignment note ;

(o) the documents handed to the carrier to accompany the air consignment note ;

(p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon ;

(q) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

9. If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in rule 8 (a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability.

10. (1) The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

(2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

11. (1) The air consignment note is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(2) The Statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated ; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

12. (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing or, by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise the right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his rights of disposition.

13. (1) Except in the circumstances set out in rule 12, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrive at the expiration of seven days after the date on which they ought to have arrived the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given to them by rules 12 and 13 each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of rules 12, 13 and 14 can only be varied by express provision in the air consignment note.

16. (1) The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The period of the carriage by air comprised in sub-rule (1) comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

20. (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

22. (1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 1,25,000 francs. Where damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 1,25,000 francs. Nevertheless, by special contract the carrier and the passenger may agree to a higher limit of liability.

(2) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The sums mentioned in this rule shall be deemed to refer to the French franc consisting of sixty-five and a half milligrammes gold of millesimal fineness nine hundred.

23. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is set down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract which shall remain subject to the provisions of this Schedule.

24. (1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the cases covered by rule 17, the provisions of sub-rule (1) also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the Court equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

26. (1) Receipt by the person entitled to delivery of luggage or goods without complaint is *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an

establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of rule 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

31. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed as regards the carriage by air.

CHAPTER V

GENERAL AND FINAL PROVISIONS

32. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to these rules, if the arbitration is to take place in the territory of

one of the High Contracting Parties within one of the jurisdictions referred to in rule 28.

33. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

34. This Schedule does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

35. The expression "days" when used in these rules means current days, not working days.

36. When a High Contracting Party has declared at the time of ratification of or of accession to the Convention that sub-rule (1) of rule 2 of these rules shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority, these rules shall not apply to international carriage by air so performed.

THE SECOND SCHEDULE

(See section 4)

RULES

CHAPTER I

SCOPE—DEFINITIONS

1. (1) These rules apply to all international carriage of persons, baggage or cargo performed by aircraft for reward. They apply equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(2) In these rules, "High Contracting Party" means a High Contracting Party to the amended Convention.

(3) For the purposes of these rules, the expression, "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of these rules.

(4) Carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) These rules shall not apply to carriage of mail and postal packages

CHAPTER II

DOCUMENTS OF CARRIAGE

Part I.—Passenger ticket

3. (1) In respect of the carriage of passengers a ticket shall be delivered containing ;

(a) an indication of the places of departure and destination ;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place ;

(c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the amended Convention may be applicable and that the amended Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of, or damage to baggage.

(2) The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to these rules. Nevertheless, if with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by sub-rule (1) (c) of this rule, the carrier shall not be entitled to avail himself of the provisions of rule 22.

Part II.—Baggage check

4. (1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which unless combined with or incorporated in a passenger ticket, which complies with the provisions of sub-rule (1) of rule 3 shall contain :

(a) an indication of the places of departure and destination ;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place ;

(c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the amended Convention may be applicable and that the amended Convention governs and in most cases limits the liability of carriers in respect of loss of, or damage to, baggage.

(2) The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to these rules. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check [unless combined with or incorporated in the passenger ticket which complies with the provisions of rule (1) (c) or rule 3] does not include the notice required by sub-rule (1) (c) of this rule, he shall not be entitled to avail himself of the provisions of sub rule 2) of rule 22.

Part III.—Air waybill

5. (1) Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of rule 9, be none the less governed by these rules.

6. (1) The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The carrier shall sign prior to the loading of the cargo on board the aircraft.

(4) The signature of the carrier may be stamped ; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

7. The carrier of cargo has the right to require the consignor to make out separate waybills when there is more than one package.

8. The air waybill shall contain :

(a) an indication of the places of departure and destination ;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place ;

(c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the amended Convention may be applicable and that the amended Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to, cargo.

9. If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notiae required by rule 8 c), the carrier shall not be entitled to avail himself of the provisions of sub-rule (2) of rule 12.

10. (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.

(2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

11. (1) The air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

(2) The statements in the air waybill relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated ; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

12. (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

13 (1) Except in the circumstances set out in the preceding rule, the consignee is entitled on arrival of the cargo at the place of destination to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given to them by rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of rules 12, 13 and 14 can only be varied by express provision in the air waybill.

(3) Nothing in these rules prevents the issue of a negotiable air waybill.

16. (1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding sub-rule comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If however, such a carriage takes place in the performance of a contract for carriage by air for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

20. The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

22. (1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 2,50,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 2,50,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery

at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The limits prescribed in this rule shall not prevent the Court from awarding in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding Court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action if that is latter

(5) The sums mentioned in francs in this rule shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgement.

23. (1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract which shall remain subject to the provisions of these rules.

(2) Sub-rule (1) of this rule shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

24. (1) In the cases covered by rules 18 and 19 any action for damages however founded, can only be brought subject to the conditions and limits set out in these rules.

(2) In the cases covered by rule 17 the provisions of the preceding sub-rule also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. The limits of liability specified in rule 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

26. (1) If an action is brought against a servant or agent of the carrier arising out of damage to which these rules relate, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under rule 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

(3) The provisions of sub-rules (1) and (2) of this rule shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

27. (1) Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

28. In the case of the death of the person liable, an action for damages lies in accordance with the terms of these rules against those legally representing his estate.

29. (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the Court seized of the case.

30. (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

31. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (3) of rule 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

32. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of the Schedule are observed as regards the carriage by air.

CHAPTER V

GENERAL AND FINAL PROVISIONS

33. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to

infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to these rules, if the arbitration is to take place within one of the jurisdictions referred to in sub-rule (1) of rule 29.

34. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

35. The provisions of rules 3 to 9 (inclusive) relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

36. The expression 'days' when used in these rules means current days, not working days.

**THE DELHI SCHOOL EDUCATION
ACT, 1973**

THE DELHI SCHOOL EDUCATION ACT 1973

AN

ACT

to provide for better organisation and development of school education in the Union territory of Delhi and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows :

CHAPTER I

PRELIMINARY

1. (i) This Act may be called the Delhi School Education Act, 1973.
- (ii) It extends to the whole of the Union territory of Delhi.
- (iii) It shall come into force on such date as the Administrator may, by notification, appoint and different dates may be appointed for different provisions of this Act, and any reference to the commencement of this Act in relation to any provision thereof shall be construed as a reference to the date on which that provision comes into force.

Short title,
extent and
commence-
ment.

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

- (a) "Administrator" means the Administrator of the Union territory of Delhi appointed by the President under article 239 of the Constitution.

Defini-
tions.

(b) "Advisory Board" means the Board referred to in section 22.

(c) "aid" means any aid granted to a recognised school by the Central Government, Administrator, a local authority or any other authority designated by the Central Government, Administrator or a local authority,

(d) "aided school" means a recognised private school which is receiving aid in the form of maintenance grant from the Central Government, Administrator or a local authority or any other authority designated by the Central Government, Administrator or a local authority.

(e) "appropriate authority" means—

(i) in the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government that authority.

(ii) in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf.

(iii) in the case of a school recognised or to be recognised by the Municipal Corporation of Delhi, that Corporation.

(iv) in the case of any other school, the Administrator or any other officer authorised by him in this behalf.

(f) "Delhi" means the Union territory of Delhi;

(g) "Director" means the Director of Education, Delhi, and includes every other officer authorised by him to perform all or any of the functions of the Director under this Act;

(h) "employee" means a teacher and includes every other employee working in a recognised school;

(i) "existing employee" means an employee of an existing school who is employed in such school immediately before the commencement of this Act, and includes an employee who was employed in such school for a period of not less than twelve months immediately preceding the 2nd day of September, 1972;

(j) "existing school" means a recognised private school which is in existence at the commencement of this Act;

(k) "Head of school" means the principal academic officer, by whatever name called, of a recognised school,

(l) "local authority" means,—

(i) in relation to an area within the local limits of the Municipal Corporation of Delhi, that Corporation;

(ii) in relation to an area within the local limits of the New Delhi Municipal Committee, that Committee;

(iii) in relation to an area within the local limits of the Delhi Cantonment Board, that Board;

(m) "manager", in relation to a school, means the person, by whatever name called, who is entrusted, either on the date on which this Act comes into force or, as the case may be, under a scheme of management made under section 5, with the management of the affairs of that school ;

(n) "managing committee" means the body of individuals who are entrusted with the management of any recognised private school ;

(o) "minority school" means a school established and administered by a minority having the right to do so under clause (1) of article 30 of the Constitution ;

(p) "notification" means a notification published in the Official Gazette ;

(q) "prescribed" means prescribed by rules made under this Act ;

(r) "private school" means a school which is not run by the Central Government, Administrator, a local authority or any other authority designated or sponsored by the Central Government, Administrator or a local authority ;

(s) "public examination" means an examination conducted by the Central Board of Secondary Education, Council for Indian School Certificate Examinations or any other Board which may hereafter be established for the purpose, and recognised by the Administrator or any other officer authorised by him in this behalf ;

(t) "recognised school" means a school recognised by the appropriate authority ;

(u) "school" includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education ;

(v) "school property" means all movable and immovable property belonging to, or in the possession of, the school and all other rights and interests in, or arising out of, such property, and includes land, building and its appurtenances, playgrounds, hostels, furniture, books, apparatus, maps, equipment, utensils, cash, reserve funds, investments and bank balances ;

(w) "teacher" includes the Head of a school ;

(x) "unaided minority school" means a recognised minority school which does not receive any aid.

CHAPTER II

ESTABLISHMENT, RECOGNITION, MANAGEMENT OF, AND AID TO, SCHOOLS

3. (1) The Administrator may regulate education in all the schools in Delhi in accordance with the provisions of this Act and the rules made thereunder.

Power of
Adminis-
trator to
regulate
education
in schools.

(2) The Administrator may establish and maintain any school in Delhi or may permit any person or local authority to establish and maintain any school in Delhi, subject to compliance with the provisions of this Act and the rules made thereunder.

(3) On and from the commencement of this Act and subject to the provisions of clause (1) of article 30 of the Constitution, the establishment of a new school or the opening of a higher class or the closing down of an existing class in any existing school in Delhi shall be subject to the provisions of this Act and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with the provisions of this Act shall not be recognised by the appropriate authority.

Recogni-
tion of
schools.

4. (1) The appropriate authority may, on an application made to it in the prescribed form and in the prescribed manner, recognise any private school :

Provided that no school shall be recognised unless—

(a) it has adequate funds to ensure its financial stability and regular payment of salary and allowances to its employees ;

(b) it has a duly approved scheme of management as required by section 5 ;

(c) it has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it ;

(d) it provides for approved courses of study and efficient instruction ;

(e) it has teachers with prescribed qualifications ; and

(f) it has prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.

(2) Every application for recognition of a school shall be entertained and considered by the appropriate authority and the decision thereon shall be communicated to the applicant within a period of four months from the date of the receipt of the application ; and where recognition is not granted, the reasons for not granting such recognition shall also be communicated to the applicant within the said period.

(3) Where recognition to a school is refused, any person aggrieved by such refusal may, within thirty days from the date of communication to him, of such refusal, appeal against such refusal, in the prescribed manner, to the prescribed authority and the decision of the prescribed authority thereon shall be final :

Provided that the prescribed authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of thirty days, extend, for reasons to be recorded by it in writing, the said period by a further period of sixty days.

(4) Where the managing committee of a school obtains recognition by fraud, misrepresentation or suppression of material particulars, or where, after obtaining recognition, the school fails to continue to comply with any of the conditions specified in the proviso to sub-section (1), the authority granting the recognition may, after giving the managing committee of the school a reasonable opportunity of showing cause against the proposed action, withdraw the recognition granted to such school under sub-section (1).

(5) The recognition granted under sub-section (1) shall not, by itself, entitle any school to receive aid.

(6) Every existing school shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder :

Provided that where any such school does not satisfy any of the conditions specified in the proviso to sub-section (1), the prescribed authority may require the school to satisfy such conditions and such other conditions as may be prescribed, within a specified period and if any such condition is not satisfied, recognition may be withdrawn from such school.

(7) Every school, whose recognition is withdrawn under sub-section (4) or sub-section (6), may appeal to the prescribed authority, who shall dispose of the appeal within six months from the date of presentation of the appeal in such manner as may be prescribed, and if the appeal is not disposed of within that period, the order for the withdrawal of recognition shall, on the expiry of the said period of six months, stand cancelled.

(8) On hearing an appeal preferred under sub-section (3) or sub-section (7), the prescribed authority may, after giving the appellant a reasonable opportunity of being heard, confirm, modify or reverse the order appealed against.

5. (1) Notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law, the managing committee of every recognised school shall make, in accordance with the rules made under this Act and with the previous approval of the appropriate authority, a scheme of management for such school :

Scheme
of
manage-
ment.

Provided that in the case of a recognised private school which does not receive any aid, the scheme of management shall apply with such variations and modifications as may be prescribed :

Provided further that so much of this sub-section as relates to the previous approval of the appropriate authority, shall not apply to a scheme of management for an unaided minority school.

(2) A scheme may be made, in like manner, to add to, vary or modify any scheme made under sub-section (1).

6. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf and subject to such conditions as may be prescribed, pay to the Administrator, for distribution of aid to recognised private schools, not being primary schools recognised by a local authority, such sums of money as that Government may consider necessary :

Aid to
recognised
schools.

Provided that no existing school receiving, immediately before the commencement of this Act, aid shall be eligible for the continuance of such aid unless it complies, within such period as may be specified by the Director with the conditions specified in the proviso to sub-section (1) of section 4.

(2) The authority competent to grant the aid may stop, reduce or suspend aid for violation of any of the conditions prescribed in this behalf.

(3) The aid may cover such part of the expenditure of the school as may be prescribed.

(4) No payment out of the aid given for salary, allowances and provident fund of employees of the school, shall be made for any other purpose.

(5) No aid shall be given to a school the management of which has been taken over under section 20

(6) No unrecognised school shall be eligible to receive any aid or any benefit made available to private schools by the Administrator or any agency of the Administrator.

CHAPTER III

SCHOOL PROPERTY

7. (1) The management of every aided school shall furnish to the appropriate authority, initially, at the time of grant of aid and thereafter annually, a statement containing a list of school property together with such particulars as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, no transfer, mortgage or lease of any movable or immovable property of an aided school, not being the property specified in the rules, shall be made except with the previous permission of the appropriate authority :

Provided that where the appropriate authority omits or fails to dispose of the application for such permission within sixty days from the date of receipt of the application in this behalf, the permission shall, on the expiry of the said period of sixty days, be deemed to have been granted.

(3) Any person aggrieved by the grant or refusal of permission under sub-section (2) may prefer, in such form and within such time as may be prescribed, appeal to the Administrator against such grant or refusal of permission and the decision of the Administrator thereon shall be final.

(4) Any transaction made in contravention of the provisions of sub-section (2), or, as the case may be, decision of the Administrator, shall be void.

CHAPTER IV

TERMS AND CONDITIONS OF SERVICE OF EMPLOYEES OF RECOGNISED
PRIVATE SCHOOLS

8. (1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognised private schools.

Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee:

Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.

(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director :

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee :

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

(5) Where the intention to suspend, or the immediate suspension of, an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.

9. Every employee of a recognised school shall be governed by such Code of Conduct as may be prescribed and on the violation of any provision of such Code of Conduct, the employee shall be liable to such disciplinary action as may be prescribed.

Terms
and
conditions
of service
of
employees
of
recognised
private
schools

Employees
to be
governed
by a Code
of
Conduct.

Salaries
of
employees

10. (1) The scales of pay and allowances, medical facilities pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

Tribunal.

11. (1) The Administrator shall, by notification, constitute a Tribunal, to be known as the "Delhi School Tribunal", consisting of one person :

Provided that no person shall be so appointed unless he has held office as a District Judge or any equivalent judicial office.

(2) If any vacancy, other than a temporary absence, occurs in the office of the presiding officer of the Tribunal, the Administrator shall appoint another person, in accordance with the provisions of this section, to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Administrator shall make available to the Tribunal such staff as may be necessary in the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) The Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sittings.

(6) The Tribunal shall for the purpose of disposal of an appeal preferred under this Act have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908 and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit.

5 of 1908.

12. Nothing contained in this Chapter shall apply to an unaided minority school.

Chapter
not to
apply to
unaided
minority
schools.

CHAPTER V

PROVISIONS APPLICABLE TO UNAIDED MINORITY SCHOOLS

13. The Administrator may make rules regulating the minimum qualifications for, and method of, recruitment of employees of unaided minority schools.

Power to prescribe minimum qualifications for recruitment.

Provided that no qualification shall be varied to the disadvantage of an existing employee of an unaided minority school.

14. Every employee of an unaided minority school shall be governed by such Code of Conduct as may be prescribed.

Power to prescribe Code of Conduct Contract of service.

15. (1) The managing committee of every unaided minority school shall enter into a written contract of service with every employee of such schools :

Provided that if, at the commencement of this Act, there is no written contract of service in relation to any existing employee of an unaided minority school, the managing committee of such school shall enter into such contract within a period of three months from such commencement :

Provided further that no contract referred to in the foregoing proviso shall vary to the disadvantage of any existing employee the term of any contract subsisting at the commencement of this Act between him and the school.

(2) A copy of every contract of service referred to in sub-section (1) shall be forwarded by the managing committee of the concerned unaided minority school to the Administrator who shall, on receipt of such copy, register it in such manner as may be prescribed.

(3) Every contract of service referred to in sub-section (1) shall provide for the following matters, namely :—

(a) the terms and conditions of service of the employee, including the scale of pay and other allowances to which he shall be entitled ;

(b) the leave of absence, age of retirement, pension and gratuity, or, contributory provident fund in lieu of pension and gratuity, and medical and other benefits to which the employee shall be entitled ;

(c) the penalties which may be imposed on the employee for the violation of any Code of Conduct or the breach of any term of the contract entered into by him ;

(d) the manner in which disciplinary proceedings in relation to the employee shall be conducted and the procedure which shall be followed before any employee is dismissed, removed from service or reduced in rank ;

(e) arbitration of any dispute arising out of any breach of contract between the employee and the managing committee with regard to—

(i) the scales of pay and other allowances,

(ii) leave of absence, age of retirement, pension, gratuity, provident fund, medical and other benefits.

(iii) any disciplinary action leading to the dismissal or removal from service or reduction in rank of the employee;

(f) any other matter which, in the opinion of the managing committee, ought to be, or may be, specified in such contract.

CHAPTER VI

ADMISSION TO SCHOOLS AND FEES

Admission
to
recognised
schools.

16. (1) A child who has not attained the age of five years, shall not be admitted to class I, or an equivalent class or any class higher than class I, in a recognised school.

(2) A student seeking admission for the first time in a recognised school in a class higher than class I shall not be admitted to that class if his age reduced by the number of years of normal school study between that class and class I or an equivalent class, falls short of five years.

(3) Admission to a recognised school or to any class thereof shall be regulated by rules made in this behalf.

Fees and
other
charges.

17. (1) No aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director.

(2) Every aided school having different rates of fees or other charges of different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds.

(3) The manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement.

School
Fund.

18. (1) In every aided school, there shall be a fund, to be called the "School Fund," and there shall be credited thereto—

(a) any aid granted by the Administrator,

(b) income accruing to the school by way of fees, charges or other payments, and,

(c) any other contributions, endowments and the like,

(2) The School Fund and all other funds, including the Pupils' Fund, established with the approval of the Administrator, shall be accounted for and operated in accordance with the rules made under this Act.

(3) In every recognised unaided school, there shall be a fund, to be called the "Recognised Unaided School Fund," and there shall be credited thereto income accruing to the school by way of—

(a) fees,

(b) any charges and payments which may be realised by the school for other specific purposes, and

(c) any other contributions, endowments, gifts and the like.

(4) (a) Income derived by unaided schools by way of fees shall be utilised only for such educational purposes as may be prescribed; and

(b) Charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for the specific purpose for which they were realised or received.

(5) The managing committee of every recognised private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed.

19. (1) For the purpose of any public examination every recognised higher secondary school shall be affiliated to one or more of the Boards or Council conducting such examinations and shall fulfill the conditions specified by the Board or Council in this behalf.

Affilia-
tions.

(2) The students of recognised higher secondary schools shall be prepared for, and presented to, the public examinations or such other form of evaluation held or made for the students of such schools.

(3) The students of every recognised middle school shall be prepared for, and presented to, such public examination as may be held by the Directorate of Education, Delhi, for the students of such schools.

(4) Every student of a recognised primary school shall be prepared for, and presented to, the public examination held by a local authority competent to hold such examination for the students of such schools.

CHAPTER VII

TAKING OVER THE MANAGEMENT OF SCHOOLS

20. (1) Whenever the Administrator is satisfied that the managing committee or manager of any school, whether recognised or not, has neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education to take over the management of such school, he may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding three years.

Taking
over the
manage-
ment of
schools.

Provided that where the management of a school has been taken over for a period of three years or less, the administrator may, if he is of opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the said limited period, he may, from time to time, issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so, however, that the total period for which such management is taken over shall not, in any case, exceed five years.

(2) Whenever the management of any school is taken over under sub-section (1), every person in charge of the management of such school immediately before its management is taken over, shall deliver possession of the school property to the Administrator or any officer authorised by him in this behalf.

(3) After taken over the management of any school under this section, the Administrator may arrange to manage the school through the Director or any other person authorised by the Director in this behalf (hereinafter referred to as the "authorised officer").

(4) Where the management of any school has been taken over under sub-section (1), the managing committee or manager of such school may, within three months from the date of taking over, appeal to the Administrator, who may after considering the representation made by the managing committee or the manager, pass such orders, including an order for the restoration of the management or for the reduction of the period during which the management of such school shall remain vested in the Administrator, as he may deem fit.

(5) Where the management of a school have been taken over under this section, the Administrator shall pay such rent as may be payable for the building of the school to the person entitled to receive it as was being paid by the managing committee or the manager immediately before the management of such school was taken over.

(6) During such period as any school remain under the management of the authorised officer—

(a) the service conditions, as approved by the Administrator, of the employees of the school who were in employment immediately before the date on which the management was taken over, shall not be varied to their disadvantage.

(b) all educational facilities which the school had been affording immediately before such management was taken over, shall continue to be afforded.

(c) the School Fund, the Pupils' Fund and the Management Fund and any other existing fund shall continue to be available to the authorised officer for being spent for the purposes of the school and

(d) no resolution passed at any meeting of the managing committee of such school shall be given effect to unless approved by the Administrator.

21. Nothing contained in section 20 shall apply to any minority school.

CHAPTER VIII

MISCELLANEOUS

22. (1) There shall be an Advisory Board for school education, to be called the "Delhi School Education Advisory Board" for the purpose of advising the Administrator on matters of policy relating to education in Delhi.

Section 20
not to
apply to
minority
schools.

Delhi
Schools
Education
Advisory
Board

(2) The Advisory Board shall be constituted by the Administrator and shall consist of a Chairman and fourteen other members, to be nominated by the Administrator.

(3) The Advisory Board constituted under sub-section (2) shall include—

- (a) Heads of recognised private schools.
- (b) representatives of the organisations of teachers of the recognised private schools.
- (c) managers of the recognised private schools,
- (d) representatives of parents or guardians of students of recognised private schools ; and
- (e) eminent educationists.

(4) The Advisory Board shall regulate its own procedure.

(5) The terms of office of every member of the Board and travelling and other allowance payable to a member of the Board shall be such as may be prescribed.

23. (1) The Administrator may delegate all or any of his powers, duties and functions under this Act to the Director or any other officer.

Delegation of powers.

(2) Every person to whom any power is delegated under sub-section (1), may exercise that power in the same manner and with the same effect as if such power had been conferred on him directly by this Act and not by way of delegation.

24. (1) Every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed.

Inspection of schools.

(2) The Director may also arrange special inspection of any school on such aspects of its working as may, from time to time, be considered necessary by him.

(3) The Director may give directions to the manager requiring the manager to rectify any defect or deficiency found at the time of inspection or otherwise in the working of the school.

(4) If the manager fails to comply with any direction given under sub-section (3), the Director may, after considering the explanation or report, if any, given or made by the manager, take such action as he may think fit, including—

- (a) stoppage of aid,
- (b) withdrawal of recognition, or
- (c) except in the case of a minority school, taking over of the school under section 20.

25. No civil court shall have jurisdiction in respect of any matter in relation to which the Administrator or the Director or any other person authorised by the Administrator or Director or any other officer or authority appointed or specified by or under this Act, is empowered by or under this Act to exercise any power, and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.

Jurisdiction of civil courts barred.

26. No suit, prosecution or other legal proceeding shall lie against the Administrator, Director or any other person authorised by the Administrator or Director for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

Protection of action taken in good faith.

27. If the manager of any recognised private school—

(a) omits or fails, without any reasonable excuse, to carry out any orders made by the Tribunal, or

Liability of manager to punishment.

(b) presents any student for any public examination without complying with the provisions of section 19, or

(c) omits or fails to deliver any school property to the Administrator or any officer authorised by him under sub-section (2) of section 20, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

28. (1) The Administrator may, with the previous approval of the Central Government, and subject to the condition of previous publication, by notification, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely :—

(a) the manner in which education may be regulated by the Administrator in Delhi;

(b) the conditions which every existing school shall be required to comply;

(c) establishment of a new school or the opening of a higher class or the closing down of an existing class in an existing school;

(d) the form and manner in which an application for recognition, of a school shall be made;

(e) the facilities to be provided by a school to obtain recognition;

(f) the manner in which, and the authority to which, an appeal against the refusal or withdrawal of recognition shall be made;

(g) the minimum qualifications for, and method of recruitment, and the terms and conditions of service of employees;

(h) the authorities to be specified for the purposes of the different provisions of this Act;

(i) the particulars which a scheme of management shall contain, and the manner in which such scheme shall be made;

(j) variations and modifications which may be made in the scheme of management for a recognised school which does not receive any aid;

(k) the conditions under which aid may be granted to recognised schools, and on the violation of which aid may be stopped, reduced or suspended;

(l) the part of the expenditure of a recognised school which is to be covered by aid;

(m) particulars of school property which should be furnished to the appropriate authority;

(n) the form in which, and the time within which, an appeal shall be preferred to the Administrator against an order made in relation to the transfer, mortgage or lien of any school property;

(o) the Code of Conduct for the employees and the disciplinary action to be taken for the violation thereof;

(p) the benefits which should be granted to the employees of recognised private school;

(q) admissions to a recognised school;

(r) fees and other charges which may be collected by an aided schools;

(s) the manner of inspection of recognised schools;

(t) the term of office, travelling and other allowances payable to the members of the Advisory Board;

(u) financial and other returns to be filed by the managing committee of recognised private schools, and the authority by which such returns shall be audited;

(v) educational purposes for which the income derived by way of fees by recognised unaided schools shall be spent;

(w) manner of accounting and operation of school funds and other funds of a recognised private school;

(x) fees, not exceeding one rupee, for preferring any appeal under this Act;

(y) any other matter which is to be, or may be, prescribed under this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule there-after 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.

29. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

Power to
remove
difficul-
ties.