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## Awareness & Access to Justice: A Solution for Strengthening Status of Teachers working in Self-Finance Courses in Higher Education.

PRAGNYABEN BANSILAL KANSARA

Research Scholar,  
Pursuing Ph. D.  
P. G. Department of Law  
Sardar Patel University,  
Vallabh Vidyanagar

### Abstract:

As we know all that human rights are available to all human beings irrespective of anything. Workplace related human rights are available to each employee at his/her workplace. In 1991, LPG policy has been declared. It has given introduction to many self-finance courses and institutions in higher education. As a result of it, large number of people have been employed as teachers in self-finance higher education institutions in India. In most of the self-finance higher education institutions, teachers are employed on contractual or temporary basis. Their rights are violated. In the present research, the researcher has studied status of teachers working in self-finance higher education institutions & taken interview from 27 teachers working in self-finance higher education institutions from State of Gujarat. It was found that majority are aware about their human rights, Legal Rights etc. and have not access to justice by them due to some reasons like job insecurity, behavior change of management etc. The researcher has given some suggestions for policy making by the authority.

**Key Words:** Teachers, Self-Finance, Higher Education, Awareness

**Introduction:**

For any action, the first step is thought. Anyone's mind works on the basis of the information and the knowledge perceived by five senses and his/her conscience. Therefore, it is very much important that any human being should have information or knowledge regarding his/her rights where he/she stands. In 1991 LPG (Liberalisation, Privatisation and Globalization) has given introduction to many self-finance courses and institutions in higher education. As a result of it, large number of people have been employed as teachers in self-finance higher education institutions in India. Law provides solution to socio-legal problems in the society. Now, the problem has been arisen that teachers' fundamental as well as human rights and certain legal rights are violated by the employers in the absence of clear policy for working conditions of teachers working in self-finance higher education institutions. The researcher believes that if awareness can be spread among the teachers about their rights, they can access justice.

**Objectives:**

- 1) To study the status of teachers working in self finance courses in Higher Education Institutions.
- 2) To study the awareness about how many ways justice can be access by teachers working in self finance courses in Higher Education Institutions.
- 3) To find reasons for not accessing to justice by teachers working in self finance courses in Higher Education Institutions.
- 4) To provide suggestions for strengthening status of teachers working in self finance courses in Higher Education Institutions.

**Research Design:**

The present study is the study on where the teachers working in self-finance courses/Institutions higher education stands in the eyes of law. So the first objective for research will be served through various legislations applicable to teachers working in self-finance courses/Institutions in higher education and various judgments applicable to them which is based on Doctrinal research. While for second objective awareness and access to justice by teachers working in self-finance courses/Institutions in higher education will be based on primary data (Non-Doctrinal) collected through interview of 27 teachers working in self-finance Courses/Institutions in State of Gujarat. Again the third and fourth objectives will be based on questions asked during interview to find reasons for not accessing justice and on the basis of which suggestions will be given. So, the researcher has used both doctrinal as well non-doctrinal research methodology.

## Status of Teachers Working in Self Finance Courses in Higher Education Institution in India:

There is no specific Act which is applicable to Teachers working in Self Finance Courses/Institutions in Higher Education Institutions. Of course, for terms of employment and benefits to be received by teachers working in Government and Grant-in-Aid Colleges are governed by UGC (University Grant Commission) norms. Therefore let's discuss which Acts are applicable to the teachers working in self-finance courses in Higher Education Institutions.

### ❖ Applicability of various Laws:

#### 1. Indian Contract Act, 1872

- All the provisions of General Principles Contract from Section 1 to 75 are applicable to an agreement between institution and Teachers employed in Self-Finance Higher Education Institutions for appointment.
- Appointment of teachers are designated as ad hoc or temporary basis. Ad hoc here means arrangement for the purpose of teaching and other work. As soon as the work finishes at the end of the academic year they are relieved from their job.
- Teachers appointed on the basis of contract are normally appointed without following any regulatory guidelines and due procedure for appointing them. The Supreme Court has urged time to time the government to bring appropriate legislation in place to regulate teachers to be appointed on contractual basis.<sup>1</sup>
- In Self-Finance Higher Education Institutions or Courses introduce by a Grant-in-aid Institution appoint contractual teachers by entering into a contract for specific term [i.e. 11 months contract]. The contract is renewed either with fresh interview or without interview after expiration of term if required by the institution. The terms of employment and conditions of services are strictly governed by contract drafted between the teacher and particular institution.
- Appointment of teachers on contract basis are very much economical for Higher Education Institutions. Because they are appointed on fixed salary. Moreover, they are not paying other benefits like House Rent Allowance, Dearness Allowance, Travelling Allowance, and various types of leaves like sick leave, duty leaves, and maternity leave with pay to female teachers if required, Payment of Gratuity, Employee Provident Fund etc. available to regular teachers.
- The Institutions appoint less number of teachers than it is required and as a result of it, the Higher Education Institutions are making huge profits. But teachers are not benefited.

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<sup>1</sup> Application of Law of Contracts in the Education Sector, *available* at: <https://www.legalserviceindia.com/legal/article-3231-application-of-law-of-contracts-in-the-education-sector.html>

- Teachers can approach to the Court in case of termination from service after long years of services to the Institution.
- The Supreme Court directed to the government the government to frame a scheme for regularization of contractual employees.<sup>2</sup>
- The Supreme Court directed the government for regulation on termination of service of temporary employees.<sup>3</sup>

## 2. Protection of Human Rights Act, 1993

Human Rights are available to teachers working in Self-Finance Courses of Higher Education Institutions.

Section 2 (1) (d) provides definition of Human Rights: the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts in India.

- ✓ Universal Declaration of Human Rights, 1948 (a model for enacting human rights – not enforceable)
- ✓ International Covenant on Civil and Political Rights, 1966
- ✓ International Covenant on Economic, Social and Cultural Rights, 1966
- ✓ Fundamental Rights Under the Constitution of India, 1950
- ✓ For Women Teachers ---- Convention on the Elimination of All forms of Discrimination Against Women, 1979 [CEDAW]

### Where to file complaint for violation of Human Rights:

- ✓ State Human Right Commission /National Human Right Commission

## 3. Constitution of India, 1950

### Fundamental Rights

Article 14:

#### Equality before law:

The State shall not deny to any person equality before the law or equal protection of laws within the territory of India.

The doctrine of equal pay for equal work is enforced in a court of law. But condition is that equal pay must be for equal work of equal value. Article 14 permits reasonable classification that is based on qualities or characteristics of persons recruited and they are working together.

<sup>2</sup> Dharwad Distt P. W. D. Literate Daily Wage Employees Association v. State of Karnataka [AIR 1990 SC 883]

<sup>3</sup> Champaklal v. Union of India [AIR 164 SC 1854]

**Article 21: Right to life**

No person shall be deprived of his life and personal liberty except procedure established by law.

**Rights emerged through interpretation by the Supreme Court:**

**Right to livelihood:** This right is included in right to life would include right to neither to continue in permanent employment which is not a bounty of employer nor can its survival be at volition or mercy of the employer. Income is the foundation to enjoy many fundamental rights and when work is the source of income, the right to work would become as much a fundamental right.<sup>4</sup>

Right to health, Right to Legal Aid, Right to Fair Trial, Right to know, Right to Privacy, Right to Reputation, Right to social and economic justice, Right to liberty, Right to speedy trial etc.,

**Right to Constitutional Remedy: (Article 32):**

Article 32 of Constitution of India enshrined right to redress of individuals. They may seek redressal for violation of fundamental rights. This is a constitutional weapon which is known as 'writs' for the enforcement of such rights. Under Article 32(2) the Supreme Court has power to issue directions or orders including writs in the nature Habeas Corpus, Mandamus, Prohibition, quo warranto, Certiorari etc.

**Directive Principles of State Policy:**

For the purpose of dreaming a State as 'Welfare State', Directive Principles of State Policy is supportive tool. The objective behind putting this specific chapter in the Constitution is to establish social and economic democracy in the Country. There is no enforceability to the provisions of Directive Principles of State Policy. But the Articles available in this chapter provide basic principles, guidelines and instructions for enacting laws. Articles 39, 39A, 42, 43A are applicable to teachers working in self finance higher education institutions.

**Article 246 ..... Schedule VII..... List III Concurrent List:**

The word 'Education' is specified in concurrent list of Schedule VII of Article 246 in the Constitution of India. So both State as well as Centre has power to enact laws on this subject. All educational institutions are bound to follow guidelines of the legislations enacted by both Parliament as well as State Legislative Assembly in the State.

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<sup>4</sup> Dr. Subhash C. KAshyap, Constitutional Law of India Page no. 620 (Universal Law Publishing, Haryana, Second Edition Volume I, 2015)

#### **4. Equal Pay For Equal Work, 1976 (Repealed) (Replaced by New Code on Wages 2019)**

The purpose of the Act is to deal with equal pay for equal work for men and women. It is a regime for dealing with payment of wages equally.

It is the duty of any employer to pay same remuneration to men and women employees who are allocated with same work or work of similar nature.

#### **5. Payment of Gratuity Act, 1972**

The main purpose of the Act is to provide a scheme for payment of gratuity which is a benefit given to employees employed for continuous services for at least five years. It is due on resignation, termination, superannuation on retirement, death etc. For that purpose this Act, the employee must come under the definition of 'Employee' as given by the Act. In definition of 'employee' as defined in the Act 'other establishments' educational institution is included.<sup>5</sup> Therefore, teachers working in self-finance higher education institutions are eligible for payment of gratuity.

#### **6. Maternity Benefits Act, 1961**

This Act is applicable to all working women irrespective of their job private/public workplace where 10 or more employees have been employed. Teachers working in self-finance higher education institutions are eligible for maternity benefits. In the year 2017 an amendment was made in the Act and now maternity leaves are available to women with pay up to 26 weeks. Out of 26, for 8 weeks a woman can claim before delivery. Maternity benefit is available with pay for maximum 2 children. This benefit is available to the teacher working in self-finance courses in higher education institutions in India.

#### **7. THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952**

Provident fund is a welfare benefit which is available to employees. It is governed under the above Act. In Provident fund, both the employee and employer contribute their part and it is deposited with EPFO by the employer. The Employer deduct amount from employee's salary. The interest received

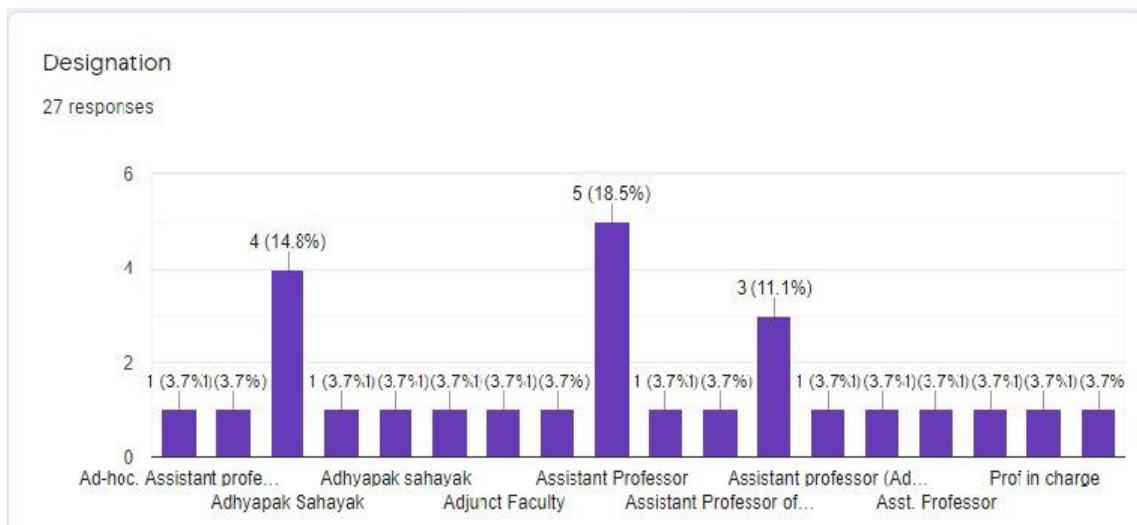
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<sup>5</sup> Management of S. I. E. T. Women's College V. Mohamed Ibrahim and Others (1992) 1 LLJ 91 (Madras)



as a result of investment is credited to EPF Account of the employee. As soon as the employee get retired, the employee will receive accumulated amount after certain conditions are satisfied.

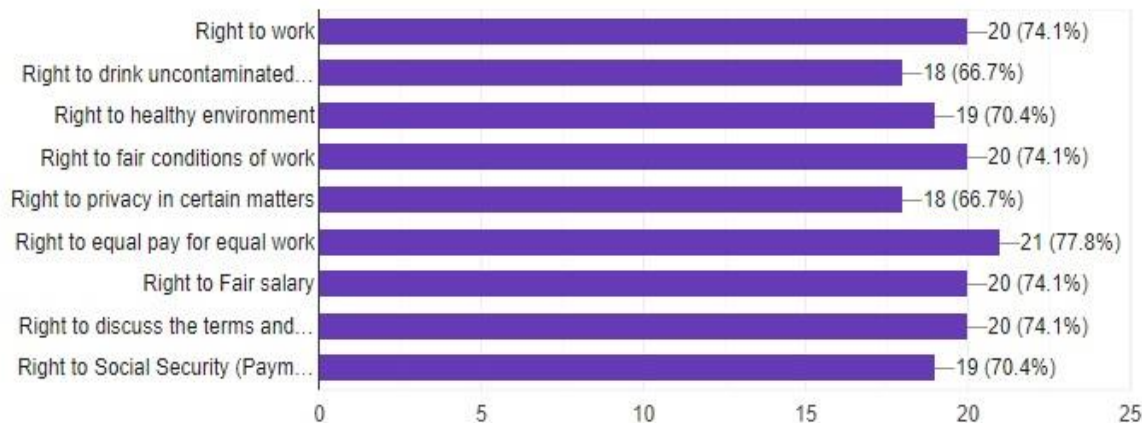
### ❖ Data Collection, Interpretation and Analysis:



- Researcher conducted interviews of self-finance self-finance I asked teachers about their designation. The answers were different from one another. They answered Ad hoc Assistant Professor, Adhyapak Sahayak, Assistant Professor, Professor-in-charge, Adjunct Faculty, Ad hoc Teaching Assistant Professor etc. For same work allocation in a State in Self-finance courses in higher education, they are allotted different name. There is requirement of uniformity in designation of teachers working in Self-finance courses.
- I asked about awareness of rights available to Teachers Working in Self-Finance Courses in Higher Education. I asked them awareness of from rights given below:
  - 1) Right to work
  - 2) Right to drink uncontaminated water at workplace
  - 3) Right to healthy environment
  - 4) Right to fair conditions of work
  - 5) Right to privacy in certain matters
  - 6) Right to equal pay for equal work
  - 7) Right to Fair salary
  - 8) Right to discuss the terms and conditions of employment at the time of joining as a teacher
  - 9) Right to Social Security (Payment of Gratuity, pension after retirement etc.)

### Are you aware about rights available to you at your workplace

27 responses



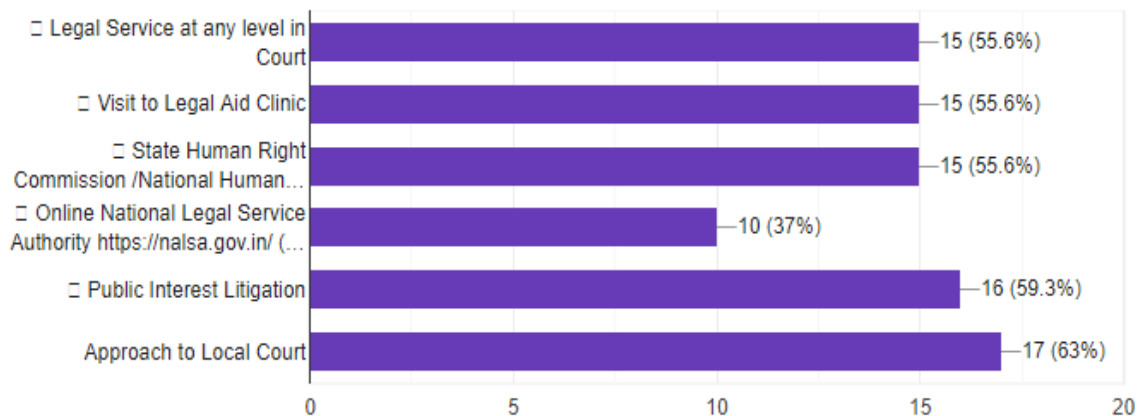
We can see in the above chart that majority of the teachers are aware about their rights either it is fundamental rights, human rights or legal rights.

- They are also aware about how to access to justice though many ways. In response to the question on awareness about how many ways justice can be accessed.

They responded in following ways.

### Are you aware about the tools to access justice for your employment

27 responses

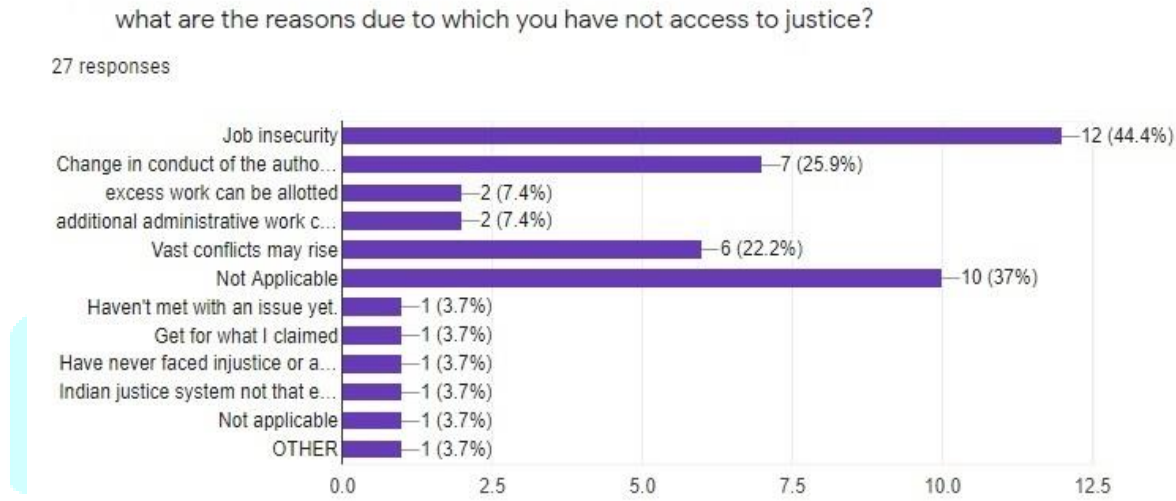


From the above chart we can see out of 27, 17 teachers are aware about approach to court regarding violation of their rights, 16 teachers are aware about filing Public Interest Litigation for violation of their fundamental rights, 15 teachers are aware about Legal Service available at any level in Court, Visit to Legal Aid Clinic, State Human Right Commission/National Human Right Commission. In the era of Information of Technology, it is surprised to me that only 10 teachers are aware about online



access to justice through Online National Legal Service Authority <https://nalsa.gov.in/> (Apply for legal Aid --- New Application).

- Afterwards I asked all 27 teachers regarding actual access to justice by them. Only 3 of 27 teachers had access to justice. And 24 had even though they are aware about their rights, they know how to access to justice. Even though they do not still access to justice.
- Then I asked the reasons for not accessing justice by the teachers working in self-finance courses in higher education.



12 teachers are not accessing justice because they have fear of losing job. They have job insecurity. Even I have seen in some institutions that authority make such fearsome environment if anyone is asking him/her regarding something which is not proper in terms of employment or other conditions of work, they threat of removing him/her. 7 teachers out of 27 believe that the conduct of the authority may change, if they will file any complaint or suit for violation of their rights. 6 teachers out of 27 believe that if they will access justice, there may rise vast conflicts between teacher and authority as against smooth working of the institutions. Some of them have reasons for not accessing justice that authority will give additional administrative work than regular hours, extra work can be allotted. Only 1 teacher has not faced such problem in self-finance institution.

### Conclusion and Suggestions:

Teaching is a noble profession. Teachers are given special status in the society, as they are contributing a lot in transforming the society. On the basis of the above writing, I have observed that there is no specific legislation in relation to teachers working in Self-Finance Courses in Higher Education Institutions. There are many rights available to the teachers like fundamental rights, legal rights, human rights etc. They are ware also aware about their rights but due to certain reasons like job insecurity and many other reasons they do not actually access to justice. The teachers working in self-finance courses are wishing the change in their working conditions and proper treatment at the

workplace. Further, same work is allotted to self-finance teachers like teachers working in Grant-in-aid or Government Colleges. So far as the salary or other benefits are concerned they are treated unequal as they are in Self-Finance. Education is a public function, whether it is imparted by self-finance institutions or by government institutions. So, the teachers should be treated equally.

### Suggestions:

- There is a need of a legislation for self-finance institutions/course Teachers' working conditions and enforcement of various rights.
- Contractual terms and conditions must be discussed between the parties 'The Teacher' and 'The Institution'.
- Job Security should be provided – As the Supreme Court has observed in a case that employee is not working on the mercy of the employer. Income is a source for enjoyment of fundamental rights available to them and work is a source for income. So that work and income must be ensured.
- Equal pay for equal work must be guaranteed to the teachers working in self-finance courses in Higher Education Institutions.
- Establishment of Trade Union is also suggested to fight against violation of rights.
- Without Departmental Inquiry, Contractual Employee cannot be removed from the employment even an FIR has been filed against him/her. So, the teachers should show courage for enjoyment of fundamental rights by accessing them.

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