

## RETENTION OF ORIGINAL CERTIFICATES OF STAFF MEMBERS, THE UNETHICAL PATH BRAZENLY TRODDEN BY PRIVATE SCHOOLS/COLLEGES

DR.ANIL KUMAR.P

**ABSTRACT:** Private schools and colleges are the predominant players in the field of education in India. While private schools are affiliated to state, CBSE, ICSE, IGCSE or other educational boards, private colleges are affiliated to universities that have jurisdiction over the respective geographical areas. Besides these entities (as regards Colleges) there are private and deemed universities that control education. All these key players hire human resources of the highest quality to meet the academic and administrative standards they have set. Faculty members basically are the fulcrum around which the academic machinery of these institutions revolves! The attrition rate in these educational institutions is very high; here attrition refers to the number of faculty members leaving their jobs to seek better opportunities. These attritions hurt and hamper the academic machinery very badly. Hence, the promoters of these institutions indulge in the unscrupulous and unethical act of retaining the original certificates (transcription of educational qualifications) of the staff, especially the faculty. The boards and universities that affiliate these private institutions very clearly emphasize (through their standard operating procedures) that retention of original certificates is a violation of their SOP as well as the laws under relevant sections of the constitution and the IPC. However, the brazenness and impunity of these promoters are such that the affiliating or nodal educational bodies are

more often than not forced into an inexplicable acquiescence or a shameful reticence whenever complaints about such 'excesses' are made. Hence, the aggrieved members of the faculty are left with no choice but to take recourse to law. Many a court has already heard petitions on such violations and expressed strong displeasure at the perpetrators of these excesses. This article delves deep into the unethical path the promoters of educational institutions have trodden so brazenly to serve their ulterior motives of deterring the faculty from leaving their jobs for reasons what so ever .The article would also enlighten the readers on the policies of educational boards/universities/UGC and the laws of the land as far as these violations of human rights are concerned.

**KEY WORDS:**PRIVATE SCHOOLS,COLLEGES,UNIVERSITIES,DEEMED AND PRIVATE UNIVERSITIES,CBSE,ICSE,IGCSE,STATE BOARDS,UGC,FACULTY,ORIGINAL CERTIFICATES,RETENTION, NO SUPPORT FROM BOARDS AND UNIVERSITIES,RECOURSE TO LAW,IPC,PETITIONS,COURTS,BLATANT VIOLATION OF THE LAWS OF THE LAND,RETICENCE OF THE BOARDS,ACQUIESCENCE OF THE BOARDS.

## INTRODUCTION:

India's educational sector has been dominated by private players for many years, now, especially post liberalization. The contributions of private schools, colleges and universities have been so staggering that admissions into these institutions, is fraught with unprecedented competition, today. While a debate on whether these institutions have transformed the lives of the learners could be reserved for another article, we need to delve into the plights of the staff and the faculty as regards the retention of the originals of their academic qualifications by the promoters of these institutions. Let us go into the circumstances, modus operandi, causes and effects of these "excesses" brazenly perpetrated by the promoters of these educational institutions.

## PRIVATE SCHOOLS:

Private schools are institutions that are financially not aided by the government. Furthermore, they are run by individuals or registered societies that take care of them. In India, there is no uniform curriculum or educational board across the country. Given the diversity of language, culture and geographical uniqueness in our federal system, a uniform educational board across the country would spark off a debate. (Reserved for another occasion) Under these circumstances, private schools across the country seek affiliations with state boards, CBSE, ICSE, IGCSE or any other board of their choice! All the above affiliating bodies have standard operating procedures (SOP) or by-laws that guide and control the private institutions under them. All these

affiliating bodies have clearly spelt out service conditions that govern the employment and working conditions of the staff and faculty! These standard operating procedures have been drafted carefully and diligently in consultation with legal experts. The constitutional and legal viabilities of these by-laws without prejudice to any beneficiary have also been ensured (as evident from the drafts available and verified).

## PRIVATE COLLEGES:

Private colleges and Universities are managed by individuals or registered societies. As regards private colleges, they are affiliated to universities that have geographical jurisdiction over them. As far as private and deemed universities are concerned, they are entitled to function as separate universities themselves. However, these Universities are guided and controlled by MHRD and University Grants Commission (the authority that controls universities of all nomenclature in India). The Universities that control these institutions have clearly spelt out employment conditions that govern the employment and working conditions of the staff and the faculty! These policies are the integral part of the exhaustive by-laws these universities have. These University by-laws are drafted in consultation with constitutional and legal experts with due diligence to legal and constitutional viabilities!

## SIGNIFICANCE OF THE FACULTY IN SCHOOLS:

Private schools(as mentioned earlier) are predominant in education sector. The country has government schools listed under KVs, Navodayas, Sainik schools and state run schools (functioning under

the federal system). However, catering to the educational demands of an Indian populace spread across the federal states is far from pragmatic. This has necessitated the demand for private schools. And individuals/groups masquerading as promoters have now had the biggest opportunity to invest in a commercial endeavour likely to bestow upon them the most ‘romantic of pecuniary gains’ for many upcoming generations! The relaxed norms and abolition of Licence raj post 1991 have also been favourable to the promoters in this context. And the rest is history!!

More than two and half decades since economic liberalization, private schools have today become the order of the day. They are all here to stay as entities that can provide the most competitive education to their beneficiaries. A state of the art infrastructure and an enviable academic structure today mark the vision of most of the private schools. Their ‘deliverable’ and ‘measurable’ outcomes definitely are dependent on the faculty which is the fulcrum around which the whole academic structure of these schools revolves!

The faculty engaged /hired in the schools need to be competent besides being qualified (as per norms) to deliver the goods. At times, it has to be confessed that they should be more dedicated and open-minded than their counterparts in government institutions. Private schools, given their insatiable desire to stay in contention in the ‘commercial market’, engage the services of the ‘best resources available in the market’. The faculty members thus drawn are placed under probation for a year. Based on the academic performances, on completion

of a year, their probations are either extended or their incumbencies confirmed.

A word on the faculty! These are men and women who have toiled hard for at least half a decade post senior secondary so as to achieve academic qualifications for even an entry level teaching position given the fact that private schools often go for the highest educational qualifications as regards teachers or faculty.

The claim of a school as a formidable entity is often judged by the quality of its faculty. Such is the significance of faculty in a private school’s academic machinery. The infrastructure of a school is often an ‘embellishment’ where as the faculty could invariably be termed an ‘essential entity’. ‘Embellishments’ have no role what so ever to play in the absence of ‘essentials’. Make no mistakes about it!!!

#### LIFE OF THE FACULTY IN SCHOOLS:

Schools hire faculty in the age group of twenty five to fifty under normal circumstances. The pay and allowances of the faculty more often than not lie at the discretion of the promoters running the schools. There indeed are norms or SOPs that invariably state that pay and allowances to the faculty ought to be as per the central or state government norms. Most of the promoters of the private schools take these norms with a ‘pinch of salt’. This is one subject that would qualify for another article, shortly. Let us leave it all at that, here! The members of the faculty often go through immense pressure to produce academic results to satisfy the ‘snobbish promoters and the society’. The society

and the promoters are ‘original to a fault’ in being ruthless and uncompromising in their demand of ‘‘handsome academic results’’. The members of the faculty are on their toes most of the time as the academic results often hang over their heads like ‘the proverbial swords of Damocles’.

#### SIGNNIFICANCE OF THE FACULTY IN COLLEGES:

Millions of students join colleges after qualifying senior secondary. Available evidences say that private colleges and universities enjoy a sizeable in-take of students aspiring to pursue their education in liberal arts, science, commerce, engineering and other disciplines. Under these circumstances, the promoters of these colleges easily give themselves to the desire of making the ‘‘best pecuniary gains’’ out of these ‘‘telling’’ number of aspirants. No business is bereft of expectation of returns and it would be unfair here to be harsh on the promoters who invariably have their entitlements of thinking in ‘business terms’!

Private colleges and Universities boast of a state of the art infrastructure along with a ‘formidable faculty’ capable of meeting their expectations. The massive expectations of the best of results cannot just be confined to the promoters. There are parents and entities from all walks of the society who have placed their expectations on the results produced by these institutions. In an era dominated by media (especially, social media platforms), the performance of a college or a university easily gets debated and publicized. Comparative studies in this

context are obvious outcomes.

On the subjects of results as the most dominant and pronounced outcome, there are no prizes for guessing by whom these results or outcomes are produced! Management gurus and key note speakers (more often than not) try to sound wise by emphasizing that ‘team work is the key to any measurable outcome’. This is absolutely true of any outcome or results produced by an institution. A team is often held responsible for a measurable outcome produced in an institution.

But, how are the results analyzed in colleges and universities, today? The promoters use a strange ‘measurable’ to evaluate results. The members of the faculty are invariably made accountable or responsible for the results. The Management experts and gurus maintain a strange ‘reticence’ here.

#### LIFE OF THE FACULTY IN COLLEGES:

The members of the faculty in colleges are men and women who have slogged hard to achieve atleast a masters in philosophy (M.Phil). For most of the faculty, a Doctorate or NET is considered to be a mandatory requirement. The Universities or nodal bodies are quite clear about this policy.

We have already seen earlier that the faculty members in colleges and Universities are accountable for the results produced at the end of the course (3 years, 2 years or more - depending on the course of study). Here, there are no two opinions that throughout their tenure

as lecturers/professors, these men and women are under immense pressure. Their pay and allowances are by no stretch of imagination comparable to those of their counter parts in Government/aided colleges and universities. Are there no norms to regulate this anomaly? There indeed are norms that specify that the pay and allowances (discussed just now) should be as per the central and state norms or the university norms! But then the 'shrewd and clever' promoters more often than not get away with these flagrant violations of norms. For, it would take ages for an aggrieved employee to establish that he was under paid. The time and cost spent on litigation in this regard hardly help an employee's cause. This is on subject I shall deal with separately in another article, later. Here, one can easily draw a conclusion that the faculty members in a college lead a stoical and compromising life and wait for the most opportune moment to migrate to government or more attractive services.

#### RETENTION OF ORIGINAL CERTIFICATES IN SCHOOLS:

The staff members (especially members of the faculty) are resourceful, hard working and dedicated. Nine out of ten times, they meet the expectations of the school managements (referred to as 'promoters' here). These men and women stand a good chance to be hired by the Government schools or institutions in foreign countries. The promoters (as available evidences indicate) are quite uneasy about any member of the faculty leaving the institution midstream! To be

fair to them, such an act of attrition affects the 'good will' they have earned in the market. However, they veil this uneasiness and often resort the proverbial humbug tell the world that the act of faculty members leaving the institution midstream or otherwise, affects the morale of the learners. This rhetoric most often appeals to the society. I shall discuss this subject in another article later!!

The uneasy and jittery promoters resort to an unethical means as a deterrent to compel the faculty to stay with them for a 'stipulated period of time'. They ruthlessly and unscrupulously retain the originals of the academic qualifications of the staff/faculty. Under these circumstances, the staff or faculty cannot easily migrate to a more secure or attractive job! Even if they resign from their jobs, the promoters concerned would NOT RETURN THEIR ORIGINAL CERTIFICATES! Original certificates are invariably required for verification (for government jobs) as per government norms and failure to produce them before the competent authorities renders an employment offer null and void.

#### RETENTION OF ORIGINAL CERTIFICATES IN COLLEGES/UNIVERSITIES:

Lecturers or professors engaged in colleges/ are highly qualified individuals capable of handling the challenges in higher education successfully. They stand a chance to serve the state and central universities as these organizations add to their staff/faculty strength every year. Furthermore, there are universities in foreign countries that hire the 'best

resources' at an attractive remuneration. These are enticing offers the qualified lecturers or professors could ill-afford to miss! Contextually, the pay and allowances of private colleges and universities in India leave much to be desired (I am leaving the rare and honourable exceptions aside!)

The promoters of private colleges and universities like their counterparts in private schools are uneasy about their staff or faculty looking for jobs elsewhere. Hence, they brazenly retain the originals of the academic qualifications of the staff/faculty. This pushes the staff or faculty into the compulsion of staying with these private institutions as per the desire of the promoters! They can neither apply for a government job nor accept an employment from the government as they cannot produce the originals of their academic qualifications. As regards foreign jobs, these aspirants cannot produce their original certificates for any attestation or verification at a consulate/embassy/high commission/competent authority!

#### NORMS ON THE RETENTION OF ORIGINAL CERTIFICATES (SCHOOLS)

Private schools are affiliated to CBSE/ICSE/IGCSE/STATE BOARDS. All these affiliating or nodal bodies in their by-laws or SOP(STANDARD OPERATING PROCEDURES) clearly state that ORIGINAL CERTIFICATES OF EDUCATIONAL QUALIFICATIONS OF STAFF SHOULD BE RETURNED TO THEM IMMEDIATELY AFTER

VERIFICATION. I have made a painstaking research of going through the by-laws of CBSE, ICSE and state boards. The policies are spelt out without any ambiguity or equivocation to the effect that there is absolutely no justification of retention of original certificates by the promoters of schools. Hence, this is a FLAGRANT VIOLATION OF THE BY-LAWS OR SOP OF THE RESPECTIVE BOARDS. No promoter in his/her senses can defend the retention of original certificates, under any circumstances!

#### NORMS ON THE RETENTION OF ORIGINAL CERTIFICATES (COLLEGES/UNIVERSITIES).

Private colleges are affiliated to universities that have geographical jurisdiction over them. These affiliating universities are controlled by UGC(UNIVERSITY GRANT COMMISSION) and MHRD(MINISTRY OF HUMAN RESOURCE DEVELOPMENT). Private Universities and Deemed-to-be Universities are controlled by UGC and MHRD.

All these nodal and affiliating bodies have their standard operating procedures under which ORIGINAL CERTIFICATES OF THE STAFF SHOULD NOT BE RETAINED BY AN INSTITUTION UNDER ANY CIRCUMSTANCES. Once again, I have taken pains to communicate with the MHRD and UGC to check, verify and interpret the rules in this regard. The rules are so clear and they invariably point to a BRAZEN AND UNETHICAL PRACTICE PERPETRATED BY THE PROMOTERS OF SCHOOLS AND

COLLEGES. This shocks my conscience, to say the least!!!

### WHAT DOES THE LAW SAY ON THIS UNETHICAL ACT?

This is an interesting question. We need to straight away draw our attention to MADRRAS HIGH COURT'S JUDGEMENT subsequent upon petitions from:

- 1)Mr.John Paul
- 2)Ms.Belshiya
- 3)Ms.Sreelatha

The respondents were:

- 1)State rep-Inspector of Police,Foreshore estate,Chennai
- 2)Principal and Correspondent-Promoter(St.John's CBSE School,Mandaveli,Chennai)

The petitioners after resignation from the afore-mentioned school demanded that their original certificates(of academic qualifications)retained by the school be returned to them.As the school refused to look into their demand, a case was filed with the Inspector of Police,Foreshore estate,Chennai. However, the complaint evinced no response, whatsoever from the Police Department.

Under these circumstances, the petitioners took recourse to legal solution. Shri P.N Prakash of Span Associates appeared for the petitioners.

The respondent number one(the Inspector of Police) one was represented by Mr.M.Maharaja,Additional Public Prosecutor.

The respondents number two (representatives of the school management) were represented by Mr.Habibullah Bashar,senior counsel.

The case vide no CRL.OP.NO-9920 OF 2012&MP NO- 1OF 2012 was heard by the honourable justice Shri Nagamuthu.

The first respondent's counsel submitted that the Police Inspector had concluded that no action would be taken on the complaint filed as the complaint did not merit any action under any relevant laws of IPC.

The counsel for the second respondents(school management) submitted that the petitioners had entered into an agreement with the school and the original certificates were not returned as the petitioners had not fulfilled the specific obligations of the agreement.THEY HAD NOT PAID THREE MONTHS' SALARY IN LIEU OF THEIR RESIGNATION AT SHORT NOTICE.

The learned judge went through the submissions carefully and observed that the petitioners' complaint deserved to be heard by the police department. Furthermore, the act of retention of original certificates constituted an offence under IPC 406 and section 6 under relevant subsections of TRANSFER OF PROPERTY (which forbids retention of original documents such as academic certificates).

The learned judge further observed that the civil agreement between the management and the teachers should not be confused with an illegal act of

retention of original certificates. The school could take recourse to law separately to address the issue of specific obligations, believed to have been violated by the teachers.

#### THE UNAMBIGUOUS LAW:

The law is very clear about the whole issue. The above example is only one among the many. Some schools argue that the staff/faculty members submit their original certificates based on a mutual trust and this should be seen as a FIDUCIARY act. However, the term 'fiduciary' applies so long as the schools do not refuse to return the originals when the staff or faculty members tender their resignation from services. Another point is that the law is very clear that **CERTAIN DOCUMENTS ARE NOT TRANSFERRABLE**. In this context, the clever and beguiling claims of school managements would not stand a legal scrutiny!

#### ANOTHER RULING OF MADRAS HIGH COURT:

The law of a land applies equally to schools, colleges or any other organizations. Madras High Court has already held that **RETAINING ORIGINAL CERTIFICATES IS ILLEGAL AND IMPROPER**. The ruling has reference to a petition filed by Ms.C.Shanthi against VEL TECH HIGH TECH DR.RANGARAJAN –DR SHAKUNTHALA ENGINEERING COLLEGE, CHENNAI.

The court expressed its displeasure at the illegal act and instructed the college that the petitioner's certificates be returned with immediate effect. I do not want to sound redundant here by placing on

record the various sections of IPC the honourable Judge may have invoked to issue such a degree. The basic provisions of IPC have already been discussed for the benefit of all the readers. I reckon that would suffice.

#### THE IMPUNITY AND BRAZANNNESS OF THE PROMOTERS:

The impunity and the brazenness of promoters do not shock me anymore. I have worked for many such promoters and have at times been party to their perfidious acts. My attempts to educate them have never ever met with any success. I am trying to put those 'frustrating moments' behind me and move on! During my services with private institutions, I have always shown the integrity to return the 'original academic transcripts' of the staff members as and when required by them. This rectitude has always driven me forward.

The promoters of schools, colleges and Universities shall continue to be engaged in this act of perfidy as they are aware of the time and cost involved in litigations should they be dragged into litigations. The litigation costs are often 'a fortune' to a lower middle class man or woman who has taken up teaching to satiate both 'vocational and pecuniary needs'. With the pay and allowances that are 'modest', a teacher could ill-afford a litigation cost. And needless to say that here the promoters of schools and colleges are the beneficiaries!!

## ROLE OF EDUCATIONAL BOARDS, UNIVERSITIES, UGC AND MHRD:

It has already been highlighted several times that the nodal bodies such as CBSE, ICSE, STATE BOARD, STATE EDUCATION

DEPARTMENTS, UNIVERSITIES, UGC & MHRD have clearly specified in their policy documents that original certificates of the staff/faculty cannot be retained by the employers.

Unfortunately, these nodal bodies have not done enough to ensure compliance of the above policy. I have interacted with a substantial number of teachers as far as this alleged violation is concerned. Nine out of 10 teachers believe that representation to the Educational boards, Universities, UGC and MHRD have evinced cold response.

Last month I filed an RTI with CBSE seeking information on the issue. Unfortunately, the officer responding to my query stated that 'retention of certificates is an internal matter of the school and the board would not interfere with it'. I was shocked both at the IGNORANCE & APATHY of the officer. He was ignorant because CBSE by-laws forbid retention of original certificates. He was apathetic because he was being too insensitive to a genuine demand. On the very day, I filed my second appeal accusing the Information Officer of providing misleading and incorrect information. Fortunately, I received a prompt response which said that schools 'need to follow by-laws and violations are viewed seriously.' The response also says that if I have an issue in hand as regards such violations, I could represent it to the board with documentary

evidence! BUT THEN, IT HAS TAKEN ME LABORIOUS EFFORTS OF A FEW MONTHS TO ELICIT A SIMPLE PIECE OF INFORMATION!

Why would the board or an authority not probe into the alleged violation of a policy in 24 hours? A mail from an aggrieved staff ought to be considered as a grievance. It would not take more than a day or two to ascertain the veracity of a claim! Yet, the nodal bodies are so slothful, lethargic and even apathetic too look into representations made to them. This is one bane of our democracy too. THE BUREAUCRATIC SLUGGISHNESS is something our IAS officers are proud of. Most of these educational boards have IAS officers at the helm of affairs! And most of them do not seem to be better than the promoters of schools and colleges!!!

## CONCLUSION:

I am sad and have compunctions that I do not have solutions for the aggrieved teachers at schools and universities victimized by this 'perfidious act'. Yet, I feel happy to have thrown insights into the by-laws of various nodal bodies and the law of the land. The instances of litigations have been placed on record for ease of reference of teachers. Perhaps these pieces of info may act as SILVER LININGS!!

REFERENCES/CITATIONS:

CBSE BY-LAWS.

ICSE BY-LAWS.

IPC 406

TRANSFER OF PROPERTY ACT  
SECTION 6 VIDE SECTION 6(4)

RTI(MHRD&CBSE)

UGC

POLICIES

MADRAS HIGH COURT  
JUDGEMENT(CRL.OP.NO-9920 OF  
2012&MP.NO-1 OF 2012)

<https://www.livelaw.in/retaining-original-certificates-illegal-improper-madras-high-court/>

Discussions with teachers from private schools and universities (names with held)