

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of 'The Uttarakhand Competitive Examination (Measures for Control and Prevention of Unfair Means in Recruitment) Act, 2023' (Act No. 13 of 2023).

As passed by the Uttarakhand Legislative Assembly and assented to by the Governor on 26th April, 2023.

THE UTTARAKHAND COMPETITIVE EXAMINATION (MEASURES
FOR CONTROL AND PREVENTION OF UNFAIR MEANS IN
RECRUITMENT) ACT, 2023
(Uttarakhand Act No. 13 Year 2023)

AN

ACT

To control and prevent of offences and the Special Court for the trial of such offences which are related to obstruct the sanctity of the examination, use of unfair means, leakage of question papers and the irregularities committed after the examination of competitive examination for the purpose of recruitment on any post at the office under the State Government, autonomous bodies run by Government, authorities, corporation and institutions operated with grants of State Government and to make provisions for matter connected therewith strengthened or incidental thereto;

Be it enacted by the Uttarakhand State Legislature in the Seventy-fourth Year of Republic of India as follows :-

- | Short
extent
and
commencement | title,
and | |
|--|---------------|--|
| | 1. | (1) This Act may be called the Uttarakhand Competitive Examination (Measures for Control and Prevention of Unfair Means in Recruitment) Act, 2023. |
| | | (2) It shall extend to the whole State of Uttarakhand. |
| | | (3) It shall be come into force at once. |

Definitions

2. (1) In this Act, unless there is anything repugnant in the subject or context:-
- (a) "Government" means the Government of the State of Uttarakhand;
- (b) "Examination Authority" means the Examination Authority as specified in Schedule 1;
- (c) "Conduct of Competitive Examination" means preparation of question papers, answersheets, Optical Mark Recognition (OMR) sheets, result sheets, printing supervision, coding process, storage, transportation, distribution/collection, post examination at examination centers offline (paper pen) and online (computer-based examination) conduct of examination, security arrangements expected from the police at each stage, evaluation, declaration of result and such other works etc;
- (d) "Competitive examination" means the examinations as specified in Schedule-2 conducted for selection to any post in any department of State Government, competitive institution, body, board, corporation or institution aided by the State Government;
- (e) "Examination Centre" means any school, computer centre, institution or part thereof or any other place and the entire premises designated and used for conducting any competitive examination;
- (f) "Examinee" means a person who has been issued an admit card or otherwise permitted by the concerned authority to appear in the selection test and also includes a person authorized to act as a scribe or assistant on his behalf;

(g) "Unfair Means" includes :-

(1) **In respect of an examinee:** -

Directly or indirectly from any person or group in competitive examination or any written, non-written, quoted, copied, printed material, material obtained from electronic or Information Technology (IT) or taking any unfair aid, other unauthorized aid or using any unauthorized electronic or mechanical device or gadget etc. in the computer-based examination;

(2) **In respect of a person:** -

- (i) Impersonation or leakage or attempt to leakage or conspiracy to leakage of question paper.
- (ii) Unauthorized access or attempt to get or take possession or attempt to take possession to question paper.
- (iii) Solving question papers in an unauthorized manner or attempt to solve or seeking assistance in solving the question paper.
- (iv) Directly or indirectly assist the examinee in an unauthorized manner in the competitive examination.
- (v) Supply of question paper data or questions in online examinations to any unauthorized person or tampering with computer intended to be solve, local area network or server etc. and assist therewith.
- (vi) Affecting merit by tampering with answer sheets or Optical Mark Recognition (OMR) sheets or marks by any means after the examination.
- (vii) Threatens the supervisory staff on duty in or outside the examination hall with any injury to his person or friends or to any of his relatives; whether by words either spoken or written or by signs or visible representations or otherwise with a view to inducing the supervisory staff or any person on duty in or outside the examination hall to show any consession;
- (viii) uses abusive or obscene or indecent language in the answer book;

- (ix) If any person and the group of persons involved in the practice of unfair means and caught in cheating but after the said situation if the indulged persons try to end the matter in Court with mutual consent shall not be made without consent of the examination authority.
- (x) Committing theft, extortion or robbery of question paper or to remove or destroy by any means the answersheet and Optical Mark Recognition (OMR) sheets of any competitive examination against the prescribed rules of Examination Authority.
- (h) "Service Provider" means such companies, institutions and organizations, which are service providers bound by the Examination Authority for the conduct of competitive examination related work, it includes their management system and all such employees, who are involved in the competitive examination related work of the Examination Authority;
- (i) "Company" means a company as defined in Section 2 of The Companies Act, 2013 (Act No. 18 of 2013);
- (j) "Limited Liability Partnership Firm" means a limited liability partnership firm as defined in Section 2 of the Limited Liability Partnership Act, 2008 (Act No. 7 of 2009);
- (k) "Limited Liability Participator" means participation in the examination of all such employees and officers of the State and examination centers and their staff, and examination authority personnel, who are posted or associated or engaged to discharge limited liability in any examination;
- (l) "Code" means the Code of Criminal Procedure, 1973;
- (m) "Supervisory staff" means any person appointed by the competent authority under any law for the supervision and conduct of an examination and includes such other persons as are appointed by the competent authority to perform the duties and functions connected with the conduct of an examination;

- (n) "Coaching Centre" means an institution imparting pre-examination coaching for securing Government job through written or oral examination conducted by any examination authority (as specified in Schedule-1) of the Government;
- (o) "Police Officer" means the Additional Superintendent of Police and police officers of equivalent rank, of a District;
- (p) "Special Court" means a court of session designated as special court under section 25 of the Act;
- (2) Words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 and the Indian Penal Code, 1860 (Central Act No. 45 of 1860) shall have the same meanings respectively assigned to them in those Codes.

Duties of supervisory staff 3.

The supervisory staff shall-

- (a) be bound responsible to act and to perform their duties in accordance with and as required by or under the statutes or the regulations, as the case may be;
- (b) not to allow, connive at or facilitate the commission of any unfair means by any candidate;
- (c) not to allow any person other than the members of the inspection team, to enter or loiter in or around the examination center.

Prohibition of use of unfair means 4.

No person shall use unfair means in any competitive examination

Possession or leakage of question paper or part thereof 5.

For conduct of competitive examination preparation of question papers, printing of question papers, digitally sending of question papers, transportation of printed question papers, keeping of question papers before and during the examination any person authorized by virtue of his duties shall not do the following before the appointed time:-

- (a) To unseal the such question papers or part or copy or packing thereof, to disclose, receive or attempt to receive, have possession of or receive question papers or questions or question data prepared in electronic or digital mode, taking password etc. to get question paper data and solving them or,
- (b) Giving or attempting to give or promise to give any confidential information to any person or examinee where such confidential information relates to or is in connection with such question papers.
- (c) Shall not disclose the data of question paper in online examinations to any unauthorized person or shall not tamper with any computer, local area network or server in order to do so.
- Prevention of disclosure by person posted or engaged in examination work** 6. Any person who is posted or engaged in any work relating to a competitive examination, except where he is authorized by virtue of his duty to do so, such information or part thereof, shall not divulge or cause to be disclosed or disclosed to any other person, directly or indirectly, what has come to his knowledge by virtue of such posting. If such information is electronically based, shall not disclose its password or any other data.
- Unauthorized possession or disclosure of question paper, answer sheet, OMR sheet in any form** 7. Any person, who is not lawfully authorized or permitted by reason of his duty to do so before the time fixed for the distribution of question papers, at any competitive examination, shall not:-
- (a) receive or attempt to receive or has possession of such question paper or answer sheet or Optical Mark Recognition (OMR) sheet or any part or copy thereof in any manner, or
- (b) give or offer to give such information which he knows or has reason to believe to be concerned/interested in or to be received or relating to such question paper.

- Prohibition of entry into the examination center** 8. Any person who is not employed/posted in work related to the competitive examination or who is not engaged in the work of conducting the competitive examination, or who is not an examinee, shall not enter the premises of the examination center during the examination.
- Prohibition of carrying unfair means / equipment in the examination center** 9. No examinee or examiner or any other person engaged in the examination shall use any kind of unfair means or appliances at the examination centre. Carrying any kind of electronic equipment (mobile phone, bluetoothdevice, watch, calculator, pager, chip, any device to influence computer) etc. at the examination center shall be strictly prohibited.
- No place other than the examination center shall be used for competitive examination** 10. No person entrusted with or engaged in any work relating to a competitive examination shall use or cause to be used any place other than the examination center for the purpose of conducting the competitive examination.
- Offences by management, organization, companies or others** 11. (1) When an offence under this Act is committed by any management or institution or limited liability partnership firm or service provider contracted or ordered for examination and others, every person who at the time the offence was committed was in charge of the business of the management or institution or limited liability partnership firm or service provider contracted or ordered for the examination and others, or was responsible for the conduct of the business of the management or institution or limited liability partnership firm or other, as well as the service provider contracted or ordered for the examination by the management or institution or limited liability partnership firm or other, shall also be deemed to be guilty of the offence and action shall be taken against him and shall be punished accordingly:

Provided that nothing contained in this sub-section shall render such person liable to any punishment under this Act, if he proves that the offence was committed without his knowledge and that he exercised due care and diligence to prevent the commission of the offence.

- (2) Management, institutions and individuals who circulate and publish false, misleading and false information and complaints in relation to examinations and question papers and answer keys related to examinations, shall be deemed guilty of offence and action shall be taken against him and shall be punished accordingly.

Explanation: The complaint or objection made in good faith by the examinee in relation to the question paper before the examination authority or the in-charge of the examination center shall not be considered as an offence committed by the examinee under the said section.

- (3) Notwithstanding anything contained in subsection (1), where an offence under this section has been committed by any management, or institution or limited liability partnership firm or other and it is proved that the offence was committed by the management or institution or limited liability partnership firm with the consent or connivance of, or any neglect on the part of, any director, partner, manager, secretary or other officer of the partnership or service provider or other, such director, partner, manager, secretary or other officer shall be deemed to be guilty of the offence and action shall be taken against him and shall be punished accordingly.
- (4) Where an offence under this Act is committed by a company engaged in the conduct of any competitive examination, every person who at the time when offence was committed was incharge of and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and action shall be taken against him and shall be punished accordingly.

Explanation- for the purpose of this section "Company" means anybody/corporate and includes a firm or other association of the individual.

**Punishment
for crime**

12. (1) If any examinee is caught cheating himself or causing another examinee to cheat in a competitive examination (online and offline) or to have indulged in unfair means as defined under section 2(g)(1), he shall be punishable with imprisonment of either description for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than rupees five lakh shall be punishable and in default of payment of fine, such examinee shall be punishable with imprisonment for a term of fifteen months:

Provided that if any examinee is found again (second time) cheating himself and causing another examinee to cheat in any competitive examination (online and offline) or to have indulged in unfair means as defined under section 2(g)(1), he shall be punishable with imprisonment of either description for a term which shall not be less than ten years but which may extend to twelve years and with fine which shall not be less than rupees ten lakh shall be punishable and in default of payment of fine, such examinee shall be punishable with imprisonment for a term of thirty-six months.

- (2) If any person, printing press, service provider contracted or ordered for examination, management for conducting examination, limited liability partnership firm, any person and organization authorized to keep and transport the examination material, any employee of the Examination Authority, limited liability participator, coaching centre or any other institution has indulged in conspiracy or otherwise unfair means as defined in clause 2(g)(2) attempts to be so or contravenes or abets the contravention of any of the provisions of this Act, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to life imprisonment and shall be punished with fine which shall not be less than rupees one crore but which may extend to rupees ten crore and in default of payment of fine, such person shall be punishable with imprisonment for a term of three years.

- (3) If any person in an organized crime conspire with the examination authority or otherwise indulge in unfair means or contravenes or abets to contravene any of the provisions of this Act, he shall be liable to be imprisonment of either description for a term which shall not be less than ten years and may extend up to life imprisonment and with fine which shall not be recorded in writing) that any person-
- (a) has committed any act which constitute unfair means, or
 - (b) is in possession of any proceeds of crime involved in unfair means, or
 - (c) is in possession of any record relating to unfair means, or
 - (d) is in possession of any property related to crime,

then, subject to the rules made in this behalf, he may authorize any officer to-

 - (i) enter and search any building, place, vessel, vehicle, or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
 - (ii) break open the lock of any door, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
 - (iii) seize any record or property found as a result of such search;
 - (iv) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;
 - (v) make a note or an inventory of such record or property;
 - (vi) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:
- (2) The authority, who has been authorized under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Special

Court in a sealed envelope, in the manner, as may be prescribed and such Special Court shall keep such reasons and material for such period, as may be prescribed.

- (3) Where an authority, upon information obtained is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authority referred to in sub-section (1) shall be required for search under this sub-section.

Power
arrest

to

15.

- (1) If the Police Officer authorized under this Act, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

- (2) The Police Officer authorized under this Act, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Special Court in a sealed envelope, in the manner, as may be prescribed and such Special Court shall keep such order and material for such period, as may be prescribed.

Attachment
and
confiscation of
property

16.

- (1) No person shall hold or be in possession of any proceeds of an offence under this Act.

- (2) If the District Magistrate has reason to believe that the property, whether moveable or immovable, in possession of any person has been acquired by a person as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by Special Court.

- (3) The provisions of the Code shall, *mutatis mutandis* apply to every such attachment.

- (4) Notwithstanding the provisions of the Code the District Magistrate may appoint an Administrator of any property attached under sub-section (2) and the Administrator shall have all the powers to administer such property in the best interest thereof.
- (5) The District Magistrate may provide police help to the Administrator for proper and effective administration of such property.

Explanation: - For the purposes of this section, "proceeds of an offence under this Act" means all property derived or obtained from the commission of an offence under this Act or has been acquired by means of funds relating to crime and shall also include cash, irrespective of the person in whose name such proceeds stand or in whose possession they are found.

Release of property

of

17.

- (1) Where any property is attached under Section 16, the claimant thereof may within three months from the date of knowledge of such attachment make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.
- (2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant.

Inquiry into the character of acquisition of property by the Court

18.

- (1) Where no representation is made within the period specified in sub-section (1) of Section 17 or the District Magistrate does not release the property under sub-section (2) of Section 17 he shall refer the matter with his report to the Special Court to try an offence under this Act.
- (2) Where the District Magistrate has refused to attach any property under sub-section (2) of Section 16 or has ordered for release of any property under sub-section (2) of Section 17, the State Government or any person aggrieved by such refusal or release may make an application to the Special Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this

Act. Special Court may, if it considers necessary or expedient 'in the interest of justice so to do, order attachment of such property.

- (3) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Special Court shall fix a date for inquiry and give notice thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 17 and to the State Government, and also to any other person whose interest appears to be involved in the case.
- (4) On the date so fixed or any subsequent date to which the inquiry may be adjourned, the Special Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by the person as a result of the commission of an offence triable under this Act and shall pass such order under Section 19 as may be just and necessary in the circumstances of the case.
- (5) Notwithstanding anything contained in the Indian Evidence Act, 1872, to the contrary, in any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a person as the result of the commission of any offence triable under this Act, shall be on the person claiming the property.

Order
inquiry

after

19.

(1)

If upon such inquiry the Special Court finds that the property was not acquired by a person as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached.

(2)

Where the accused is convicted of any offense punishable under this Act, the Special Court may, in addition to awarding any sentence, by order in writing, declare that any movable or immovable or both property free from encumbrances belonging to the accused shall be deemed to vest in the State Government.

Appeal	20.	The provisions of Chapter XXIX of the Code shall, <i>mutatis mutandis</i> , apply to an appeal against any judgement or order of a designated Court passed under the provisions of this Act.
Liability of management etc. to pay all costs and expenses	21.	If any person, printing press, service provider contracted or ordered for examination, management for conducting examination, any person or organization authorized to keep or transport the examination material, any employee of the Examination Authority, limited liability partnership, coaching centre or any other institutionis found guilty of an offense under sub-section (2), (3) and (4) of section 12 of this Act, then as determined by the Special Court, they shall be liable to pay costs and expenses and shall be barred by this forever.
Offence to cognizable, non-bailable and non-compoundable	22.	<p>Special Court may upon perusal of police reports of the facts which constitutes an offence under this Act or upon any complaint made by a party authorized in this behalf under this Act take cognizance of the offence for which the accused has committed for trial.</p> <p>(a) Notwithstanding anything contained in the Code of Criminal Procedure 1973(2 of 1974) for an offence punishable under this Act shall be cognizable, non-bailable and non-compoundable.</p> <p>(b) No person accused of an offence punishable for terms of imprisonment of more than ten years shall be release on bail under this Act unless:-</p> <p>(i) The Public Prosecutor has been given an opportunity to oppose the bail application for such release, and</p> <p>(ii) Where the Public Prosecutor opposes the application, the Special Court has satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:</p> <p style="padding-left: 40px;">Provided that a person who is an examinee, or woman, sick or infirm may be released on bail if the Special Court shall direct.</p>
No inquiry or approval required	23.	(1) For the purposes of this Act -

- (a) generally preliminary inquiry shall not be required for registration of a First Information Report against any person:

Provided that the State Government, if it so desires, shall conduct preliminary inquiry of any case by an Executive Magistrate not below the rank of an Additional District Magistrate.

- (b) the investigating officer shall not require approval for the arrest, if necessary, of any person,

against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

- (2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgement or order or direction of any Court.

Investigation of crimes	24.	No police officer below the rank of Additional Superintendent of Police (in districts where Additional Superintendent of Police is not posted, Superintendent of Police) shall investigate any offence committed under this Act.
Cases considered by Special Courts	25.	Notwithstanding anything contained in the Code or any other law for the time being in force, the offences specified under this Act shall be trial only by the Special Court under this Act.
Power to appoint Special Courts	26.	The State Government, in consultation with the Chief Justice of the Hon'ble High Court of Uttarakhand, shall, for trial of offences punishable under this Act, by notification, designate such numbers of Session Courts as Special Court or special courts for such area or areas as may be specified in the notification.
Servant	27.	Notwithstanding anything contained in section 21 of the Indian Penal Code, 1860 (Act 45 of 1860) every person engaged in the conduct of competitive examination shall be deemed to be a public servant for the purpose of this Act.
Act not to be in derogation of any other law	28.	The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

- Power to remove difficulties** 29. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by notification, make such provisions, not inconsistent with the provisions of this Act, as may appear necessary for the removal of the difficulty:
- Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, on the table of the State Legislative Assembly.
- Power to make rules** 30. (1) The State Government may make Rules for carrying out the purposes of the Act.
- (2) Every Rules made under this section shall, as soon as may be after they are so made, be laid before the State Legislative Assembly while it is in session.
- Power to issue directions or orders** 31. The State Government may from time-to-time issue directions or order in writing for giving effect to the provisions of this Act.
- Power to amend Schedule** 32. The State Government may by notification include or exclude in the schedule 1 and 2 such authority and examination in respect of which it considers necessary to apply the provisions of this Act and after the publication of such notification in the Gazzette the schedule 1 and 2 shall be deemed to be amended accordingly.
- Protection of action taken in good faith** 33. No suit, prosecution or other legal proceedings shall lie against the State Government or any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.
- Repeal and saving** 34. (1) The Uttarakhand Competitive Examination (Measures for Control and Prevention of Unfair Means in Recruitment) Ordinance, 2023, is hereby repealed.
- (2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Schedule 1

(See section 2, (b))

- (1) Uttarakhand Subordinate Services Selection Commission.
- (2) Uttarakhand Public Service Commission.
- (3) Uttarakhand Medical Selection Board.
- (4) Any other Institutions authorized by the State Government to conduct competitive examinations from time to time.

Schedule 2

(See section 2, (d))

- (1) All competitive examinations to be conducted by the Uttarakhand Subordinate Services Selection Commission, Uttarakhand Public Service Commission, Uttarakhand Medical Selection Board and any other Institutions authorized by the State Government to conduct competitive examinations from time to time.

By Order,

SHAHANSHAH MUHAMMAD DILBER DANISH,
Secretary.

Statement of object and reasons

Cases of malpractices in some public examinations of the State have come to knowledge in the last few years before the State Government, some of these cases also indicate the presence of organized copying mafia. Such efforts are contrary to the concept of providing equal opportunities to the candidates of the State in the competitive examination provided in the 'Constitution of India' and the objective of providing excellent human resources to the State. In such a situation, it has been decided to make a specific law for the purpose of maintaining the sency of competitive examination.

In this context, the Uttarakhand Competitive Examination (Measures for Control and Prevention of Unfair Means in Recruitment) Ordinance, 2023 was promulgated.

2- The proposed Bill is the replacing Bill of the above said Ordinance and fulfills the above objects.

Pushkar Singh Dhami
Chief Minister