IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 24TH DAY OF FEBRUARY 2021 / 5TH PHALGUNA, 1942

WP(C). No.16198 OF 2010(S)

PETITIONER:

1 MOOSA, MANAGER,
AMLP SCHOOL, ALANALLOOR, ARATTUTHODI,
PERUMPADARI P.O, MANNARKKAD TALUK,
PALAKKAD DISTRICT.

2 V.V.SHOUKATHALI, S/O. MOHAMMAD,
VADAKKEVALAPPIL, JAWAHAR NAGAR, THENKARA,,
PALAKKAD DISTRICT.

BY ADVS. SRI. K. MOHANAKANNAN
SMT. A. R. PRAVITHA
SMT. D. S. THUSHARA

RESPONDENTS:

1 STATE OF KERALA,
SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2 THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

3 THE CHIEF ELECTION COMMISSION, KERALA
THIRUVANANTHAPURAM.

4 THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

5 THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.

* 6 THE ELECTION COMMISSIONER OF INDIA,
REPRESENTED BY ITS SECRETARY, ASOKA ROAD, NEW DELHI.

* IS IMPLEADED AS ADDITIONAL 6TH RESPONDENT VIDE ORDER DATED 25.09.2015 IN I.A. NO.6864/2010

R1, R2, R4 & R5 BY SENIOR GOVERNMENT PLEADER
SRI. T. K. ARAVINDA KUMAR BABU

R3, R6 BY SRI.MURALI PURUSHOTHAMAN, SC, ELE.COMMN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.02.2021, ALONG WITH WP(C). NOS.17534/2010(S), 29964/2010(S), 27670/2015(S) & 27993/2015(S), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 24TH DAY OF FEBRUARY 2021 / 5TH PHALGUNA, 1942

WP(C). No.17534 OF 2010

PETITIONER:

JIBU P. THOMAS, ADVOCATE
RESIDING AT PUTHENPURACKAL HOUSE,
PAZHOOR P.O., PIRAVAM-686 664.

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENTS:

1 **THE STATE OF KERALA,**
REPRESENTED BY THE SECRETARY TO GENERAL
EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2 **THE DIRECTOR OF PUBLIC INSTRUCTIONS,**
THIRUVANANTHAPURAM.

3 **THE CHIEF ELECTION COMMISSION,**
KERALA, THIRUVANANTHAPURAM.

R1 & R2 BY SENIOR GOVERNMENT PLEADER
SRI. T. K. ARAVINDA KUMAR BABU

R3 BY SRI.MURALI PURUSHOTHAMAN, SC, ELE.COMMN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.02.2021, ALONG WITH WP(C). NOS.16198/2010(S), 29964/2010(S), 27670/2015(S) & 27993/2015(S), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 24TH DAY OF FEBRUARY 2021 / 5TH PHALGUNA, 1942

WP(C). No.29964 OF 2010

PETITIONER/S:

C. P. RAJASEKHARAN,
(DIRECTOR, EDUCATIONAL F M, IGNOU, KOCHI),
CHITHRAKODOOM, CHEROOR, THRISSUR-8.

BY ADVS.SRI.M.V.ASHIM
SRI.B.HARRYLAL
SRI.C.R.REGHUNATHAN

RESPONDENT/S:

1 STATE OF KERALA
REP. BY CHIEF SECRETARY, THIRUVANANTHAPURAM.

2 PRINCIPAL SECRETARY
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

3 PRINCIPAL SECRETARY,
EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.

4 KERALA STATE ELECTION COMMISSION
REP. BY SECRETARY, THIRUVANANTHAPURAM.

5 ELECTION COMMISSION OF INDIA
REP. BY SECRETARY, NIRVACHAN SADAN, NEW DELHI.

R1 & R3 BY SENIOR GOVERNMENT PLEADER
SRI. T. K. ARAVINDA KUMAR BABU

R4 & R5 BY SRI. MURALI PURUSHOTHAMAN, SC, ELE.COMMN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.02.2021, ALONG WITH WP(C). NOS.16198/2010(S), 17534/2010(S), 27670/2015(S), & 27993/2015(S), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 24TH DAY OF FEBRUARY 2021 / 5TH PHALGUNA, 1942

WP(C). No.27670 OF 2015

PETITIONER:

MOHAMMED SHAJAHAN K.P.,
AGED 31 YEARS, S/O. MARAKKAR K.P.,
KANGATTU PUTHENVEETIL HOUSE,
VADAKKANGARA P.O, MANKADA VIA,
MALAPPURAM DISTRICT, PIN - 679 324.

BY ADVS.SRI.ALIAS M.CHERIAN
SRI.JINU JOSEPH
SRI.N.RAGHUNATH

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.

2 THE PRINCIPAL SECRETARY
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

3 DIRECTOR OF PUBLIC INSTRUCTION
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION, THYCAUD,
THIRUVANANTHAPURAM 695 014.

4 KERALA STATE ELECTION COMMISSION
OFFICE OF ELECTION COMMISSION, PATTOM P.O.,
THIRUVANANTHAPURAM -695 004.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER
SRI. T. K. ARAVINDA KUMAR BABU

R4 BY ADV. SRI. MURALI PURUSHOTHAMAN, SC, K.S.E.COMM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.02.2021, ALONG WITH WP(C). NOS.16198/2010(S), 17534/2010(S), 29964/2010(S), & 27993/2015(S), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 24TH DAY OF FEBRUARY 2021 / 5TH PHALGUNA, 1942

WP(C). No.27993 OF 2015

PETITIONER:

1 MATHEW ZACHARIAS, PRESIDENT,
APPROCH INDIA, IDIYAKUNNEL, PUPALLY POST,
WAYANAD DISTRICT, KERALA -673 579.

2 GEORGE JOSEPH,
SECRETARY, APPROCH INDIA, MURIANKARY, C.H.COLONY,
CHEVARAMBALAM P.O., KOZHIKODE - 673 017.

3 O.SIVARAMAN, MEMBER,
APPROCH INDIA, OMBALAMURICKAL HOUSE,
P.O.NENMENI, SULTHAN BATHERY - 673 592.

BY ADVS. DR.GEORGE ABRAHAM
SRI.V.A.MUHAMMED
SMT.P.A.JENZIA

RESPONDENTS:

1 THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OFSCHOOL EDUCATION LITERACY,
MINISTRY OF HUMANRESOURCES DEVELOPMENT, SASTRI BHAVAN,
RAJENDRA PRASAD ROAD, SASTRI BHAVAN, NEW DELHI - 11.

2 THE MINISTRY OF HUMAN RESOURCES DEVELOPMENT
SASTRI BHAVAN, RAJENDRA PRASAD ROAD,
SASTRI BHAVAN, NEW DELHI - 11.

3 THE STATE ELECTION COMMISSIONER,
THIRUVANANTHAPURAM - 695 001.

4 THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM - 695 001.

5 THE SECRETARY TO GOVERNMENT
DEPARTMENT OF LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

6 THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM - 695 014.

7 THE KERALA PRIVATE SCHOOL TEACHERS UNION KPSTU
REPRESENTED BY ITS SECRETARY, CENTRAL COMMITTEE OFFICE,
CARRIER STATION ROAD, KOCHI - 682 016.

* 8 THE CHIEF ELECTION COMMISSION OF INDIA,
REPRESENTED BY ITS SECRETARY GENERAL,
SAFDARJANG ROAD, NEW DELHI-110 001.

* 9 THE ELECTION COMMISSION,
VIKAS BHAVAN, THIRUVANANTHAPURAM-695 033.

* ARE IMPLEADED AS ADDL. RESPONDENTS 8 AND 9, VIDE ORDER DATED 26/10/2015 IN IA. NO.14529/2015.

R1 & R2 BY SRI. JAGADEESH LAKSHMAN, CGC
R3 & R8 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC, K.S.E.COMM
R4 TO R6 BY SENIOR GOVERNMENT PLEADER
SRI. T. K. ARAVINDA KUMAR BABU

R7 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.02.2021, ALONG WITH WP(C). NOS.16198/2010(S), 17534/2010(S), 29964/2010(S), & 27670/2015(S), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

S. Manikumar, CJ

Instant public interest writ petitions are filed generally with prayers for issuance of a writ, order, or direction, declaring that the teaching staff of aided schools are not entitled to contest in the election to the local bodies, including State Legislative Assembly and Parliament. As they are working in aided schools, petitioners, *inter alia*, have sought for issuance of a writ of mandamus declaring that the exemption, if any, granted to the aided school teachers, permitting them to contest in various elections conducted by the Election Commissions, as *non est* in the eye of law, and to declare the same as void.

2. In W.P.(C) No.17534/2010, the petitioner therein has sought for a direction to the State and the Director of Public Instructions, to make suitable amendments in the Kerala Educational Rules, 1956, to give effect to the directions stipulated in the Right of Children to Free and Compulsory Education Act, 2009.

3. In W.P.(C) No.27670/2015, the petitioner therein has sought for a direction declaring that aided school teachers are not entitled to be engaged in political activities and to contest for election to Local Self Government bodies under the Kerala Panchayat Raj Act, 1994, as well as

the Kerala Municipalities Act, 1994. The petitioner has also sought for a direction to the State officials, to issue necessary orders prohibiting aided school teachers from engaging in political activities and contesting the election to Local Self Government bodies under the Kerala Panchayat Raj Act, 1994, as well as the Kerala Municipalities Act, 1994.

4. However, distinct from the reliefs sought for in other writ petitions, in W.P.(C) No.29964/2010, the petitioner therein has sought for a declaration that any provision permitting contest in elections to the Parliament, State Assembly or Local Body by the teachers of private educational institutions, both under aided and unaided sector, shall be unconstitutional and violative of Articles 21, 21A, 41 and 46 of the Constitution of India.

5. That apart, petitioner therein has also sought for a declaration that Section 2(iv) of the Legislative Assembly (Removal of Disqualifications) Act, 1951 permitting the office holders in private educational institutions to be members of the local bodies or Central or State Legislative bodies, is in violation of Articles 41 and 46, and *ultra vires* to Articles 21 and 21A of the Constitution of India and quash the same.

6. For appropriate disposal of the writ petitions, we deem it fit that the parties can be referred as they are arrayed in W.P.(C) No.29964/2010,

and to rely on the basic contentions raised, as well as the counter affidavit filed thereto by the State Government.

7. The petitioner in W.P.(C) No.29964/2010, is a retired Director of Doordarshan, Mangalore Station, and was serving as the Director of Audio-visual communication in Indira Gandhi National Open University (IGNOU), Kochi, at the time of filing the writ petition. According to him, the experience gained by him for having served under the mass communication field over last three decades, having authored stage plays and children books, conveying the message for social working, has constrained him to file the writ petition, to prevent the massive participation of the teachers, working in private educational institutions, including Government aided colleges and school, in active politics and contest in elections to the Parliament, State Assembly, and local bodies, by diluting the quality of service to the cause of education and breeding fissiparous and divisive tendencies among the students and society, on account of petty political considerations.

8. Petitioner therein has further stated that while service rules applicable to the Government teachers interdict the involvement in active politics and contest in elections, the teachers in private sector, discharging the very same functions, are freely allowed to actively participate in politics,

including making recriminatory and abusive political speeches and contesting in elections. He has stated that in a State where the private educational sector play an equally important role, it is necessary that the teachers working in private sector are also regulated by appropriate law/orders to prevent them from active involvement in politics and elections, which is necessary to ensure their absolute commitment to the cause of education and that they remain as ideal role models for the students, by their noble conduct in both personal and professional life.

9. Petitioner therein has further submitted that an objective consideration of Sections 30 and 145 of the Kerala Panchayat Raj Act, 1994 and the provisions of Representation of People Act, 1951, would militate against the concept of permitting teachers in private sector, in participating in politics and elections. It is also predominantly contended that the directive principles of the State Policy, enumerated in the Constitution of India, have laid down that the State shall provide free and compulsory education to all the children up to the age of 14 years. Free and compulsory education emphasizes the State's obligation to provide quality education and with such an objective alone, the Right of Children for Free and Compulsory Education Act, 2009 (Education Act, 2009, for short), has been enacted.

10. It is also contended that Section 24 of the Education Act, 2009 prescribes the duties of the teachers and Entries 3 & 4 in Schedule I provide for minimum working days in an academic year and working hours, in a week. A teacher, actively participating in politics and contesting in elections, cannot fulfill these statutory obligations, but would subvert the quality of education, which would militate against the primary duties of the State under Articles 41 and 46 of the Constitution of India and the fundamental rights enshrined under Articles 21 and 21A. In the above backdrop, it is submitted that though the teachers in private aided educational institutions are appointed by the management, their appointments have to be approved by the State and the teachers are receiving salary from the public exchequer.

11. It is further submitted that since the State does not permit Government teachers to contest elections, it is not desirable, in public interest, to permit teachers as a class, to contest elections. Therefore, it is also submitted that Section 2(iv) of the Act, 1951 permitting teachers to be members of the local bodies, is in violation of Articles 21, 21A, 41 and 46 of the Constitution of India, and the said provision of the Representation of People Act, 1951, granting exemption to the teachers of private sector, who receive salary from the Government, is liable to be declared as, *ultra vires*

of the provisions of the Constitution. In this context, it is pointed out that a teacher is not permitted to contest Parliamentary elections, which is also to be inferred as a valid statutory prohibition, meant to be, in public interest.

12. According to the petitioner, though he has submitted a representation dated 17.09.2010 to the State Government, as well as to the Kerala State Election Commission, no action was initiated to redress his grievance, which necessitated him to approach this Court, by filing the above said writ petition.

13. We also deem it fit to consider some of the grounds raised in the other writ petitions.

14. It is contended that the restrictions imposed in the Government Servants' Conduct Rules, 1960, are not made applicable to the teaching and non-teaching staffs of the aided schools, governed by the Kerala Education Rules, 1959. According to the petitioners, the Kerala Education Rules, 1959 state that Government are the authority to pay salary and, therefore, aided school teachers, have to be treated as Government servants, at least, in the matter of regulations and the restrictions imposed under the Representation of People Act, 1951.

15. That apart, it is pointed out that the financial control of the State itself is sufficient to hold that the aided school teachers are at par with the

Government servants and, therefore, it is submitted that whatever restrictions applicable to the Government servants, in particular, teachers working in Government schools, are to be made applicable to the teaching staff of the aided schools also.

16. It is further contended that the teacher-student relationship will be adversely affected if they are permitted to indulge in political activities. It is also contended that since Government teachers are removed from the disqualifications as per the provisions of Representation of People Act, 1951, it is clear that aided school teachers are persons holding 'office of profit', under the Government, in the matter of contesting elections and, therefore, hit by the provisions of the Constitution of India.

17. Petitioners have also contended that the provisions of Right of Children to Free and Compulsory Education Act, 2009 would specify that a teacher appointed in an educational institution shall perform the duties, maintain regularity and punctuality in attending the school, and complete the entire curriculum in a specified time.

18. That apart, Section 27 of the Education Act, 2009 states that no teacher shall be deployed for any non educational purposes. According to the petitioners, such provisions are made, in order to ensure that teachers, if otherwise engaged, would be unable to maintain punctuality, regularity,

and complete the curriculum, within a specified time, so as to benefit a child, taught by a teacher. Further, as per Article 21A of the Constitution of India, it is the fundamental right of a child, from the age of 6 to 14 years, to have education and mere conferring of a right, is not good enough for imparting education, but there should be teachers to teach the child continuously and maintain a good relationship by and between a teacher and students.

19. Respondents have filed common counter affidavits controverting the contentions raised by the petitioners in the instant writ petitions. The Special Secretary to the Government, General Education Department, Thiruvananthapuram, has filed a counter affidavit, wherein it is stated that the field of education, within the State, is dominated by aided and unaided schools, other than Government schools. While the appointments in Government schools are made by the Government itself, appointments in the aided schools are made by the concerned Managers.

20. Section 11 of the Kerala Education Act, 1958, and Rule 1 of Chapter XIVA of the Kerala Education Rules, 1959, empower the Manager of a school to make appointments in aided schools, which indicates that the method of appointment in Government schools and aided schools are not the same. Therefore, it is submitted that since the method of appointment

and the conditions of service of Government teachers and aided school teachers differ substantially, both cannot be treated equally.

21. While the service conditions of the teachers/non-teaching staff of the aided schools are governed by various provisions of the Kerala Education Act, 1958 and the rules framed thereunder, teachers working in the Government schools, cannot be equated to that of teachers in aided schools, enabling the latter to contest in elections.

22. It is further stated that as per G.O.(P) No.231/67/G.Edn. dated 29.05.1967 [Exhibit-R4(a)], teachers of aided schools are conferred with a right to contest in elections, based on which, the permission continued to be granted for the aided school teachers, to contest in elections.

23. It is also submitted that the Legislative Assembly (Removal of Disqualifications) Act, 1951 stipulates that a person shall not be disqualified for being chosen as and for being, a member of the Legislative Assembly of the State, by reason only that he holds an office in any educational institution other than a Government institution.

24. Therefore, according to the Government, a combined reading of the provisions of Act, 1951 and the Government order, would show that, there is no prohibition for the aided school teachers to contest in the elections, despite the fact that they work as a teacher in an aided school.

25. That apart, it is stated that the existing provisions in the Kerala Education Rules, 1959 permit aided school teachers to avail leave for the purpose of enabling them to work as elected members of the Legislative Assembly, President/Chairman of the Local Bodies/Members.

26. Sum and substance of the contentions advanced by the Government is that the contentions made in the writ petitions that unless the aided school teachers are prohibited from contesting the elections, it would be detrimental to the interest of students, are without any basis, for the reason that those elected representatives, who are nominated as Chairperson/ President are entitled to take long term leave, in which event, imparting education is being done by engaging substitute teachers. Therefore, alternate arrangements are ensured to replace the services of teachers on long leave, who are nominated as Chairman/President of Local Self Government Institutions.

27. Moreover, since those, who are holding the posts as members of Local Self Government Institutions, are not required to perform the functions of a member of the LSGI on a full term basis, their working hours at school is not reduced by their absence.

28. Apart from the same, it is stated that such aided school teachers elected as members of LSGI are permitted to carry out their duties and

functions as a member, only during free hours and hours, beyond periods of study. Therefore, according to the Government, there is no loss of working hours, and that, the interest of the student community is well protected.

29. Mr. George Abraham, learned counsel for the petitioners in W.P. (C) No.27993/2015, submitted that removal of disqualification of the aided school teachers to contest in elections, is violative of the provisions of Right of Children for Free and Compulsory Education Act, 2009, and the rules made thereunder, and if the teachers are permitted to contest in elections, it would be detrimental to the interests of the students and would also violate the mandatory requirements under law.

30. Mr. Vinod Bhat, learned counsel for the petitioner in W.P.(C) No.17534/2010, submitted that the said writ petition was filed in the backdrop of non-uniform laws governing the involvement of school teachers in political activities in the State of Kerala. He further submitted that presently, the statutory embargo is only against the teachers working in Government schools to contest elections, while the teachers working in aided school, irrespective of the extent of Government grant to their institutions and payment of salary and other service benefits, are wholly excluded from the disqualification.

31. Relying on the decision in **Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and Others** reported in [(1992) 4 SCC 404], Mr. Vinod Bhat, learned counsel for the petitioner in W.P.(C) No.17534/2010, further submitted that the Hon'ble Supreme Court held that the test is to determine office of profit, and the teachers working in aided schools cannot be categorised, as a class.

32. Mr. S. Vinod Bhat, learned counsel, also referred to Chapter XIV B of the Kerala Education Rules, 1959, which deals with the conduct rules. Rule 4 of Chapter XIV B prohibits a teacher from entering into a pecuniary arrangement for the benefit of resignation by any of them or for the taking of leave for the benefit of the other and if any teacher indulges in such activities, their service will be suspended pending the orders of competent authorities. Teachers are also prohibited from directly or indirectly engaging in any trade or business or undertake any employment as per Rule 7 of the KER. Likewise, as per Rule 14 of the KER, no teacher shall, except with the previous sanction of the Director, own wholly or conduct or participate in the editing or management of any newspaper or other periodical publication. Rule 23 prohibits a teacher from engaging in any kind of activity prejudicing normal functioning of the school, including that no teacher shall use mobile phones or such other devices in the classroom. As

per Rule 25, teachers are prohibited from taking part in the promotion, registration or management of any bank or company. Similarly, Rule 26 of the KER prohibits a teacher from serving or accepting paid employment in any company, mutual benefit society or co-operative society or to act as an agent whether paid by salary or commission, to any insurance company or society, except taking part in the management of a mutual benefit society, if he has obtained the sanction of Deputy Director of Education. Teachers are also prohibited from communicating with the press as per Rule 36 and communicating with members of the Legislature as per Rule 37, and discussion of the policy or action of the Government as per Rule 38.

33. The statutory provisions are brought to our notice by the learned counsel for the petitioners, to canvas the proposition that onerous duties, obligations, and responsibilities are imposed on the teachers, to ensure discharge of their duties and functions of the schools continuously and to the utmost advantage of the students. Therefore, providing leave to the teachers, in contemplation of Rule 56 of Chapter XIV of the Kerala Education Rules, 1959, to work in the local bodies and to participate in Legislative Assembly Sessions, is violative of the provisions of Right of Children for Free and Compulsory Education Act, 2009. According to the learned counsel for the petitioners, having regard to the noble objects of

Articles 21 and 21A of the Constitution of India, the provisions of Legislative Assembly (Removal of Disqualifications) Act, 1951, removing the disqualification of teachers other than teachers of Government schools is unconstitutional. It is further submitted that while Act, 1951 was enacted, imparting education to the children was not given importance, and applying the provisions of the Right of Children for Free and Compulsory Education Act, 2009, in true sense, Section 2(iv) of Act, 1951 cannot be sustained.

34. The unanimous contention advanced by learned counsel for the petitioners, relying on Article 102, which deals with disqualification for membership for either House of Parliament and Article 191 of the Constitution of India, dealing with disqualification for membership of Legislative Assembly or Legislative Council of a State, is that, since aided school teachers are receiving salary from the State Government and their functioning is regulated by the provisions of Kerala Education Act, 1958, and the rules 1959 framed thereunder, they are holding 'office of profit' under the State Government and, therefore, an aided school teacher is also governed by the disqualifications prescribed under Articles 102 and 191 of the Constitution of India.

35. It is further contended that even if teachers are appointed by the managements of the aided schools, they are strictly controlled and

regulated by the provisions of Kerala Education Act, 1958 and the Rules, 1959, and that there is pervasive control by the State Government. According to the learned counsel for the petitioners, State Government have issued order, G.O.(P) No.237/67/G.Edn., dated 29.5.1967, permitting the teachers working in aided schools, governed by Chapter XIV(C) KER, to have political rights as teachers under Chapter XIV(B) KER. As per Section 2(iv) of the Legislative Assembly (Removal of Disqualifications) Act, 1951, teachers working in educational institutions, other than the Government institutions, have been allowed to contest in the elections to the Legislative Assembly, by the removal of disqualifications. When the teachers working in the schools, whether Government or aided or unaided, perform the same duties and responsibilities, and when all of them receive salary from the Government, service conditions, regulated by statute and rule, they form only one class of teacher as a whole, and in such circumstances, there cannot be a separate class of teachers working in aided schools, allowing them to contest in Local Body and Assembly elections.

36. In one of the writ petitions, viz., W.P.(C) No.29964/2010, the constitutional validity of Section 2(iv) of Act, 1951 is challenged basically contending that the said provision is violative of Articles 21, 21A, 41 and 46 of the Constitution of India. The permission granted by the State

Government to the aided school teachers, as per the provisions of the Kerala Education Rules, 1959, is challenged on the ground that consequent to the introduction of Right of Children to Free and Compulsory Education Act, 2009, the Central Rules, 2010, and the State Rules, 2011, the teachers are endowed with specific duties, hours of work and provisions have been made to ensure that teachers do not indulge in any activity, other than imparting education to the children.

37. It is further submitted that by virtue of the provisions of Kerala Municipality Act, 1994 and the Kerala Panchayat Raj Act, 1994, the Elected members/ President / Chairperson have to discharge their duties with more diligence, punctuality and dedication, so as to fulfill the requirements of the provisions of the said Acts.

38. Moreover, the elected members are required to discharge so much of duties, as per the aforesaid Acts and, therefore, teachers elected to the local bodies would not be able to discharge their functions as a teacher, to spare any time for imparting education to the students, as per the provisions of Right of Children for Free and Compulsory Education Act, 2009 and the rules thereto, Kerala Education Act, 1958, and the rules framed thereunder.

39. Learned counsel for the petitioners also invited our attention to

Articles 243F and 243V of the Constitution of India, dealing with disqualifications for membership, for being chosen as a member of Panchayat and Municipality.

40. Sum and substance of the contention of the learned counsel for the petitioners is that every student is entitled, as of right, to secure education continuously, uninterruptedly, and if the aided school teachers are permitted to contest in elections to the State Legislative Assembly and local bodies, and simultaneously work in two institutions, the students will be deprived of their right to education, protected under Articles 21 and 21A of the Constitution of India, especially due to the fact that the education secured by a student is significant for his/her future prospects.

41. That apart, it is pointed out that every child between the age of 6 to 14 years is entitled to free and compulsory education in such manner as the State may, by law, determine, as envisaged under Article 21A of the Constitution of India. Therefore, according to the petitioners, a duty is cast upon the State, coupled with an obligation, to ensure that the students secure education guaranteed under Article 21A, which is a fundamental right and also as per the provisions of Education Act, 2009.

42. Relying on Section 2(f) of the Right of Children for Free and Compulsory Education Act, 2009, which defines elementary education, and

Section 2(n), which defines school, it is submitted that any male or female child of the age of 6 to 14 years is entitled to get education in any school recognised imparting elementary education and which takes in a school established, owned or controlled by appropriate Government, a local authority, a school belonging to any specified category and unaided school not receiving any kind of aid or grants to meet expenses from the appropriate Government or the local authority, and therefore, the said provisions make it clear that it has not distinguished a student studying in Government, aided, unaided schools etc., and, therefore, exclusion of teachers other than Government teachers from the provisions of Act, 1951 enabling them to contest elections, in the light of the provisions of Education Act, 2009, cannot be sustained.

43. It is further submitted that, by virtue of Section 3 of the Education Act, 2009, every child of the age of 6 to 14 years is entitled to free and compulsory education in a neighbourhood school, till the completion of his or her elementary education, and for that purpose, no child shall be liable to pay any kind of fee or charges or expenses, which may prevent him or her from pursuing and completing the elementary education.

44. According to the petitioners, Section 6 of the Education Act, 2009

mandates a duty on the appropriate Government and local authority to establish school for carrying out the provisions of the Act, including establishment of neighbourhood schools within a period of three years from the commencement of the Act. Section 7 makes it clear that the Central Government and the State Governments shall have the concurrent responsibility for providing funds, for carrying out the provisions of Education Act, 2009. The Central Government is endowed with a duty to prepare the estimates of capital and recurring expenditure for implementation of the provisions of the Act and the Central Government shall provide to the State Governments, as grant-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

45. Relying on the provisions of Kerala Education Act, 1958 and the Kerala Education Rules, 1959, Mr. T. K. Aravinda Kumar Babu, learned Senior Government Pleader, submitted that Government is providing funds to the aided educational institutions, as grant in aid, pay salary to the teachers, working in aided schools, but the Government is not having the authority to appoint or terminate them. Therefore, teachers working in aided educational institutions, will not come under the expression 'office of profit', under the Government, and even if the disqualification is not

removed, as per Act, 1951, by virtue of Articles 102 and 191 of the Constitution of India, aided school teachers does not have any disqualification and, therefore, entitled to contest in elections.

46. On the above aspect, he invited the attention of this Court to the definition of 'aided school', under Section 2(1) of Act, 1958, to mean a private school, recognised by and is receiving aid from the Government, but shall not include educational institutions, entitled to receive grants under Article 337 of the Constitution of India, except insofar as they are receiving aid in excess of the grants to which they are so entitled. He also referred to Chapter XIV A of the Kerala Education Rules, 1959 dealing with the conditions of service of aided school teachers and sub-rule (1) thereto, which specifies that Managers of private schools shall appoint only candidates who possess the prescribed qualifications.

47. Learned Senior Government Pleader has also referred to Rule 56 of the Kerala Education Rules, 1959, which deals with leave rules, and submitted that the said rule takes care of a situation where teachers are provided with facilities for availing leave, to work in the local bodies and participate in Assembly Sessions.

48. Mr. Aravinda Kumar Babu, learned Senior Government Pleader, further submitted that since Articles 243F and 243V of the Constitution of

India dealing with disqualifications to Panchayats and Municipalities are largely dependent on the disqualification prescribed for contesting elections to the Parliament and State Legislature, or such other bodies, according to him, once the provisions of Articles 102 and 191 of the Constitution are advantageous to the teachers, who are not discharging any duties in an office of profit, under the Central or State Governments, then even if Section 2(iv) of Act, 1951 is held to be bad, they are well protected as per the provisions of the Constitution of India.

49. Placing reliance on a Hon'ble Division Bench judgment of this Court in **Gopala Kurup v. Samuel Arulappan Paul and Ors.**, reported in AIR 1961 Ker. 242, Mr. T. K. Aravinda Kumar Babu, learned Senior Government Pleader, submitted that the issue, in the cases on hand, is covered by the said decision.

50. Mr. Murali Purushothaman, learned standing counsel for the State Election Commission, submitted that superintendence and conduct of all the elections to Panchayats and Municipalities are vested with the State Election Commission, constituted under Article 243K/ZA of the Constitution of India. Likewise, superintendence and conduct of elections to the Parliament and State Assembly are vested with the State Election Commission under Article 324 of the Constitution. To substantiate his

contentions, the learned standing counsel has referred to the constitutional and statutory provisions of Kerala Panchayat Raj Act, 1994, Kerala Municipalities Act, 1994, Legislative Assembly (Removal of Disqualifications) Act, 1951, Kerala Education Act and the rules framed thereunder.

51. Learned standing counsel for the State Election Commission also submitted that the qualifications and disqualifications for membership of Parliament and State Legislatures are provided by the Constitution of India and Representation of People Act, 1951. To contest in an election to the Parliament or State Legislature, a person shall be qualified or must not be disqualified under the Constitution of India and Representation of People Act, 1951. If the candidate is not qualified as above, or is disqualified, the Returning Officer is authorised by law to reject the nomination of the candidate. He also referred to the protective provisions contained under Chapter XIV A of the Kerala Education Rules, 1959.

52. That apart, learned standing counsel for the State Election Commission submitted that disqualifications for candidature for the purposes of elections to the Legislative Assembly are provided under the Constitution and the Representation of the People Act 1951. The Constitutional disqualifications are provided under Article 191. Article 191 (a) provides that a person shall be disqualified for being chosen as, and for

being, a member of the Legislative Assembly of a State if he holds any office of profit under the Government of India or Government of any State, other than an office declared by the Legislature of the State by law not to disqualify its holder. Legislature of the State, by law, can declare that certain holders of office of profit under the Government are not disqualified. The Legislative Assembly (Removal of Disqualifications) Act, 1951, is an Act to declare certain offices as offices which will not disqualify the holders thereof for being chosen as, and for being, members of the Legislative Assembly of Kerala.

53. Mr. Babu Joseph Kuruvathazha, learned counsel appearing for the Kerala Private School Teachers' Union (KPSTU), represented by its Secretary, Kochi, respondent No.7 in W.P.(C) No.27993/2015, contended that, whether a teacher working in an aided school has to be permitted to contest in the elections to the local bodies, State Assembly and Lok Sabha, is a policy matter of the Government. After considering all the relevant aspects, Government have taken a policy decision, to permit the teachers working in aided schools to contest in elections and in order to nullify the said policy decision, petitioners have approached this Court with the instant writ petitions. He also submitted that such a legislation of law, pertaining to the policy of the Government, is not a matter, which can be agitated

under Article 226 of the Constitution of India, especially in view of the fact that there is no violation of the fundamental right guaranteed under the Constitution of India, to the petitioners, due to the contesting of aided school teachers in elections.

54. Learned counsel for the 7th respondent further submitted that when an aided school teacher is elected to State Legislature or Indian Parliament, he/she used to avail leave for that period and his post/responsibility would be substituted by another competent teacher. Similarly, when a teacher working in aided school becomes the President/Chairperson/Mayor of the Panchayat/Municipality/Corporation, he/she used to avail leave during the entire tenure of such public office.

55. Learned counsel for the 7th respondent Union further submitted that there is a difference between a teacher of a Government school and that of an aided school. Teachers of a Government school will be transferred from one school to another, in the district/State, whereas no such transfer is possible as far as the aided school teacher is concerned, unless the aided school is a corporate management. Therefore, the teachers working in aided schools, work sincerely and in a dedicated manner. Hence, their involvement in public affairs would not affect their duty/responsibility as a teacher.

56. Finally, learned counsel for the 7th respondent submitted that as a matter of policy, considering all the relevant aspects, Government have decided not to permit the teachers working in Government schools, to participate in the election process to the State Assembly, Parliament, as well as Civil bodies, but, at the very same time, Government have taken a decision to permit the teachers working in aided schools, to contest in elections. The said decision of the Government is in accordance with law and the petitioners have no *locus standi* to challenge the same.

57. Heard Dr. George Abraham, learned counsel for the petitioners in W.P.(C) No.27993/2015, Mr. Vinod Bhat, learned counsel for the petitioner in W.P.(C) No.17534/2010, learned counsel Mr. G. Harilal, Mr. T. K. Aravinda Kumar Babu, learned Senior Government Pleader for the State, Mr. Murali Purushothaman, learned standing counsel for the State Election Commission, Mr. Babu Joseph Kuruvathazha, learned counsel for the 7th respondent Union, and perused the pleadings and materials on record.

58. Let us consider the constitutional and statutory provisions.

59. Article 21 of the Constitution of India speaks about protection of life and personal liberty and the same reads thus:

> "**21. Protection of life and personal liberty**.- No person shall be deprived of his life or personal liberty except according to procedure established by law. "

60. Article 21-A of the Constitution of India speaks about right to education and it reads thus:

> "**21-A. Right to education**.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

61. Article 41 of the Constitution of India reads thus:

> "**41. Right to work, to education and to public assistance in certain cases**.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

62. Article 46 of the Constitution of India reads thus:

> "**46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.-** The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

63. Article 102 of the Constitution of India, in regard to disqualification for membership for either House of Parliament, reads thus:

"**102. Disqualifications for membership**.- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament —

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

[*Explanation*.— For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

64. Article 191 of the Constitution dealing with disqualification for membership of Legislative Assembly or Legislative Council of a State is extracted hereunder:

"**191**. **Disqualifications for membership.**- (1) A person shall be disqualified for being chosen as, and for being, a

member of the Legislative Assembly or Legislative Council of a State-

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

[Explanation.—For the purposes of this clause], a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule."

65. Articles 243F and 243V of the Constitution of India, dealing with disqualifications for membership, for being chosen as a member of Panchayat and Municipality, read thus:

"**243-F. Disqualifications for membership**- (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

(a) if he is so disqualified by or under any law for the

time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

"**243V. Disqualifications for membership.**- (1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

66. Reading of Articles 243F and 243V of the Constitution of India would categorically and in unequivocal terms, make it clear that if a person is only disqualified by or under law for the time being in force and for the purpose of elections to the Legislature of the State concerned alone they are disqualified for being chosen as a member of Panchayats / Municipalities / Corporation. But, the fact remains that the disqualification of a teacher of any institution is removed, by virtue of the provisions of Act, 1951, insofar as election to the Legislative Assembly is concerned. Therefore, it is clear that Articles 243F and 243V of the Constitution of India dealing with disqualification for being chosen as a member of Panchayats and Municipality, are closely intertwined with any law made by the State and, therefore, the respondents argued that if there is no disqualification, as per the provisions of Act, 1951, for being elected as a member of the State Legislative Assembly, then, there can be no disqualification for contesting in the election to the Panchayats and the Municipality/Corporation.

67. Section 29 of the Kerala Panchayat Raj Act, 1994 speaks about qualifications for membership of a Panchayat, and it reads thus:

> "**29. Qualifications for membership of a Panchayat**. - A person shall not be qualified for chosen to fill a seat in a Panchayat at any level unless: -

(a) his name appears in the electoral roll of any constituency in the Panchayat;

(b) he has completed his twenty-first year of age on the date of filing of nomination;

(c) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes, he is a member of any of those castes or for those tribes, as the case may be;

(d) in the case of a seat reserved for women, such person is a woman;

(e) he makes and subscribes before the returning officer or any other person authorised by the State Election Commission an oath or affirmation according to the form set out for the purpose in the first schedule.

[Provided that even if a candidate has omitted any word or words inadvertently when he makes and subscribes signature in such oath or affirmation and in the case he has been subsequently elected as member and assumed office on oath or affirmation made in the Second Schedule he shall not be considered as disqualified for the mistake happened earlier.

(f) he has not been disqualified under any other provisions of this Act."

68. Section 30 of the Kerala Panchayat Raj Act, 1994 speaks about disqualification of officers and employees of Government, local authorities etc., and it reads thus:

"**30. Disqualification of officers and employees of Government, local authorities etc**.-(1) Officer or employee in the service of the State or Central Government or of a local authority or a corporation controlled by the State or Central Government or of a local authority or any company in which the State or Central Government or a local authority has not less than fifty one percent share or of a statutory Board or of any University in the state shall be qualified, for election or for holding office as a member of a panchayat at any level.

Explanation.– For the purpose of this section, company means a Government company as defined in section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a co-

operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969)].

(2) Any Officer or employee referred to in sub-section (1) who has been dismissed for corruption or disloyalty shall be disqualified for a period of five years from the date of such dismissal for election or for holding office as a member of a Panchayat at any level."

69. Section 34 of the Kerala Panchayat Raj Act, 1994 speaks about disqualification of a candidate for being chosen as a member of a Panchayat, and it reads thus:

"**34. Disqualification of candidates**. – (1) A person shall be disqualified for being chosen as and for being a member of a panchayat at any level, if he –

(a) is so disqualified by or under any law, for the time being in force, for the purposes of elections to the Legislative Assembly; or

[(aa) has been proved at any later time, that the community certificate produced before the Returning Officer or the declaration submitted along with the nomination paper under sub-section (2) of section 52 for contesting to a seat reserved for Scheduled Castes or Scheduled Tribes was false or bogus or that he does not belong to Scheduled Caste or Scheduled Tribe, as the case may be, under the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (11 of 1996) or under any other law for the time being in force and declared as such and six years have not elapsed from the date of such declaration, or.]

(b) (i) has been sentenced by a Court or Tribunal to imprisonment for a period not less than three months for an offence involving moral turpitude;

(ii) has been found guilty of an offence of corruption by a competent authority under any law in force;

(iii) has been held personally liable for maladministration by the Ombudsman constituted under Section 271 G; or

(c) has been adjudged to be of unsound mind; or

(d) has voluntarily acquired the citizenship of a foreign State; or

(e) has been sentenced by a Criminal Court for any electoral offence punishable under Section 136 or [x x] Section 138 or has been disqualified from exercising any electoral right on account of corrupt practices in connection with an election, and six years have not elapsed from the date of such sentence or disqualification; or

(f) is an applicant to be adjudicated an insolvent or is an undischarged insolvent; or

(g) is interested in a subsisting contract made with, or any work being done for, the Government or the any [Local Self Government Institution] except as a shareholder (other than a director) in a company or except as permitted by rules made under this Act;

Explanations. - A person shall not, by reason of his having a share or interest in any newspaper in which an advertisement relating to the affairs of the Government or [any Local Self Government Institution], or by reason of his holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Government or the panchayat, be disqualified under this clause; or

(h) is employed as a paid legal practitioner on behalf of the Government or the Panchayat concerned; or

(i) is already a member whose term of office as such will not expire before his fresh election can take effect or has already been elected a member whose term of office has not yet commenced; or

(j) is in arrears of any kind due by him to the Government or the Local Self Government Institution otherwise than in a fiduciary capacity upto and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired; or

(k) is dismissed or removed from the service of the Central Government or of the State Government or the Service of any local authority or any other service referred to in sub-section (1) of Section 30; and five years have not elapsed from the date of such dismissal or removal; or

(kk) has been disqualified as per the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and has not completed six years from the date of disqualification. or

(l) is debarred from practicing as an advocate or Vakil; or

(m) is a deaf-mute; or

(n) is disqualified under any other provision of this Act; or

(o) is included in the black list for any default in connection with any contract or tender with the Government.

(p) has been found liable for loss, waste or misuse of money or other property of the Panchayat by the Ombudsman]

(2) If any question arises as to whether a candidate has become subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of the State Election Commission and the decision of the State Election Commission on such question shall be final."

70. Section 86 of the Kerala Municipalities Act, 1994 speaks about disqualification of officers and employees of Government, local authorities, etc., and it reads thus:

"**86. Disqualification of officers and employees of Government, local authorities etc**.- (1) No officer or employee in the service of a State or Central Government or a local authority or a Corporation owned or controlled by a State or the Central Government or of a company in which a State or Central Government or local authority has not less than fifty one per cent share or Boards or any University established under a State enactment shall be qualified for election as, or for holding the office of Councillor of a Municipality.

Explanation.- For the purpose of this section, company means a Government Company as defined in

section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a Co-operative Society registered or deemed to have been registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969).]

(2) Any officer or employee referred to in sub-section (1) who has been dismissed for corrupt practices or disloyalty shall be disqualified for a period of five years from the date of such dismissal for election as, or for holding office of, Councillor of a Municipality."

71. Sections 90 and 91 of the Kerala Municipalities Act, 1994 speak about disqualification of candidates, for being a Councillor of a Municipality; and disqualification of Councillors, and they read thus:

"**90. Disqualifications of candidates**.— (1) A person shall be disqualified in the following circumstances for being chosen as and for being a Councillor of a Municipality if he-

(a) is so disqualified under any provision of the Constitution or by or under any law for the time being in force relating to elections to the State Legislative Assembly; or

(aa) has been proved at any later time, that the community Certificate produced before the Returning Officer or the declaration submitted along with the nomination paper under sub-section (2) of section 108 for contesting to a seat reserved for Scheduled Castes and Scheduled Tribes was false or bogus or that he does not belong to Schedule Caste or Scheduled Tribe, as the case may be, under the Kerala (Scheduled Caste and Scheduled tribes) Regulation of Issue

of Community Certificates Act, 1996 (11 of 1996) or under any other law for the time being in force and declared as such and six years have not elapsed from the date of such declaration; or]

(b) (i) has been sentenced by a Court or a Tribunal with imprisonment for a period of not less than three months for an offence involving moral turpitude; or

(ii) has been found guilty of corruption by the competent authority under any law in force, or

(iii) has been held personally liable for maladministration by the Ombudsman constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994), or]

(c) has been adjudged to be of unsound mind; or

(d) has voluntarily acquired the citizenship of a foreign state; or

(e) has been sentenced by a criminal court for any electoral offence punishable under section 160 or [xxx] of section 162 or has been disqualified from exercising any electoral right on account of corrupt practices in connection with an election and six years have not elapsed from the date of such sentence or disqualification; or

(f) is an applicant for being adjudicated as an insolvent or is an undischarged insolvent; or

(g) is interested in subsisting contract made with, or any work being done for the Government or Municipality concerned except as a shareholder (other than a Director) in a company or except as permitted by rules made under this Act.

Explanation.— A person shall not, by reason of his having a share or interest in any newspaper in which an advertisement relating to the affairs of the Government or the Municipality concerned may be inserted, or by reason of his holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Municipality, be disqualified under this clause; or

**[(h) is employed as a paid legal practitioner on behalf of that Municipality; or]

(i) is already a Councillor whose term of office as such will not expire before his fresh election can take effect or has already been elected as Councillor whose term of office has not yet commenced; or

(j) is in arrears of any kind due by him to the Municipality (otherwise than in a fiduciary capacity) upto and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired; or

(k) is dismissed or removed from any of the services referred to in section 86 and five years have not elapsed from the date of such dismissal or removal; or

(kk) has been disqualified under the provisions of The Kerala Local Authorities (Prohibition of Defection) Act, 1999 and six years have not elapsed since the date of his disqualification; or]

(l) is debarred from practising as an Advocate or Vakil; or -

(m) is a deaf-mute; or

(n) is disqualified under any other provisions of this Act; or

(o) is black-listed consequent on defaulted performance under any contract or auction with the Government; or

(p) has been found by the Ombudsman that there is loss, wastage or misuse of money or property of the Municipality.]

(2) If any question arises as to whether the candidate has become subjected to any of the disqualifications mentioned in sub-section (1), the question shall be referred to for the decision of the State Election Commission and the decision of the State Election Commission on such question shall be final."

"**91. Disqualification of Councillors**.— (1) Subject to the provisions of Section 92 or Section 178, a Councillor shall cease to hold office as such if he,-

(a) is found guilty under clause (b) of sub-section (1) of Section 90 or is sentenced for such an offence; or]

(aa) has been proved under the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificate Act, 1996 (11 of 1996) or under any other law for the time being in force that he does not belong to Scheduled Caste or Scheduled Tribe, as the case may be, and declared as such in the case of a member elected to an office reserved for Scheduled Castes or Scheduled Tribes; or]

(b) has been adjudged to be of unsound mind; or

(c) has voluntarily acquired the citizenship of a foreign State; or

(d) has been sentenced by a criminal court for any electoral offence punishable under section 160 or [xxx] section 162 or has been disqualified from exercising any electoral right on account of corrupt practices in connection with an election, and six years have not elapsed from the date of such sentence of disqualification; or

(e) has applied for being adjudicated, or is adjudicated, as an insolvent; or

(f) acquires any interest in any subsisting contract made with, or work being done for the Government or the [any Local Self Government Institution] except as a shareholder (other than a director) in a company or expect as permitted by rules made under this Act **[or enters into the contract [with the Local Self Government Institution] as a Convener of the beneficiary committee which undertake the project or work [of any Local Self Government Institution], as per any rules made under this Act.]

Explanation.— A person shall not, by reason of his having a share or interest in any newspaper in which any advertisement relating to the affairs of the Government or the [any Local Self Government Institution] may be inserted, or by reason of his holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Local Self Government Institution concerned be disqualified under this clause; or

(g) is employed as a paid legal practitioner on behalf of the Municipality or accepts employment as a legal practitioner against the Municipality;

(h) ceases to reside in the Municipality; or

(i) is debarred from practising as an Advocate or Vakil; or

(j) is in arrears of any kind due by him (otherwise than in a fiduciary capacity) to the Government or to the Local Self Government Institutions upto and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time if any, specified therein, has expired; or

(k) [absents himself without the permission of the Municipality concerned from the meetings of the council of the Standing Committee as the case may be, for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of the restoration to a office, as member under sub-section (1) of Section 93, as the case may be or if within the said period of three month than three meetings have been held, absents himself from three consecutive meetings held after the said date:

Provided that no meeting from which a Councillor absented himself shall be counted against him under this clause if-

(i) due to notice of that meeting was not given to him; or

(ii) the meeting was held after giving shorter notice than that prescribed for an ordinary meeting; or

(iii) the meeting was held on a requisition by the Councillors; [xx]

[Provided further that the Municipality in no case, shall give permission to a Councillor from not attending the meetings of the council or the Standing Committee for a continuous period exceeding six months; or]

(l) is disqualified under any provision of the Constitution or by or under any law, for the fro the time being in force, relating to election to the State Legislative Assembly; or

[(II) disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act 1999; or]

(m) is disqualified under any other provisions of this Act. [(n) is responsible for the loss or wastage or misuse of money and properties of the Municipality or

(o) has failed, twice consecutively, to convene once in three months the meeting of the Ward Committee or the Ward Sabha of which he is the Convenor; or

(p) has failed to file declaration of assets within the time limit prescribed in Section 143A; or

(q) has been declared disqualified, as per Section 89,]

(2) Notwithstanding anything contained in clause (p) of sub-section (1), a member, who had committed default in filing a statement of his assets and liabilities within the time limit prescribed under Section 143A on the date on which the Kerala Municipality (Amendment) Act, 2007 came into force, shall not be deemed to be disqualified if he files such statement before the concerned authority within 90 days from the date on which the said Act came into force."

72. Right of Children for Free and Compulsory Education Act, 2009 is a legislation introduced by the Union Government in the 66th year of republic of India, which shall extend to the whole of India, except the State

of Jammu & Kashmir. It has come into force on the publication in the Gazette on 27.08.2009. Statements of object and reasons of Education Act, 2009 make it clear that it is with the intention of providing universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all and taking into account the objective provided by the Constitution in the directive principles of State policy, to provide free and compulsory education to all the children upto the age of 14 years. In that background, the Government have felt that the number of children, particularly children from disadvantaged groups and weaker sections, continue to drop out of the school before completing elementary education and moreover, the quality of learning achievements is not always satisfactory, even in the case of children who complete elementary education. Thus, taking into account the duty cast upon the Government under Article 21A of the Constitution of India, Right of Children for Free and Compulsory Education Act, 2009 has been enacted.

73. Section 2(f) of the Right of Children to Free and Compulsory Education Act, 2009 defines "elementary education" to mean the education from first class to eighth class; the school is defined under Section 2(n) to mean any recognised school imparting elementary education and includes,-

"(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;"

74. Under Section 2(a) of Education Act, 2009, 'appropriate Government' is defined to mean,-

"(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory; "

75. As per Section 8 of the Right of Children to Free and Compulsory Education Act, 2009, appropriate Government is duty bound to provide,-

(a) free and compulsory education to every child.

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school."

76. The explanation thereto, relevant to the context, reads thus:

> "Explanation.—The term "compulsory education" means obligation of the appropriate Government to—
>
> (i) provide free elementary education to every child of the age of six to fourteen years; and
>
> (ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;"

77. Reading of the aforesaid provision makes it clear that apart from providing free and compulsory education to the children between the age of six to fourteen years, it is the duty of the appropriate Government, to ensure good quality elementary education, conforming to the standards and norms specified in the Schedule, and to ensure and monitor admission, attendance and completion of elementary education by every child. Said provision further provides that Government have a duty and obligation to ensure education of the children in all respects, in the elementary school, irrespective of the *nomenclature* such as aided, unaided, Government etc. Likewise, the local authority is clearly conferred with a duty under Section 9 of the Act and that apart, the parents and guardian are also dutiful to ensure admission of his or her child or ward, as the case may be, to elementary education in the neighbourhood school.

78. The most significant and important feature of the Education Act, 2009 is contained under Chapter IV dealing with responsibilities of schools

and teachers. In this context, Section 12 reads thus:

> "**12. Extent of school's responsibility for free and compulsory education**.— (1) For the purposes of this Act, a school,—
>
> (a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;
>
> (b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;
>
> (c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:
>
> Provided that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.
>
> (2) The school specified in sub-clause (iv) of clause (n) of Section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:
>
> Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of Section 2:

> Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.
>
> (3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."

79. Section 13 of the Right of Children for Free and Compulsory Education Act, 2009, makes it clear that no capitation fee can be collected while admitting a child and subject the child or his or her parents or guardian to any screening procedure. Sub-section (2) to Section 13 prescribes that any school or person, if contravenes the provisions of sub-section (1), as specified above, shall be punishable with fine which may extend to ten times the capitation fee charged and if the child is subjected to a screening procedure, such action is punishable with fine which may extend to Rs.25,000/- for the first contravention and Rs.50,000/- for each subsequent contraventions. The said provision is expressive of the fact that the appropriate Government is to ensure that the elementary schools or any person acting on behalf of the schools is not indulging in collecting capitation fees and adopting a screening procedure while admitting a student to any elementary class.

80. Section 21 of the Act deals with the Constitution of School Management Committee. It states that the school specified in sub-clause (iv) of clause (n) of Section 2 shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers. Section 21 provides that at least three-fourth of the members of such Committee shall be parents or guardians and also make a provision for ensuring representation to the parents or guardians of children belonging to disadvantaged groups or weaker sections.

81. It is relevant to note that Section 2(n)(iv) deals with an unaided school not receiving any aid or grants to meet its expenses from the appropriate Government or the local authority, which this means that relevance, significance and importance is given to education and its quality rather than the nature and management of the school. Moreover, the School Management Committee is duty bound to monitor the working of the school; prepare and recommend school development plan; monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and perform such other functions as may be prescribed, subject to certain exemptions made to a school established and administered by minority and all other aided schools, as defined in Section

2(n)(ii) in the matter of performing advisory function.

82. The School Management Committee is also duty bound to prepare a school development plan, except the school established and administered by a minority, whether based on religion or language and an unaided school, as defined in Section 2(n)(ii), in such manner as may be prescribed. It is also relevant to note that sub-section (2) of Section 22 states that the School Development Plan so prepared under sub-section (1) shall be the basis of the plans and grants to be made by the appropriate Government to the local authority, as the case may be.

83. Section 23 of the Education Act, 2009 speaks about the qualifications for appointment and terms and conditions of service of teachers. Which is extracted hereunder for convenience:

> "**23. Qualifications for appointment and terms and conditions of service of teachers**.—(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.
>
> (2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for

appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years:

Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017 (24 of 2017).]

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed."

84. Section 24 of the Act speaks about the duties of teachers and redressal of grievance and it reads thus:

"**24. Duties of teachers and redressal of grievances.**—(1) A teacher appointed under sub-section (1) of Section 23 shall perform the following duties, namely:—

(a) **maintain regularity and punctuality in attending school**;

(b) **conduct and complete the curriculum in accordance with the provisions of sub-section (2) of Section 29;**

(c) **complete entire curriculum within the specified time;**

(d) **assess the learning ability of each child and accordingly supplement additional instructions, if any, as required**;

(e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and

(f) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed."

85. Section 27 of the Act, 2009 speaks about prohibition of deployment of teachers for non-educational purposes, and it reads thus:

"27. Prohibition of deployment of teachers for non-educational purposes.— No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be."

86. Section 28 of the Act, 2009, which speaks about prohibition of private tuition by teacher, states that no teacher shall engage himself or herself in private institution or private teaching activity.

87. Chapter V of the Education Act, 2009 deals with curriculum and completion of elementary education. Section 29 under Chapter V speaks about curriculum and evaluation procedure and it reads thus:

> "**29. Curriculum and evaluation procedure**.— (1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.
>
> (2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:-
>
> (a) conformity with the values enshrined in the Constitution; (b) all round development of the child;
>
> (c) building up child's knowledge, potentiality and talent;
>
> (d) development of physical and mental abilities to the fullest extent;
>
> (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
>
> (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
>
> (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
>
> (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same."

88. A combined reading of the aforesaid provisions, makes it clear that a teacher appointed, whether in Government or aided or unaided schools, as the case may be, in the light of the provisions of Right of

Children for Free and Compulsory Education Act, 2009, is duty bound to maintain regularity and punctuality in attending the school and also in the matter of discharge of his or her duties, in accordance with the provisions of Section 27 and the Schedule to the Act. So also, the temporary teachers. No material has been placed before this Court to show that Government have issued any orders that the temporary teachers so appointed to fill up the gap, shall not engage in political activities and contest in elections. Thus, a teacher, working in an aided school, whether permanent or temporary, can participate in political activities and contest in elections.

89. As per Section 25(1) of the Education Act, 2009, the appropriate Government and the local authority shall ensure that the Pupil-Teacher ratio, as specified in the Schedule, is maintained in each school within three years from the date of introduction of the Act and sub-section (2) makes it clear that for the purpose of maintaining Pupil-Teacher ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in Section 27. Section 26 of the Act makes it clear that the appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that

vacancy of teacher in a school under its control shall not exceed ten per cent of the total sanctioned strength. Section 27 prohibits deployment of teachers for non educational purposes, which specifies that no teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be. Therefore, reading of Sections 24, 26 and 27 of the Act, 2009 together, makes it clear that teachers are duty bound to ensure themselves that they are not indulging in any other activities, other than those permitted as per the provisions of the Right of Children for Free and Compulsory Education Act, 2009.

90. When a statutory duty is cast upon the authorities prohibiting deployment of teachers for non educational purposes, with the exceptions as contained in Section 27 of the Right of Children for Free and Compulsory Education Act, 2009, can a teacher working in an aided school, contest in elections? *Prima facie*, we are of the view, that would run contrary to the mandate of Section 27 of the Education Act, 2009.

91. It is also relevant to note that Section 28 of the Education Act, 2009, prohibits a teacher from engaging himself or herself in private tuition or private teaching activity. Reading of the provisions of Right of Children

for Free and Compulsory Education Act, 2009, and the scheme envisaged by Government of India, in the matter of imparting education, it is clear that a teacher is not intended to engage himself in activities, other than teaching activity, and apart from the one permitted under Section 27 of the Act, meaning thereby, to ensure a sincere and dedicated service by the teacher.

92. In order to protect the rights of children, methodologies are provided under Section 31 of the Education Act, 2009, by which, the National Commission for Protection of Child Rights constituted under Section 3, or, as the case may be, the State Commission, constituted under Section 17 of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned, perform the following functions:

> "(a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
>
> (b) inquire into complaints relating to child's right to free and compulsory education; and
>
> (c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act."

93. That apart, sub-section (2) of Section 31 states that the said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under Sections 14 and

24 of the Protection of Child Rights Act. Sub-section (3) of Section 31 states that where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed

94. Section 32 provides for redressal of grievances of a child and the redressal authority is the local authority having jurisdiction. It also contemplates National Advisory Council and State Advisory Council with sufficient members for advising the Central Government and the State Governments on implementation of the provisions of the Act in an effective manner. The provisions of Section 35 of Education Act, 2009 confers power on the Central Government to issue guidelines to the appropriate Government, the local authority, as it deems fit, for the purpose of implementation of the Act, and the appropriate Government is vested with powers to issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee, regarding implementation of the provisions of the Act. So also, powers are vested on the local authority to do so.

95. By virtue of the powers conferred under Section 38 of the

Education Act, 2009, Central, as well as the State Governments, are entitled to make rules. Accordingly, the Central Government have made the Right of Children to Free and Compulsory Education Rules, 2010 and the State Government have made the Kerala Right of Children to Free and Compulsory Education Rules, 2011. As per sub-rule 15(c) of Rule 3 of the Right of Children to Free and Compulsory Education Rules, 2011, the school management committee shall also perform the following functions, viz., to ensure that no teacher is deployed for non-educational purposes other than those specified in Section 27 of the Act, and as per sub-rule 15(f) of Rule 3 of the said rules, school management committee shall ensure that teachers are not burdened with non academic duties other than those specified in Section 27 of the Act.

96. As per Rule 14(1)(c) of the Rules, 2011, the school conforms to the values enshrined in the Constitution. Rule 18 of the rules deals with duties to be performed by Head-teacher and Teachers. As per sub-rule (3) of Rule 18 of the Rules, 2011, a teacher, in addition to the functions specified in clauses (a) to (e) of sub-section (1) of Section 24, shall perform the following duties, namely:-

> "(a) ensure full utilization of school facilities like library, laboratory and Information and Communication Technology, sports and games, work education etc.

(b) induction/participation in in-service training programmes.

(c) participation in curriculum formulation, and development of syllabi, training modules and text book development under the academic authority."

97. Going through the provisions of the said rules, it is clear that every effort has been made thereunder to implement the provisions of the Right of Children for Free and Compulsory Education Act, 2009. The appropriate Government or the local authority, as the case may be, is duty bound to discharge the functions mentioned in the Education Act, 2009, Rules, 2010 and Rules, 2011.

98. Let us consider, as to what is prohibited under Section 27 of the Education Act, 2009. At the risk of repetition, we deem it fit to extract Section 27 of the Act, 2009, as under:

"**27. Prohibition of deployment of teachers for non-educational purposes**.—No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be."

99. Participating in political activities and contesting in elections are not permitted under Section 27 of the Act, 2009. No activity, other than the one specified therein, is permitted. Therefore, what is prohibited by Section 27 of the Right of Children for Free and Compulsory Education Act, 2009, cannot be diluted by the State in allowing the teachers, working in aided schools, to contest in elections and after being elected as a Member, President, Chairman or the Chairpersons of the local bodies, or Assembly, as the case may be, to

discharge the duties simultaneously, both as a teacher in the aided school and as an elected representative, in any of the above capacities, in a local body or Assembly.

100. After introduction of the Right of Children for Free and Compulsory Education Act, 2009, State or the managing committee of an aided school cannot depute a teacher, to perform the duties other than those permitted in Section 27 of the Act, 2009, but, at the same time, by virtue of the Legislative Assembly (Removal of Disqualifications) Act, 1951, allows the teachers in aided schools, to contest in elections to be a member of a local body or Assembly, as the case may be. When recognition/ up-gradation is granted, as per Rule 14 of the Right of children to Free and Compulsory Education Rules, 2011, to a school, with the fulfillment of conditions, *inter alia*, that the school confirms to the values enshrined in the Constitution, and when the school management committee is duty bound to follow sub-rules 15(c) and (f) of the said Rules, 2011, *prima facie*, we are of the view that it would amount to failure on the part of the appropriate Government or the local authority, as the case may be, in implementing Section 27 of the Act, in letter and spirit.

101. The Kerala Education Act, 1958, was introduced by the State Government for the better organisation and development of educational

institutions in the State of Kerala for providing a varied and comprehensive educational services throughout the State. Aided school is defined thereunder, to mean a private school which is recognised by and is receiving aid from the Government, but shall not include educational institutions entitled to receive grants under Article 337 of the Constitution of India, except insofar as they are receiving aid in excess of the grants to which they are so entitled to.

102. In exercise of the powers conferred by Section 36 of the Kerala Education Act, 1958, (Act 6 of 1959), the Government of Kerala have framed the Kerala Education Rules, 1959. Chapter XIV (B) of the KER, 1959 deals with conduct rules. Rules 7, 14, and 23 under Chapter XIV (B) of KER are extracted hereunder:

> "**7**. No teacher shall except with the previous sanction of the Government engage directly or indirectly in any trade or business or undertake any employment:
>
> Provided that a teacher may without such sanction undertake honorary work of social or charitable nature, or work of a literary, artistic, or scientific character, subject to the condition that his official duties do not thereby suffer; but he shall not undertake or shall discontinue such work if so directed by the Government."
>
> "**14**. No teacher shall except with the previous sanction of the Director own wholly [x x] or conduct or participate in the editing or management of any newspaper or other periodical publication. Such sanction will be given only in the case of newspapers or publications mainly

devoted to the discussion of topics not of a political character such for instance as art, science or literature."

"**23**. No teacher shall engage himself in any kind of activity prejudicing normal functioning of the School and no teacher shall use mobile phone or such other devise in the class room."

103. Chapter XIV (C) of the KER, 1959 deals with conduct rules applicable to aided schools. Rules 25, 26, 27, 36, 36A, 37, 38, 40, 41, 42, 43, 45 and 47, under Chapter XIV (C) of KER, are extracted hereunder:

"**25**. **Promotion and management of Companies** – No teacher shall take part in the promotion, registration or management of any Bank or Company.

Provided that a teacher may in accordance with the provisions of any general or special order of Government take part in the promotion, registration or management of a Co-operative Society registered or deemed to be registered under the Co-operative Societies Act."

"26. No teacher shall serve or accept paid employment in any company, mutual benefit Society or Co-operative Society or act as an agent whether paid by salary or commission, to any insurance Company or Society, where, however, no remuneration is accepted, there is no objection to a teacher's taking part in the management of a mutual benefit society if he has first obtained the sanction of the [Deputy Director (Education)] and a certificate to the effect that the work undertaken will be performed without detriment to his duties."

"**27**. Teachers shall be at liberty to take part in the promotion of Co-operative Societies or Co-operative Banks and to serve in any Committee or Board appointed or constituted for the Management of such societies or Banks provided that their activities are confined to such societies or Banks as are situated within the limits of the revenue districts in which they are employed.

"**36**. **Communication with Press** – No teacher shall except with and during the continuance of previous sanction of Government own wholly or in part, or conduct or participate in the editing or management of any news paper or other periodical publication. Such sanction will only be given in the case of newspapers or publications mainly devoted to the discussion of topics not of a political character such for instance, as art, CHAPTER XIV C 152 science or literature. The sanction is liable to be withdrawn at the discretion of Government.

36A. No teachers shall without the previous sanction of Government, in any manner give aid or participate in the editing, publishing or management of any publication which contains commercial advertisements or shall become a member of any group of teaches or Government servants which brings out such publication].

37. Communicating with members of the Legislature- No teacher shall approach any member of the Legislature with a view to having any grievance made the subject matter of interpellations or discussion in the Legislature. Any such disclosure will be liable for disciplinary action.

38. **Discussions of the policy or action of Government** – Subject to the provisions of any law for the time being in force relating to election to Parliament, State Legislature and Local Bodies:-

(a) No teacher shall, by any utterance, writing or otherwise discuss or criticise in public or at any meeting or association or body, any policy pursued or action taken by Government nor shall he in any manner participate in such discussion or criticism;

Provided that noting contained in this Rule shall be deemed to prohibit a teacher from participating in discussion at any private meeting solely of teachers, in aided schools or of any recognised association of teachers, of matters of academic nature and matters which affect the personal interests of such teachers individually, or generally.

Explanation – Nothing contained in this Rule shall be constructed to limit or abridge the power of Government requiring any teacher to publish and explain any policy or action of Government in such manner as may appear to them to be expedient or necessary.

(b) A teacher shall not, except in the discharge of his duties preside over to take part in the organization or occupy a prominent position at or address any non-official meeting or conference at which it is likely that speeches will be made or resolution will be proposed or passed criticising the action of Government or requesting Government to take certain action other than to make grants admissible under Government rules or orders in support of educational or similar institutions.

Note - Regularly convened meeting of associations of teachers recognised by Government, and of committees or branches of such associations are not non official meetings for the purpose of this Rule."

"**40. Publication of documents and communication to the press in the name of teachers and public** speeches- No teacher shall, in any document published by him or in any communication made by him to the press or in any public utterance delivered by him, make any statement of fact or opinion which is capable of embarrassing:-

(a) the relation between the Government and the people or any section thereof;

(b) the relation between the Government and the Government of India; and

(c) the relation between the Government and any other Indian State or any foreign country.

41. A teacher who intends to publish any document or to make any communication to the Press or to deliver any public utterance containing statements in respect of which any doubt as to the application of the restrictions imposed by Rule 40 may arise, shall submit to Government a copy or draft of the document which he intends to publish or of the utterance which he intends to deliver and shall thereafter act in accordance with

such orders as may be passed by Government.

42. **Evidence before committees**:- No teacher shall give evidence before a public committee except with the previous sanction of Government.

43. No teacher giving such evidence shall criticise the policy or decisions of the Government or any other Government provided that expressions of opinion by a teacher on purely academic matters shall not be construed as criticism.

45. No teacher shall take part in or in any way assist any movement or activity which is or tends directly or indirectly to be subversive of Government as by law established nor shall he permit any member of his family to do so.

Explanation:- A teacher shall be deemed to have permitted person to take part in or assist a movement or activity within the meaning of the above Rule, if he has not taken precaution and one everything in his power to prevent such person so acting, or if, when he knows or has reason to suspect that such person is so acting, he does not at once inform the Government or the Educational Officer.

47. A teacher proposing to take part in a non official conference or meeting held in any place in the Kerala State must obtain the prior sanction of the Government:-

Provided that such sanction shall not be necessary in respect of conferences in which a teacher may participate in the course of duty or conferences convened to discuss academic, scientific, technical, literary, religious, or similar subject and participation there in is not likely to embarrass Government in his relationship with the public in any manner. In cases of doubt the teacher should apply to Government and obtain orders."

104. Rule 51(b) speaks about the rules to be observed by Service Associations and it reads thus:

"**(b) Rules to be observed by Service Associations** – Government shall withdraw the recognition granted to any association; if it violates any of the following Rules-

(1) The Association shall not seek assistance of any political party or organization to represent the grievances of its members, or indulge in any seditious propaganda, or expression of disloyal sentiments.

(2) The Association shall not resort to any strike or threat of strike as a means of achieving any of its purpose or for any other reason.

(3) The Association shall have the following Rule incorporated among its Rules;- "A strike or threat of a strike in schools shall never be used as a means of achieving any of the purposes of the Association".

(4) The Association shall not except with the previous sanction of Government;

(i) issue or maintain any periodical publications,

(ii) Permit its proceedings to be open to the press, or publish any representation on behalf of its members, in the press or otherwise.

[(4A) No publication issued by the Association shall contain commercial advertisements]

(5) The Association shall not engage in any political activity

(6) The Association shall not:-

(i) Pay, or contribute towards any expenses incurred by a candidate for any election to a legislative body whether in India or elsewhere or to a local authority or body;

(ii) Support by any means, the candidature of any person of such election;

(iii) Undertake or assist in the registration of electors or the selection of candidate for such election; and

(iv) Maintain or contribute towards the maintenance of any member of a legislative body or of local authority or body

(7) Government may require the regular submission for their information copies of the rules of the Association and the annual statement of its account and of lists of its members.

(8) The funds of an Association shall consist exclusively of subscriptions from members and grants, if any, made by the Government or the money collected with the prior sanction of the Government and shall be applied only for the furtherance of the objects of the Service Association.

Note:- The Association shall not ask for or collect money (other than subscriptions from members of the Association) without obtaining the prior sanction of the Government.

(9) Any amendment of a substantial character in the rules of the Association shall be made only with the previous approval of the Government and any other amendment of minor importance shall be communicated through proper channel for transmission to the Government for information.

(10) The Association shall not do any act or assist in the doing of any act, which if done, by a teacher would contravene any of the provisions of the teachers conduct rules.

(11) The Association shall not address any communication to a foreign authority except through the Government which shall have the right to withhold it.

(12) Communications addressed by the Association or by any office bearer on its behalf to the Government or a Government authority shall not contain any disrespectful or improper language.

(13) Federation or a Confederation of Associations shall affiliate only recognised Associations, and if the recognition accorded to any of the Associations affiliated to a Federation or a Confederation of Associations is withdrawn, the Federation or confederation of Association

shall forthwith disaffiliate such Association.

(14) The Association shall cease to be affiliated to Federation or Confederation of Associations whose recognition under these Rules is withdrawn by the Government."

105. Chapter XXVI of the KER, 1959 deals with the scale of pay of aided school teachers, and the same reads thus:

"**1**. [(1) Teachers of Aided Lower Primary, Upper Primary, High and Training Schools shall be paid the scale of pay applicable to teachers of Government Lower Primary, Upper Primary, High and Training Schools. The Headmaster of an Aided Lower Primary School, or the Headmaster of an Aided Upper Primary school shall be given the scale of pay applicable to the Headmaster of Government School only if he has put in a minimum of 15 years continuous service as teacher in schools recognised by the Department. Those Headmasters who have not put in this minimum service shall be given their grade pay and supervision allowance as may be fixed by Government until they complete the prescribed minimum service].

[(2) There shall be two scales of pay for teachers of aided primary schools, as in the case of teachers of Government Primary Schools. All categories of Primary school teacher who have completed 15 years of continuous service shall be given the higher scale of pay and others shall be given the lower scale of pay] [Boys service ie., in the service rendered before 18 years of age shall not count for the grant of higher scale of pay.]

[(3) In Aided Primary schools where managers expect undue delay in getting the seniority lists approved, the Managers may promote as Headmasters a qualified teacher temporarily until a teacher is promoted in accordance with the rules, subject to the condition that he shall not be regarded as a probationer in higher category or entitled by virtue of such promotion to any preferential claim to future promotion to such category, when such a person is subsequently promoted to the higher category.

(4) When the provisional promotees are promoted on a regular basis, later on in accordance with the rules, after the approval of the seniority list by competent authority, they will commence probation in such category from the date of such promotions or from the dates of their earlier temporary promotions whichever is regular, according to seniority.

(5) The persons will be eligible to draw increments in the time scale of pay applicable to them from the date of commencement of probation but shall not be entitled to arrears of pay.

(6) The teachers promoted temporarily will be paid either the minimum of the higher time scale of pay or the pay admissible to them in the higher time scale based on the pay in the lower time scale applicable to them under the rules regularising fixation of pay from time to time whichever is higher.]

1A. (1) The Government or the Director or Deputy Director (Education) concerned or the Educational Officer concerned shall have the power to order refund in appropriate cases of salary paid to teachers in excess of the amount legally due or payment made irregularly.

(2) The refund referred to in sub rule (1) may be effected either by adjustment in pay bills or in any other manner as the Government or the Director or Deputy Director (Education) concerned or the Educational Officer concerned may deem fit].

[(3) An appeal from an order of refund of salary by the Educational Officer or the Deputy Director (Education) shall lie to the Director.

(4) No appeal under sub-rule (3) shall be entertained unless it is submitted within a period of one month from the date of receipt of the Order:

Provided that the Director may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient reason for not submitting the appeal in time]."

106. Apart from the above, Chapter XXVII-A of Kerala Education Rules, 1959 takes care of education, provident fund, and insurance for

aided school teachers, and the rules in the said Chapter shall apply only to the teachers, to whom, rules to Chapter XIVB apply. Rule 1 to Chapter XXVII-A of the KER read thus:

> "**1.** [(a) The rules in this chapter shall apply only to those teachers to whom rules in chapter XIV (B) apply.]
>
> (b) The Scheme of Pension-cum-Provident Fund cum-Insurance for aided school teachers will be governed by the following rules. Such of the teachers as are now governed by the Travancore Cochin Teacher's provident Fund Rules or the Madras Teacher's contributory Provident Fund Insurance Pension Rules shall have the option to be governed either by those rules or come under these rules. Such option shall be exercised within a period of three months from the commencement of these rule. Those who do not exercise such option within the time limit shall be deemed to have opted to continue under the old rules applicable to them.
>
> Provided that Government may subject to such conditions as they may determine permit any of the aided school teachers who are governed by the old rule, to come under these Rules, if the applications for such change over to the new rules are made before [31 December 1962.]"

107. Sub-rule (2) thereto specifies that every teacher shall subscribe to the contributory Provident Fund, to be instituted by the Government, in accordance with the rules to be framed regulating that Fund.

94. Rule 56 of the Kerala Education Rules, 1959, reads thus:

> "**56. Leave Rules**:- (1) In the matter of casual leave and all other kinds of leave, the teachers of aided schools shall be governed by the Rules for teachers of government schools in the Service Regulations for the time being in force.

[Provided that the matter of leave, the teachers appointed for limited periods i.e those appointed in short vacancies and those appointed in regular vacancies but not eligible for vacation salary under Rule 49, shall be governed by the leave rules in Appendix VIII of Kerala Service Rules.]

[(2) Teachers who are members of the Legislative Assembly shall be granted special leave without pay for attending the sessions of Legislature. Such leave may be combined with the vacation. The period of special leave granted under this rule shall count for increment but not for leave.]

[(2A) Teachers who are members of the Legislative Assembly may be granted special leave without pay for attending the sessions of the Legislature and their work in their constituencies for one entire academic year at a time or for the entire period of membership of the Assembly. The period of such leave shall count for increments and higher scale of pay but not for leave and pension].

[(3) Teachers who are members of the University bodies attending the meeting of such bodies in their official capacity shall be treated as on duty including the actual days taken for to and fro journey].

[(4) A Teacher shall cease to be in service after a continuous absence of 5 years whether with or without leave].

[(5) Teachers who are elected as Presidents, Chairman or Chairpersons of local bodies constituted under the Kerala Panchayat Raj Act, 1994 and the Kerala Municipalities Act, 1994, shall be granted special leave without pay for attending their duties under the said Acts for one entire academic year at a time or part thereof or for the entire period of their holding

such office. The period of such leave shall count for increments, higher scale of pay and pension but not for leave, if so requested.

(6) Teachers who are elected as Presidents, Chairman or Chairpersons of local bodies, constituted under the Kerala Panchayat Raj Act, 1994 and Kerala Municipalities Act, 1994 and who are elected as Chairman or Chairpersons of standing committee constituted under such local bodies shall be granted duty leave upto 20 days in an academic year, without detrimental to their duties and responsibilities being a teacher in the school and to the academic interest of the students, for attending to the meetings of the concerned local bodies.

(7) Teachers who are elected as members of the local bodies, constituted under the Kerala Panchayat Raj Act, 1994 and the Kerala Municipalities Act, 1994, shall be granted duty leave upto 15 days in an academic year, without detrimental to their duties and responsibilities being a teacher in the school and to the academic interest of the students, for attending the meeting of the concerned local bodies]."

108. As the conduct rules, referred to in the foregoing paragraphs, are self-explanatory, as to what the teachers should not do, while in service, there is absolutely no reason to exempt the teachers, working in aided schools, from adhering to the abovesaid rules. The only argument made by Mr. Aravinda Kumar Babu, learned Senior Government Pleader, is that the Legislative Assembly (Removal of Disqualifications) Act, 1951,

grants exemption to them. When the provisions of the Kerala Education Act, 1958, the rules framed thereunder, the Right of Children for Free and Compulsory Education Act, 2009, and the rules framed thereunder, set out duties and responsibilities of a teacher, the same are to be discharged by all the teachers, whether working in Government or aided or unaided schools. Viewed from that angle, the Legislative Assembly (Removal of Disqualifications) Act, enacted in the year 1951, is contrary to the subsequent enactments.

109. Preamble of the Legislative Assembly of Travancore-Cochin (Removal of Disqualifications) Bill, states that whereas, pursuant to sub-clause (a) of clause (1) of Article 191 of the Constitution of India read with Article 238 thereof, it is expedient to declare certain offices as offices which will not disqualify the holders thereof for being chosen as, and for being, members of the Travancore Legislative Assembly; the Legislative Assembly of Travancore-Cochin (Removal of Disqualifications) Act, 1951 has been enacted. Clause 2 of the Bill speaks about removal of certain disqualifications for membership and it reads thus:

> "2. A person shall not be disqualified for being chosen as, and for being, a member of the Travancore-Cochin Legislative Assembly, by reason only-

(1) that he holds under the Government of India, or the Government of any State specified in the First Schedule to the Constitution of India an office which is not remunerated either by salary or by fees payable out of the Consolidated Fund of India or of any such State, or

(2) that he holds an office in any educational institution other than a Government institution."

110. Clause 3 of the Bill speaks about removal of certain other disqualifications for membership and it reads thus:

"A person shall not be deemed to be or to have been disqualified for being a member of the Travancore-Cochin Legislative Assembly by reason only that such person had prior to the commencement of this Act held under the Government of Travancore-Cochin an office which was not a whole time office or that he had held an office, in any educational institution other than a Government institution."

111. The Statement of Objects and Reasons of the Legislative Assembly of Travancore-Cochin (Removal of Disqualifications) Bill are extracted hereunder:

"**Statement of Objects and Reasons**

Article 191 of the Constitution of India provides *inter alia* that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of a State if he holds an office of profit under the Government of India or the Government of a State, other than an office declared by the Legislature of the State by law, not to disqualify its holder. The Article itself makes an exception in the case of

> Ministers either for the Union or for the State. There are, however, certain other offices of profit, the disqualification in respect of which should be removed. The Bill is intended to achieve the above object. Clause 2 of the Bill provides for the removal of disqualification of a person who is the holder or an office which is not remunerated either by salary or by fees payable out of the consolidated fund of India or of a State and also of a person who holds an office in any educational institution other than a Government institution. Clause 3 provides for the removal of disqualifications in respect of certain offices previously held."

112. Preamble of the Legislative Assembly (Removal of Disqualifications) Act, 1951, states that whereas, pursuant to sub-clause (a) of clause (1) of Article 191 read with Article 238 of the Constitution of India, it is expedient to declare certain offices as offices which will not disqualify the holders thereof for being chosen as, and for being, members of the Legislative Assembly of the State of Kerala. Section 2(iv) of Act, 1951 speaks about removal of certain disqualifications for membership and it reads thus:

> "*2. Removal of certain disqualifications for membership*.-
> (1) A person shall not be disqualified for being chosen as, and for being a member of the Legislative Assembly of the State of Kerala by reason only,-
> (i) that he is in receipt of the salaries for allowances to which he is entitled under the law for the time being in

force relating to the payment of salaries and allowances to members of the Legislative Assembly of the State of Kerala or of traveling and daily allowances while serving as a member of any Committee or Board constituted by the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, or

(ii) that he holds under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India an office which is not remunerated either by salary or by fees payable out of the Consolidated Fund of India or of any such State, or

(iii) that he is a member of the Committee constituted to translate the Constitution of India into Malayalam, or

(iv) that he holds an office in any educational institution other than a Government institution.

(v) that he holds an office in the National Cadet Corps raised and maintained under the National Cadet Corps Act, 1948 (Central Act XXXI of 1948), or in the Territorial Army raised and maintained under the Territorial Army Act, 1948 (Central Act LVI of 1948.)

(vi) that he is a member of the Air Defence Reserve or the Auxiliary Air Force raised under the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952).

(vii) that he holds the office of Chairman or member of the Kerala State Law Commission; or

(viii) that he is the Chairman or the Vice-Chairman or a member of the State Planning Board constituted by the Government or a member of the Backward Classes Reservation Commission constituted by the Government.

(2) No person shall be disqualified or deemed ever to have been disqualified for being chosen as, and for being, a member of the Legislative Assembly of the State of Kerala by reason only-

(i) that he holds or has held the office of the Chairman of a Government Company.

> *Explanation*.- For the purposes of this clause, " Government Company" means a company in which not less than fifty-one per cent of the paid up share capital is held by the Government of Kerala or jointly by the Central Government and the Government of Kerala and includes a company which is a subsidiary of any such company; or
>
> (ii) that he holds or has held the office of the Chairman or Vice-Chairman of a Corporation established or constituted by or under any Central or State Act and owned or controlled by the Government of Kerala.
>
> (3) No person shall be disqualified or deemed ever to have been disqualified for being chosen as, and for being, a member of the Legislative Assembly of the State of Kerala by reason only that he holds or has held the office of the Chairman of the Administrative Reforms Commission.
>
> *Explanation*.- For the purposes of this clause, "Administrative Reforms Commission" means a body of experts constituted by the State Government from time to time, to study different aspects of administration and recommend measures for its improvement."

113. Section 3 of the Act speaks about removal of Certain other disqualifications for membership and it reads thus:

> "*3. Removal of Certain other disqualifications for membership*.- A person shall not be deemed to be or to have been disqualified for being a member of the Legislative Assembly of the State of Kerala by reason only that such person had prior to the commencement of this Act held under the State Government an office which was not a whole time office or that he had held an office in any educational institution other than a Government institution."

114. The Governor of Kerala has promulgated the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2011 (Ordinance No.47 of 2011) on 10.11.2011 and published the same in the Kerala Gazette Extraordinary for general information. Said ordinance is extracted hereunder:

> *"ORDINANCE No. 47 of 2011*
> *THE LEGISLATIVE ASSEMBLY (REMOVAL OF DISQUALIFICATIONS) AMENDMENT ORDINANCE, 2011*
> *AN*
>
> *ORDINANCE*
>
> further to amend the Legislative Assembly (Removal of Disqualifications) Act, 1951.
>
> Preamble.- Whereas, it is expedient further to amend the Legislative Assembly (Removal of Disqualifications) Act, 1951 (XV of 1951) for the purposes hereinafter appearing:
>
> AND WHEREAS, the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action.
>
> NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Government of Kerala is pleaded to promulgate the following Ordinance.
>
> 1. Short title and commencement.- (1) This Ordinance may be called the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2011.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall be deemed to have come into force on the 11th day of October, 1951.

2. Act XV of 1951 to be temporarily amended.- During the period of operation of this Ordinance, the Legislative Assembly (Removal of Disqualifications) Act, 1951 (XV of 1951) (hereinafter referred to as the principal Act), shall have effect subject to the amendments specified in section 3.

3. Amendment of section 2.- In Section 2 of the principal Act, after clause (i) of sub section (1), the following Explanation and Note shall be inserted namely;-

"Explanation- For the purposes of this clause, members of the Legislative Assembly shall include the Ministers, Speaker, the Deputy Speaker, the Leader of the Opposition and the Chief Whip.

Note.- This explanation shall be deemed to have come into force in respect of the Leader of the Opposition on the 1st day of September, 1977 and in respect of the Chief Whip on the 1st day of October, 1982."

115. Notification dated 10.12.2011 reads thus:-

"SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No.6121/Table 1/2011/Leg.

Dated, Thiruvananthapuram, 10th December, 2011

In exercise of the powers conferred by sub-clause (a) of

clause (2) of Article 174 of the Constitution of India, the Governor of the State of Kerala hereby prorogues the Third Session of the Thirteenth Kerala Legislative Assembly with effect from December 9, 2011 at the conclusion of its sitting.

.....

By order of the Governor
P.D.RAJAN
Secretary,
Legislative Assembly."

116. The Governor of Kerala by notification in the Kerala Gazette Extraordinary dated 18.01.2012, has promulgated the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012 (Ordinance No. 7 of 2012) and published the same. Said ordinance reads thus:

"ORDINANCE No.7 of 2012

THE LEGISLATIVE ASSEMBLY (REMOVAL OF DISQUALIFICATIONS) AMENDMENT ORDINANCE, 2012

Promulgated by the Governor of Kerala in the Sixty-second Year of the Republic of India.

AN

ORDINANCE

further to amend the Legislative Assembly (Removal of Disqualifications) Act, 1951.

Preamble.- WHEREAS, the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2011 (47 of 2011) was promulgated by the Governor of Kerala on the 10th day of November, 2011.

AND WHEREAS, a Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during the session which commenced on the 9th day of December, 2011 and ended on the same day.

AND WHEREAS under sub-clause (a) of clause (2) of article 213 of the Constitution of India, the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2011 (47 of 2011) will cease to operate on the 20th day of January, 2012:

AND WHEREAS, difficulties will arise if the provisions of the said Ordinance are not kept alive;

AND WHEREAS, the Legislative Assembly of the State of Kerala is not in session and the Government of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance.-

1. Short title and commencement.—(1) This Ordinance may be called the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall be deemed to have come into force on the 11th day of October, 1951.

2. Act XV of 1951 to be temporarily amended.- During the period of operation of this Ordinance, the Legislative Assembly (Removal of Disqualifications) Act, 1951 (XV of 1951) (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in section 3.

3. Amendment of section 2.— In section 2 of the principal Act, after clause (i) of sub-section (1), the following Explanation and Note shall be inserted, namely:—

"Explanation.—For the purpose of this clause, members of the Legislative Assembly shall include the Ministers, the Speaker, the Deputy Speaker, the Leader of the Opposition and the Chief Whip.

Note:—This explanation shall be deemed to have come into force in respect of the Leader of the Opposition on the 1st day of September, 1977 and in respect of the Chief Whip on the 1st day of October, 1982.".

3. Repeal and saving.— (1) The Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2011 (47 of 2011) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Ordinance."

117. The Governor of Kerala by notification in the Kerala Gazette Extraordinary dated 11.04.2012, has promulgated the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012 (Ordinance No. 23 of 2012) and published the same. Said ordinance reads thus:

"ORDINANCE No. 23 of 2012
THE LEGISLATIVE ASSEMBLY (REMOVAL OF DISQUALIFICATIONS) AMENDMENT ORDINANCE, 2012

Promulgated by the Governor of Kerala in the Sixty-third Year of the Republic of India.

AN

ORDINANCE

further to amend the Legislative Assembly (Removal of Disqualifications) Act, 1951.

Preamble.- WHEREAS, the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2011 (47 of 2011) was promulgated by the Governor of Kerala on the 10th day of November, 2011.

AND WHEREAS, a Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 9th day of December, 2011 and ended on the same day.

AND WHEREAS, in order to keep alive the provisions of the said Ordinance, the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012 (7 of 2012) was promulgated by the Governor of Kerala on the 16th day of January, 2012;

AND WHEREAS, a Bill to replace the said Ordinance by

an Act of the State Legislative could be introduced in, and passed by, the Kerala Legislative Assembly during its sessions which commenced on 1st day of March, 2012 and ended on the 23rd day of March, 2012.

AND WHEREAS, under sub-clause (a) of clause (2) of article 213 of the Constitution of India, the said Ordinance will cease to operate on the 12th day of April, 2012;

AND WHEREAS, difficulties will arise if the provisions of the said Ordinance are not kept alive;

AND WHEREAS, the Legislative Assembly of the State of Kerala is not in session and the Government of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance.-

1. Short title and commencement.—(1) This Ordinance may be called the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall be deemed to have come into force on the 11th day of October, 1951.

2. Act XV of 1951 to be temporarily amended.- During the period of operation of this Ordinance, the Legislative

Assembly (Removal of Disqualifications) Act, 1951 (XV of 1951) (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in section 3.

3. Amendment of section 2.— In section 2 of the principal Act, after clause (i) of sub-section (1), the following Explanation and Note shall be inserted, namely:-

"Explanation.—For the purpose of this clause, members of the Legislative Assembly shall include the Ministers, the Speaker, the Deputy Speaker, the Leader of the Opposition and the Chief Whip.

Note:—This explanation shall be deemed to have come into force in respect of the Leader of the Opposition on the 1st day of September, 1977 and in respect of the Chief Whip on the 1st day of October, 1982."

4. Repeal and saving.—(1) The Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012 (7 of 2012) is hereby repealed."

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Ordinance."

118. Firstly, our endeavour is to find out as to whether Section 2(iv) of the Legislative Assembly (Removal of Disqualifications) Act, 1951, is

constitutionally valid, as contended by the petitioner in W.P.(C) No. 29964/2020. In the foregoing paragraphs, we have discussed the various provisions of the Right of Children to Free and Compulsory Education Act, 2009, the Kerala Education Act, 1958, and the rules framed thereunder. Taking into account the provisions discussed above, the role and responsibility of teachers in Indian society are very wide and have utmost relevance and importance so far as the development of modern India is concerned. Development of a nation largely depends upon the education that is secured by the citizens of the country.

119. The role of a teacher to shape the minds of the younger generation is very important, to be discharged in public interest and for the development of the nation. This we say so because, unlike yester years, a teacher has to educate the students with a scientific temper and humanistic attitude and approach, taking into account the nature, character, conduct, inclinations and the needs of a student. In order to achieve the above said aspects, a teacher has to be in continuous contact with the students. A teacher has an onerous duty to interact with a student, as frequently as possible, in order to understand their problems, rectify and alleviate the same, make him interested and active in the entire education process. Therefore, a teacher has to ensure that the students are becoming a part

of integration and development of the nation and capable of translating the democratic principles and republican ideals with the objective to secure absolute development to the nation and thereby, alleviate poverty, unemployment and make the nation fit enough to complete among other nations in all respects. If a child does not obtain a proper education, at the elementary level and develops basic character, conduct, and other requirements, the democratic principles would not be formed in him, which is a fundamental requirement, for the efficient governance of the country. Therefore, the role of a teacher cannot be simplified in any manner, so as to be disadvantageous and adverse to the life of student community and thereby, the entire nation. A teacher has a vital role in inculcating good practices in students from the elementary stage, so as to be responsible, dedicated and sacrifice themselves to the cause of the nation, rather than making individualistic approaches, so as to protect personal and self interest. We are also of the view that only if proper education is imparted to the students, they can become good citizens of the country and involve in nation building.

120. Teachers working in Government or aided or unaided schools, as the case may be, have a prime duty to instill confidence in the minds of the children, by understanding their faculties of communication, decision making, and their role in developing the society. Teachers are also

responsible for inculcating knowledge, encouraging creative thoughts, and above all, developing moral character in the children, in the formative ages itself. It cannot be lost sight of the fact that whoever have secured the highest qualifications, it is only because of the discharge of duties by the teacher, with utmost dedication and promoting the interests of the student. The more the teacher interacts with the students, the more benefit, for the student in the learning process. Resultantly, the progress of the society is largely dependent on the quality teaching imparted by the teachers and, therefore, they can be termed as the strong pillars of developing democracy to its maximum advantage, to the citizens at large. To put it differently, only if the teachers dedicate themselves to their profession, leaving aside any other activities and concentrate on teaching, without interruption of any manner of whatsoever nature, the goals that are envisioned by the framers of the Constitution, and the laws in relation to fundamental rights of the children, for education, would be attained.

121. According to Dr. APJ Abdul Kalam "Mission of Education" is the foundation to ensure the creation of enlightened citizens who will make a prosperous, happy and strong nation and to quote further "when learning is purposeful, creativity blossoms, when creativity blossoms, thinking emanates. When thinking emanates, knowledge is fully lit. When

knowledge is lit, the economy flourishes".

122. The Great scholar Plato once stated that the main function of education is not to put knowledge into the soul, but to bring out the latent talents in the soul by directing it towards the right objects. Readings of Great Rabindranath Tagore would make it clear that he was a great visionary who had foreseen the emergence of a global community and the requirement to educate students in a manner where they not only learn to appreciate their own culture, but they would also be able to identify with people who were culturally different. All these things we have said in order to highlight the importance of teachers, their interaction with children and continuous support provided by the teachers, so as to shape the students to attain the goals and aims that are nourished by them, develop themselves as worthy citizens of this country, excel themselves in the global competition and prosper, so as to make the flag of the nation fly high.

123. We are not oblivious of the fact that in a democratic polity, a teacher may be a good representative of the citizens in the Parliament, State Legislature, or local bodies. But the fact remains, unlike the pre-independence period or the immediate post independence period, various responsibilities are to be undertaken by the Panchayats, as well as the

Municipalities, so as to ensure the development of the community and the development of the State/nation. Framers of the Constitution have realised the situation and it was accordingly, Parts IX and IXA have been introduced to the Constitution of India, as per the Amendment Act, 1992 with effect from 24.04.1993 and 01.06.1993 respectively.

124. Moreover, decentralization of power was found to be important and relevant, in order to achieve the goals of implementing governance, right from the village level, and it was accordingly, in Kerala, the Panchayat Raj Act, 1994 and Municipality Act, 1994 were introduced. Going through the provisions of the aforesaid Acts, it is evident that various duties have to be discharged by the local bodies, at various levels, which includes Corporations/Municipalities, and in order to achieve the goals fixed thereunder, the Councilors and Ward Members have to discharge their duties with utmost dedication, sincerity and devotion. Provisions of law relating to local bodies, show that various statutory standing committees and other committees are constituted for ensuring decentralization of power thus empowering the Ward Councilors and the Members, in order to have a consolidated, integrated and effective development. Therefore, the members of the Panchayats, as well as Municipalities and Corporations, have to devote themselves, absolutely to the cause of the people, in

contemplation of the provisions of the statutes.

125. We also find that under the aforesaid Statutes, various rules have been framed, in order to discharge the duties of the Ward Members and Councilors, and to ensure the well being, prosperity, and development of the citizens and the local bodies and thus the whole state. Likewise, the Members of the State Legislative Assembly are also endowed with various duties, functions, and are provided with sufficient funds, in order to develop their constituencies as such, and therefore, full time devotion and attention are to be extended by the Members of the State Legislatures also, so as to ensure development of the State.

126. All the above aspects are narrated, to demonstrate that teachers contesting the election to the State Legislature, as well as to the local bodies, have to dedicate themselves to the cause of the people, once they are elected, and till their tenure is over. Union Government have felt it necessary that elementary education should be given more importance, relevance, significance and credence, and it was accordingly that the Right of Children to Free and Compulsory Education Act, 2009, was enacted.

127. We have discussed the relevant provisions of the Right of Children for Free and Compulsory Education Act, 2009, to explain the importance and significance of teachers in discharging their functions in the

educational institutions. Provisions of Act, 2009 make it clear that a teacher has to attend the school, without fail, in order to ensure that the student is not put to any manner of difficulties in the process of education. Provisions of law discussed above also would explicitly show that continuity and regular interaction with the students is a vital aspect while discharging the duties and obligations of the teacher, and the manner in which the relationship has to be maintained, in order to achieve the target of promising full fledged students, coming out from the schools.

128. After the introduction of Act, 2009, and the rules framed thereunder, when the State cannot depute teachers to perform duties other than those permitted in Section 27, the State, at the same time, cannot contend that they will not prevent the teachers, working in aided schools, from contesting in elections, to be a member of a local body or the Assembly, as the case may be, in view of the Legislative Assembly (Removal of Disqualifications) Act, 1951. At this juncture, let us consider the decision of the Government of Kerala, on the representation made by the Teachers' Associations of the Government schools in contesting elections. Government Order (Rt.) 2593/Edn. dated 25.08.1967 reads thus:

"EDUCATION (B) DEPARTMENT

G.O.(Rt.) 2593/Edn., dated, Trivandrum, 25th August 1967

Abstract.- Education - Government school teachers - Freedom for political activities - Request – Declined.

Read.- Representation from Teachers Association of Government schools.

ORDER

Government are receiving several representations from Government School Teachers' Associations requesting for the grant of freedom for political activities as in the case of aided school teachers. Government have examined the question in all its aspects and they have come to a conclusion that Government school teachers should not engage in political activities. The request of the Teachers Association for the grant of freedom for political activities to Government school teachers is therefore declined.

(By order of the Governor)
K.P. ACHUTHAN NAIR,
Education Secretary."

129. Let us also consider the clarifications issued by the Ministry of Human Resource Development, Department of School Education and Literacy, Government of India, dated 13.09.2010, which is reproduced:

"F.No. 1-3/2010-EE 4
Government of India 1
Ministry of Human Resource Development
Department of School Education and Literacy
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Room No. 429-A, C Wind, Shahtri Bhawan
New Delhi, September 13, 2010

To

All Education Secretaries of States / UTs

Subject: Guidelines under section 35 (1) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 regarding implementation of the provisions of section 27-reg.

The Ministry has received various representations seeking clarification on the nature of duties of teachers relating to elections to the local authority or the State legislatures or Parliament under section 27 of the RTE Act.

2. The matter has been considered in the Ministry. At the outset, it be mentioned that the purpose of section 27 is not to enumerate the non educational duties of a school teacher, but to emphasize that teachers should not be deployed for non-educational duties other than those which are considered to be essential in national interest. This section has to be read in consonance with the provisions of section 24 of the Act specifying the duties of teachers (specifically to conduct and complete the prescribed curriculum within the specified time) and norms and standards specified in the Schedule of the Act (specifically minimum number of working days / instructional hours and, minimum number of working hours per week for teachers), both of which underline the crucial role of teachers in providing quality elementary education to children and the need to ensure that teachers are engaged in their academic duties.

3. The objective of Section 27 is to free teachers from deployment to non-educational assignments and enable them to spend more time on school and classroom related activities. In this connection, the department has also examined the judgement dated 6.12.2007 of the Hon'ble Supreme Court in the case of Election Commission of India Vs. St. Mary’s School & Others, and accordingly the

following guidelines are issued under section 35(1) of the RTE Act, 2009.

> "Duties relating to election to the local authority or the State Legislatures or Parliament relate to conduct of elections and the consequent deployment of teachers on the days of poll and counting, the time spent on training imparted to them and collection of election material for such deployment. All other duties relating to electoral roll revisions will be undertaken on holidays and during non-teaching hours and non-teaching days"

4. The appropriate Government and local authority may utilize the services of school teachers for elections to the local authority or the State legislatures or Parliament, as the case may be, in accordance with the aforementioned guidelines.

5. This issues with the approval of the competent authority.

Yours faithfully,
Sd/-
Vikram Sahay
Director"

130. As clearly defined by the Government of India, objective of Section 27 of Act, 2009, is to free teachers, from deployment to non-educational assignments and to enable them to spend more time in school and classroom related activities.

131. One of the contentions raised by the petitioners is that when teachers, whether working in Government or aided or unaided, as the case may be, constitute one class under the Act, 2009, and ordained to perform

the same duties and responsibilities, whether, teachers working in aided schools alone can be allowed to participate in political activities and contest in elections, and in such circumstances, is there any *intelligible differentia*, in the action of the Government of Kerala? Thus, while, on one hand, Government of Kerala, by virtue of the powers under the Legislative Assembly (Removal of Disqualifications) Act, 1951, have permitted the teachers, working in aided schools to contest in elections, and on the other hand, denied permission to the teachers, working in Government schools, to participate in political activities and contest in elections. As stated supra, teachers, Government or aided or unaided, perform the same duties and responsibilities, under the Right of Children to Free and Compulsory Education Act, 2009 and the rules framed thereunder.

132. Though G.O.(Rt.) No.2593/Edn. dated 25.08.1967 is not challenged, let us consider a few decisions on *intelligible differentia.*

(i) Article 14 does not prohibit reasonable classification, but for passing the test of permissible classification, there are two conditions, which have been time and again laid down and reiterated. It is useful to refer to the Constitution Bench judgment of the Hon'ble Supreme Court in **Budhan Choudhary v. State of Bihar** reported in **AIR 1955 SC 191**, wherein at paragraph 5, the following has been laid down:

> "5….It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of

> permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure…"

(ii) In **Probhudas Morarjee Rajkotia v. Union of India**, reported in AIR 1966 SC 1044, a Constitutional Bench of the Hon'ble Supreme Court, while interpreting Article 14 of the Constitution of India, held as follows:

> "8. ..... It cannot be too strongly emphasized that to make out a case of denial of the equal protection of the laws under Art.14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made."

(iii) In **Harakchand Ratanchand Banthia v. Union of India**, reported in AIR 1970 SC 1453, at paragraph No.23, the Hon'ble Supreme Court, held thus:-

> "23….When a law is challenged as violative of Article 14 of the Constitution it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (1) whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group and (2) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object…"

(iv) In **Western M.P. Electric Power & Supply Co. Ltd. v. State of U.P.**, reported in AIR 1970 SC 21, after taking note of the decision in **Mohd. Shujat Ali v. Union of India** [1975 (3) SCC 76], the Hon'ble Supreme Court held that Article 14 of the Constitution of India does not operate against rational classification. Relevant portion of the said decision is as under:

> "7. Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."
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> 16. In **Mohd. Shujat Ali vs. Union of India** [1975 (3) SCC 76], the Hon'ble Supreme Court observed that Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." At the same time, the Court cautioned against the ready-made invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brawer, "the very idea of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in **State of Jammu & Kashmir v. Triloki Nath Khosa** (AIR 1974 SC 1), the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in **State of Jammu & Kashmir v. Triloki Nath Khosa**: (at SCC p.42)

> "Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

[Emphasis added]

(v) In **D.S. Nakara v. Union of India,** [(1983) 1 SCC 305], a Constitutional Bench of the Hon'ble Supreme Court explained the said concept of Article 14 of the Constitution of India, and held as under:

> "11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.
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> 12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in In re Special Courts Bill, 1978, AIR 1979 SC 478, restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:
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> (3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

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(6)The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. "

(vi) In **Sri Srinivasa Theatre and others v. Government of Tamil Nadu and others**, reported in (1992) 2 SCC 643, while explaining the scope of Article 14, the Hon'ble Supreme Court at paragraph Nos.9 and 10, held thus:-

"9. Article 14 of the Constitution enjoin upon the State not to deny to any person 'Equality before law' or 'the equal protection of laws' within the territory of India. The two expressions do not mean the same thing even if there may be much in common. Section 1 of the XIV Amendment to U.S. Constitution uses only the latter expression whereas the Irish Constitution (1937) and the West German Constitution (1949) use the expression "equal before law" alone. Both

these expressions are used together in the Universal Declaration of Human Rights, 1948, Article 7 whereof says "All are equal before the law and are entitled without any discrimination to equal protection of the law." While ascertaining the meaning and content of these expressions, however, we need not be constrained by the interpretation placed upon them in those countries though their relevance is undoubtedly great. It has to be found and determined having regard to the context and scheme of our Constitution. It appears to us that the word "law" in the former expression is used in a generic sense-a philosophical sense-whereas the word "law" in the latter expression denotes specific laws in force.

10. Equality before law is a dynamic concept having many facets. One facet-the most commonly acknowledged-is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the preamble and part IV of our Constitution."

(vii) In **Venkateshwara Theatre v. State of Andhra Pradesh and Others**, [(1993) 3 SCC 677], the Hon'ble Supreme Court, held as under:-

"20. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions namely, (i) it is founded on an intelligible differentia which distinguishes

those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary. [See: Re Special Courts Bill, [1979] 2 SCR 476 at pp. 534- 5361. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get and advantage over others, so long as they are not singled out for special treatment. [See: **Khandige Sham Bhat v. Agricultural Income-Tax Officer**, [1963] 3 SCR 809 at p. 8 171.

23. Just a difference in treatment of persons similarly situate leads of discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law."

In **K. Thimmappa v. Chairman, Central Board of Directors, SBI**, (2001) 2 SCC 259 that the classification under Article 14 of the Constitution of India need not be a scientifically perfect one and it is sufficient if the distinction is on just and reasonable relation to the object of the legislation. The relevant portion is as under:

"3. ..... Before we deal with the respective contentions of the parties it would be appropriate for us to notice that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule-making authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well-defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled:

(a) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; and

(b) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis and what is necessary is that there must be a nexus between the basis of classification and the object under consideration. Article 14 of the Constitution does not insist that the classification should be scientifically perfect and a court would not interfere unless the alleged classification results in apparent inequality. When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view. If a law deals with members of a well-defined class then it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the rule-making authority to determine what categories of persons would embrace within the scope of the rule and merely because some categories which would stand on the same footing as those which are covered by the rule are left out would not render the rule or the law enacted in any manner discriminatory and violative of Article 14. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation, and what it really seeks to achieve."

(viii) In **L.I.C. of India and Another v. Consumer Education & Research Centre and Others**, reported in (1995) 5 SCC 482, the Hon'ble Apex Court reiterated the above noted principle in the following words:-

> "The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. Maneka Gandhi v. Union of India [1978 (1) SCC 248] ratio extricated it from this moribund and put its elasticity for egalitarian path finder lest the classification would deny equality to the larger segments of the society. The classification based on employment in Government, semi-Government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice."

(ix) In **Prafulla Kumar Das v. State of Orissa**, reported in (2003) 11 SCC 614, the Hon'ble Supreme Court, deciding about the validity of a legislation, held thus it would be impossible to declare a law *ultra vires* merely because it would cause hardship, unless a case for discrimination or unreasonableness has been made out.

> "45. In this case, the petitioners seek benefit to which they are not otherwise entitled. The legislature, in our opinion, has the requisite jurisdiction to pass an appropriate legislation which would do justice to its employees. Even otherwise a presumption to that effect has to be drawn. If a balance is sought to be struck by reason of the impugned legislation, it would not be permissible for this Court to declare it ultra vires only because it may cause some hardship to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and

> not otherwise. We do not think that in this case, Article 14 of the Constitution is attracted."

(x) In **Amita v. Union of India**, reported in (2005) 13 SCC 721, at paragraph No.11, the Hon'ble Supreme Court, held thus:-

> "11. ....Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequal. Article 14 of the Constitution of India is both negative and positive right. Negative in the sense that no one can be discriminated against anybody and everyone should be treated as equals. The latter is the core and essence of right to equality and state has obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled as a human being. Therefore, Art.14 contemplates reasonableness in the state action, the absence of which would entail the violation of Art.14 of the Constitution."

(xi) In **Confederation of Ex-Servicemen Association v. Union of India**, reported in AIR 2006 SC 2945, at paragraph No.27, the Hon'ble Supreme Court, held as under:-

> "27. Before more than five decades, a Constitution Bench of this Court was called upon to consider a similar contention in the well known decision in State of West Bengal v. Anwar Ali Sarkar & Another, (1952 SCR 284 : AIR 1952 SC 75). In that case, validity of certain provisions of the West Bengal Special Courts Act, 1950 was challenged on the ground that they were discriminatory and violative of Article 14 of the Constitution. Dealing with the contention, S.R. Das, J.

(as His Lordship then was), made the following pertinent observations which were cited with approval in several cases;

"It is now well established that while article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained."

(emphasis supplied)"

(xii) In **Satyawati Sharma v. Union of India and another**, reported in AIR 2008 SC 3148, at paragraph Nos.14 to 17, the Hon'ble Supreme Court, observed thus:-

> "14. Article 14 declares that the state shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the Directive Principals of State Policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations."

(xiii) In **Shayara Bano v. Union of India**, reported in 2017 (9) SCC 1 the Hon'ble Supreme Court, held thus:-

> "63. In the pre-1974 era, the judgments of this Court did refer to the rule of law or positive aspect of Article 14, the concomitant of which is that if an action is found to be arbitrary and, therefore, unreasonable, it would negate the equal protection of the law contained in Article 14 and would be struck down on this ground. In S.G. Jaisinghani v. Union of India, (1967) 2 SCR 703, this Court held: In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system

> governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey Law of the Constitution 10th Edn., Introduction cx). Law has reached its finest moments, stated Douglas, J. in United States v. Wunderlick [342 US 98], when it has freed man from the unlimited discretion of some ruler. Where discretion, is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes [(1770) 4 Burr. 2528 at 2539], means sound discretion guided by law. It must be governed by rule, not by humour: Shayara Bano vs. Union Of India And Ors. Ministry Of ... on 22 August, 2017 Indian Kanoon - http://indiankanoon.org/doc/115701246/ 239 it must not be arbitrary, vague, and fanciful. (pages 718 719) This was in the context of service rules being seniority rules, which applied to the Income Tax Department, being held to be violative of Article 14 of the Constitution of India."

133. The legislative power in relation to education was earlier distributed in all the three legislative lists in Seventh Schedule to the Constitution. Parliament was conferred with the legislative power, in respect of matters specified in Entries 63, 64, 65, and 66 of List I (Union List), while the State Legislatures were conferred with the power, in respect of matters specified in Entry 11 of List II (State List) and Parliament, and State Legislatures were conferred with the power, in respect of matters

specified in Entry 25 of List III (Concurrent List). By the Constitution (Forty Second Amendment) Act, 1976, Entry 11 of List II has been deleted and Entry 25 in List III has been enlarged to cover the matters which were earlier specified in Entry 11 of List II. In view of the said amendment, the legislative power in respect of education is now conferred exclusive on Parliament, in respect of matters specified in Entries 63 to 66 of List I, and concurrently on Parliament and State Legislatures, in respect of matters specified in Entry 25 of List III.

134. The Right of Children to Free and Compulsory Education Act, 2009 is enacted by the Parliament as an Act to provide for free and compulsory education to all the children of the age of 6 to 14 years. As per the said Act, a duty is caste not only upon the State Government and the local authorities, but also upon all the schools, whether Government or private aided or unaided, and specified category schools, to impart quality primary education. Thus, it is respectfully submitted that, in the light of the Act, 2009, there cannot be a genus of educational institutions other than Government institutions, in the matter of quality education/norms of imparting education, and consequently, aided school teachers cannot justifiably be given a different treatment as that of Government school teachers. It is also submitted that such a classification, if adopted, it would

be without any *intelligible differentia*, and hence, violative of Article 14 of the Constitution of India.

135. Giving due consideration to the statutory provisions, the decisions, extracted above, and the clarification issued by the Ministry of Human Resource Development, Department of School Education and Literacy, Government of India dated 10.09.2016, we find no *intelligible differentia*, in allowing the teachers, working in aided schools, vis-a-vis, teachers working in Government schools, to participate in political activities and contest in elections.

136. Section 27 of the Act, 2009 starts with the opening words, "no teacher shall be deployed for any non-educational purposes other than the decennial population census...". Thus, it is discernible that there is exercise of power coupled with a duty by the State government and the local body. On the said aspect, let us consider a few decisions.

> "(i) In **Julius v. Lord Bishop of Oxford**, (1874-80) 5 AC 214 : 1847-80 All England Reporter 43 HL, the United Kingdom House of Lords Court has summoned up the legal position as under:
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> > "The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done,

> something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so...”."

(ii) **Maxwell** on **Interpretation of Statutes**, 11th Edn. at Page 231, referred to in **State (Delhi Admn.) v. I.K. Nangia and Another** [1979 AIR SC 1977], is reproduced hereunder:-

> "Statutes which authorise persons to do acts For the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may" or "shall, if they think fit", or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have-to say the least-a compulsory force, and so could seem to be modified by judicial exposition.” (Emphasis supplied)”

(iii) In **Deewan Singh and others v. Rajendra Pd. Ardevi and others** reported in (2007) 10 SCC 528, at paragraph 32, the Hon'ble Supreme Court held as follows:

> “32. Even if the expression “shall” is read as “may” although there does not exist any reason therefor, the statute provides for a power coupled with a duty. It is a well-settled principle of interpretation of statutes that where power is conferred upon a public authority coupled with discretion, the word “may” which denotes discretion, should be construed to mean a command.”

(iv) In **Dhampur Sugar Mills Ltd. v. State of U.P. and Ors.** [(2007) 8 SCC 338], the Hon'ble Supreme Court held that mere use of word 'may' or 'shall' was not conclusive. The question whether a particular provision of a statute is directory or

mandatory, can be resolved by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed, and for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant thereto.

(v) In **Smt. Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr.** (AIR 2008 SC 1282), while dealing with the use of the word "may", the Hon'ble Apex Court held thus:

> "...It is well-settled that the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force..." (Emphasis supplied)

(vi) In **Bachahan Devi and Ors. v. Nagar Nigam, Gorakhpur and Ors.** [(2008) 12 SCC 372], the Hon'ble Supreme Court held as under:

> "13. Several statutes confer power on authorities and officers to be exercised by them at their discretion. The

power is in permissive language, such as, 'it may be lawful', 'it may be permissible', 'it may be open to do', etc. In certain circumstances, however, such power is 'coupled with duty' and must be exercised.

14. More than a century ago, in Baker, Re (1890) 44 Ch D 262, Cotton, L.J. stated;

> "I think that great misconception is caused by saying that in some cases 'may' means 'must'. It never can mean 'must', so long as the English language retains its meaning; but it gives a power, and then it may be question in what cases, where a Judge has a power given by him by the word 'may', it becomes his duty to exercise it."
>
> (emphasis supplied)

15. In the leading case of Julius v. Lord Bishop of Oxford (1880) 5 AC 214 : 49 LJ QB 580 : (1874-80) All ER Rep 43 (HL), the Bishop was empowered to issue a commission of inquiry in case of alleged misconduct by a clergyman, either on an application by someone or suo motu. The question was whether the Bishop had right to refuse commission when an application was made. The House of Lords held that the Bishop had discretion to act pursuant to the complaint and no mandatory duty was imposed on him.

16. Earl Cairns, L.C., however, made the following remarkable and oft-quoted observations:

> "The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person

> in whom the power is reposed, to exercise that power when called upon to do so."

17. Explaining the doctrine of power coupled with duty, de Smith, ('Judicial Review of Administrative Action', 1995; pp.300-01) states:

> "Sometimes the question before a court is whether words which apparently confer a discretion are instead to be interpreted as imposing duty. Such words as 'may' and 'it shall be lawful' are prima facie to be construed as permissive, not imperative. Exceptionally, however, they may be construed as imposing a duty to act, and even a duty to act in one particular manner." (emphasis supplied)

18. Wade also says (Wade & Forsyth; 'Administrative Law: 9th Edn.): p.233):

> "The hallmark of discretionary power is permissive language using words such as 'may' or 'it shall be lawful', as opposed to obligatory language such as 'shall'. But this simple distinction is not always a sure guide, for there have been many decisions in which permissive language has been construed as obligatory. This is not so much because one form of words is interpreted to mean its opposite, as because the power conferred is, in the circumstances, prescribed by the Act, coupled with a duty to exercise it in a proper case."
>
> (emphasis supplied)

21. In **Alcock v. Chief Revenue Authority** [(1923) 25 BOM LR 920], the relevant statute provide that if, in the course of any assessment, a question arises, as to the interpretation of the Act, the Chief Revenue Authority 'may' draw up a statement of the case and refer it to the High Court. Holding the provision to be mandatory and following Julius, Lord Phillimore observed:

> "When a capacity or power is given to a public authority, there may be circumstance which couple with the power of duty to exercise it."

23. It was contended that there was no specific legal duty compelling the Commissioner to exercise the discretion. Rule 250 merely vested discretion in him but it did not require him to exercise the power. Relying upon the observations of Earl Cairns, L.C., the Court observed:

> "The discretion vested in the Commissioner of Police under Rule 250 has been conferred upon him for public reasons involving the convenience, safety, morality and the welfare of the public at large. An enabling power of his kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor can it be evaded...."
>
> (emphasis supplied)

(vii) In **State of Kerala and Ors. v. Kandath Distilleries**, [(2013) 6 SCC 573], the Hon'ble Supreme Court had an occasion to consider the use of expression 'may' in Kerala Abkari Act, 1902, at paragraph 29, the Hon'ble Apex Court held as under:

> "29. Section 14 uses the expression "Commissioner may", "with the approval of the Government" so also Rule 4 uses the expressions "Commissioner may", "if he is satisfied" after making such enquiries as he may consider necessary "licence may be issued". All those expressions used in Section 14 and Rule 4 confer discretionary powers on the Commissioner as well as the State Government, not a discretionary power coupled with duty.... "

(viii) In **Mangalam Organics Ltd. v. Union of India (UOI)** [(2017) 7 SCC 221], the Hon'ble Supreme Court held thus:

> "17. Proceeding on the aforesaid basis, submission of the learned Counsel for the Appellant was that once conditions of a particular statutory provision were fulfilled, the Government was obligated to exercise the power with the issuance of a required notification. It was argued that this power rested in the Central

Government Under Section 11C of the Act coupled with the duty and, therefore, the Central Government was duty bound to exercise the power once the conditions stipulated therein were fulfilled. In support, reference was made to the judgment of the Privy Council in Julius v. Lord Bishop of Oxford and Anr., which was followed by this Court in *Ambica Quarry Works v. State of Gujarat and Ors.,* where it was explained that the very nature of the thing empowered to be done may itself impose an obligation to exercise the power in favour of a particular person. It was held that this is especially so where the non-exercise of the power may affect that person's substantive rights. Para 13 of this judgment was specifically relied upon which reads as under:

> "13. It was submitted by *Shri Gobind Das* that the said Rule was in *pari materia* with Sub-rule (b) of Rule 18 of Gujarat Minor Mineral Rules, 1966. Often when a public authority is vested with power, the expression "may" has been construed as "shall" because power if the conditions for the exercise are fulfilled is coupled with duty. As observed in Craies on Statute Law, 7th Edn., p. 229, the expression "may" and "shall" have often been subject of constant and conflicting interpretation. "May" is a permissive or enabling expression but there are cases in which for various reasons as soon as the person who is within the statute is entrusted with the power, it becomes his duty to exercise it. As early as 1880 the Privy Council in **Julius v. Lord Bishop of Oxford** [(1880) 5 AC 214] explained the position. Earl Cairns, Lord Chancellor speaking for the judicial committee observed dealing with the expression "it shall be lawful" that these words confer a faculty or power and they do not of themselves do more than confer a faculty or power. But the Lord Chancellor explained there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may

> couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. Whether the power is one coupled with a duty must depend upon the facts and circumstances of each case and must be so decided by the courts in each case. Lord Blackburn observed in the said decision that enabling words were always compulsory where the words were to effectuate a legal right."
>
> 18. Learned Counsel also drew our attention to the judgment in the case of *Dhampur Sugar Mills Ltd. v. State of U.P. and Ors*. wherein the Privy Council decision in Julius was again referred to about enforcement of the obligation to which the power is coupled with duty, by issuing order for that purpose. It was submitted that in the said case, the Court had directed the Government to constitute an Advisory Council while rejecting the contention of the Government that it was for the Government to exercise its discretion. It was also submitted that the same approach and legal position has been laid down in **D.K. Basu v. State of West Bengal and Ors**., where it was held that the power of the State Governments to set up the State Human Rights Commissions was not a power simpliciter but a power coupled with the duty to exercise such power, especially so because it touched the right of affected citizens to access justice, which was a fundamental right covered by Article 21. The said duty of the State Government was accordingly enforced by the Court by issuing a mandamus or direction to set up the Commissions/fill up the vacancies within a time bound period. Again in **Aneesh D. Lawande and Ors. v. State of Goa and Ors.**, this Court gave a direction to enforce the obligation which was held to be annexed to the power conferred on the Government. Reference was also made to **Suresh Chand Gautam v. State of Uttar Pradesh and Ors.** on this very aspect."

(ix) In **State of Meghalaya and Ors. v. All Dimasa Students Union, Dima-Hasao District Committee and Ors.** [(2019) 8

SCC 177], the Hon'ble Supreme Court held as under:

> "157. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to Tribunal to pass orders and issue directions to secure ends of justice. Use of words 'may', 'such orders', 'gives such directions', 'as may be necessary or expedient', 'to give effect to its orders', 'order to prevent abuse of process', are words which enable the Tribunal to pass orders and the above words confer vide discretion.
>
> 160. The object for which said power is given is not far to seek. To fulfill objective of the NGT Act, 2010. NGT has to exercise a wide range of jurisdiction and has to possess vide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to judgment of this Court in **L. Hirday Narain v. Income Tax Officer, Bareilly**, [(1970) 2 SCC 355], where this Court was examining provision empowering authority to do something. This Court laid down in paragraph 14:
>
> > "14. The High Court observed that Under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case

> when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right -- public or private -- of a citizen."
>
> 191. From the foregoing discussions we arrived at following conclusions:
>
> 1. xxxxxxxxxxx
> xxxxxxxxxxxx
>
> 15) Rule 24 of National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. There is no lack of jurisdiction in NGT in directing for appointment of a committee and to obtain a report from a Committee."

137. Exercise of power coupled with a duty by the State to strictly enforce Section 27 of the Act, cannot be different, in respect of teachers, working in aided schools. Section 27 of the Act does not distinguish a teacher, working in a Government or an aided school.

138. Bearing in mind the aforesaid aspects, we have to consider, as to whether Section 2(iv) of the Act, 1951, can be constitutionally sustained, due to the introduction of various statutes discussed above. It is significant to note that as per Section 2(iv), a person, who holds an office, in any educational institution other than a Government institution, is included in

the Act, in order to remove disqualifications for membership in the State Legislative Assembly.

139. The Legislative Assembly (Removal of Disqualifications) Act, 1951 is enacted invoking Article 191(1)(a) r/w. Article 238 of the Constitution of India, to declare certain offices, as offices, which will not disqualify the holders thereof being chosen as, and for being a member of the Legislative Assembly of the State of Kerala. Section 2(1) thereto makes it clear that a person shall not be disqualified for being chosen as and for being a member of the Legislative Assembly of the State of Kerala by a reason only,- (i) that he is in receipt of the salaries or allowances to which he is entitled under the law for the time being in force relating to the payment of salaries and allowances to members of the Legislative Assembly of the State of Kerala or of traveling and daily allowances while serving as a member of any Committee or Board constituted by the Government of India or the Government of any State specified in the First Schedule to the Constitution of India; or (ii) that he holds under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India an office which is not remunerated either by salary or by fees payable out of the Consolidated Fund of India or of any such State; or (iii) that he is a member of the Committee constituted to translate the

Constitution of India into Malayalam; or (iv) that he holds an office in any educational institution other than a Government institution; or (xxxxxx). Therefore, one thing is clear that at the time of introducing the Legislative Assembly (Removal of Disqualifications) Act, 1951, the framers of law were conscious of the fact that a teacher in any educational institution other than a government institution would suffer from a disqualification if the Act, 1951 was not introduced and by the said legislation, disqualification was removed.

140. We have said so, because a contention has been raised by Mr. T. K. Aravinda Kumar Babu, learned Senior Government Pleader, that even if Section 2(iv) of the Act, 1951, is found to be bad, it is protected under Articles 102 and 191 of the Constitution of India. Such a contention has been raised, basically to canvas that an aided school teacher is not holding any office of profit under the Government of India or Government of any State, and according to him, the activities of a teacher appointed in an aided school, are controlled and regulated only by the Management. However, so far as an aided school is concerned, they are guided by the provisions of Kerala Education Act, 1958 and Kerala Education Rules, 1959.

141. That apart, going through the provisions of the Kerala Education Rules, 1959, it could be deduced that various restrictions are made by the

State Government to regulate and control the activities of aided educational institutions and have appointed officers, at various levels, to redress the disputes, by and between the management and teachers, for regulating appointment of the teachers to various classes, and promotions. Decisions of the management is not final, but subject to the orders of the competent authorities under the Kerala Education Act, 1958 and the rules framed thereunder. Appointment and promotions are subject to scrutiny of the competent authorities under the Act and the rules. Thus, the provisions of Act, 1958 and the Rules, 1959 would make the situation more clear. Section 9(1) of the Act makes it clear that the Government shall pay the salary of all the teachers in aided schools direct or through the headmaster of the school and second limb of sub-section (2) specifies that it shall be competent for the Government to prescribe the number of persons to be appointed in the non-teaching establishment of aided schools, their salaries, qualifications and other conditions of service, and further that they shall be paid by the Government. Section 10 enables the Government to prescribe qualifications to be possessed by persons for appointment as teachers in Government and private schools. Section 14 empowers the Government to take over management of schools whenever it appears to the Government that the managers of any aided school have neglected to

perform any of the duties imposed by or under the Act or the rules made thereunder, and that in the public interest, it is necessary to take over the management of the school for a period not exceeding five years on certain conditions. Further, various chapters of the Rules, 1958 make it clear that there is substantial control exercised by the Government in order to regulate and control the functioning of the aided schools. We have highlighted all the aspects, in order to demonstrate that the Government have a substantial power, in the matter of ensuring and imparting proper education by the teachers and the managements of the aided schools.

142. Though the management of an aided school is vested with the Management, the Manager of the school is only a statutory functionary, to discharge his functions and duties in contemplation of the provisions of the Kerala Education Act, 1958 and the rules framed thereunder.

143. It is also relevant to note that the salary of the teachers in aided educational institutions is fixed and paid by the Government, in accordance with the provisions of the Kerala Education Rules, 1959, and at par with the teachers in the Government schools. That apart, the qualifications for appointment of teachers and headmasters at various levels are also prescribed by the Kerala Education Rules, 1959, for controlling and regulating the functions of the schools by the Government. To put it

otherwise, though the appointment and termination are done by the Manager of the school, in all other respects, teachers of the aided schools are regulated and controlled by the Government, in protecting the interest of the teachers, not only by payment of salary and other service benefits, and providing them with grievances redressal mechanism at Government levels, but also to ensure that the appointment and promotions are done, as per the statutory requirements. Thus, there is pervasive control by the State, over the schools, whether aided or unaided, or Government. On the aspect of pervasive control, let us consider a few decisions.

(i) In **Andi Mukta Satguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others** reported in 1989 (II) LLJ 324, the appellant was a Science College run by a Public Trust, affiliated to Gujarat University. At paragraphs 20 and 22, the Hon'ble Supreme Court held as follows:

> "The words "any person or authority" used in Article 226 are therefore not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.
>
> Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by charter, common law, custom or even contract. Judicial control over the fast

> expanding maze of bodies affecting the rights of the people should not be put into watertight compartments. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226."

In the above reported case, the Hon'ble Apex Court further held that,

> "To the Trust managing the affiliated college, public money is given as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Governmental Institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating university. Their activities are closely supervised by the University authorities. Employment in such Institution is not devoid of any public character. So are the service conditions of the academic staff. Their service conditions are not purely of a private character and such service conditions has super-added protection by university decisions creating a legal right duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused."

(ii) In **Rakesh Gupta v. State of Hyderabad** reported in **AIR 1996 AP 413**, a Hon'ble Division Bench of the Andhra Pradesh High Court considered the scope and extent of power under Article 226 of the Constitution of India and the use of the word or expression "any person or authority" occurring under Article 226 of the Constitution of India. The Court observed as follows:

> "The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty

> imposed on that body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed; and
>
> The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartments. It should remain flexible to meet the requirements of various circumstances."

(iii) In **K. Krishnamacharyulu v. Sri Venkateswar Hindu College of Engineering** reported in (1997) 3 SCC 571, the appellant and six others were appointed on daily wages to the post of Lab Assistant as non-teaching staff in the respondent-private college. The Writ Petition and Appeal seeking equal pay were dismissed. Aggrieved by the same, they moved the Apex Court. The question which came up for consideration before the Hon'ble Supreme Court was when there were no statutory rules issued regarding pay scales to be fixed on par with the Government employees and the private Institution, being not in receipt of any grant-in-aid, whether the Writ Petition under Article 226 of the Constitution is maintainable? The Hon'ble Apex Court, at paragraph 4, observed as follows:

> "The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grants-in-aid; whether the Writ Petition under Article 226 of the Constitution of India is not; maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties. .....We are of the view that the State has an obligation to provide facilities and opportunities to the people to avail of the right to education. The Private Institutions cater to the need of providing educational opportunities."

(iv) In **Islamic Academy of Education v. State of Karnataka** reported in **AIR 2003 SC 3724**, the petitioners therein were mostly unaided professional educational institutions, both minority and non-minority. It was inter alia contended that the private unaided professional educational institutions, had been given committee autonomy not only as regards admission of students, but also determination of their own fee structure. It was also contended that these institutions could fix their own fee structure, which could include a reasonable revenue surplus for purposes of development of education and expansion of the institution, and that so long as there was no profiteering or charging of capitation fees, there could be no interference by the Court. Per contra, on behalf of the Union of India, various State Governments and some students, who sought to intervene, it was submitted that right to set up and administer an educational institution was not an absolute right, and this right is subject to reasonable restrictions and that, this right is subject (even in respect of minority institutions) to national interest. It was further submitted that imparting education was a State function, but, due to resource crunch, the States were not in a position to establish sufficient number of educational institutions. Though the issue was with regard to fee structure, the Hon'ble Apex Court also considered, as to whether the Government is denuded of its power to lay down any law, just because the institution was once recognised or affiliated to the examining body. At paragraphs 217 and 219, the Hon'ble Apex Court, held as under:

> "218. Although the minorities have a right to establish institutions of their own choice, they admittedly do not have any right of recognition or affiliation for the said purpose. They must fulfill the requirements of law as also other conditions which may reasonably be fixed by the

appropriate Government for the University.

219. It cannot be said that once recognition has been granted, no further restriction can be imposed. There exist some institutions in this country which are more than a century old. It would be too much to say that only because an institution receives recognition/affiliation at a distant point of time the appropriate Government is denuded of its power to lay down any law in imposing any fresh condition despite the need of change owing to passage of time. Furthermore, the Parliament or the State Legislature are not denuded of its power having regard to restrictions that may satisfy the test of Clause (6) of Article 19 of the Constitution of India or regulations in terms of Art. 30 depending upon the national interest/public interest and other relevant factors. However, the State/University while granting recognition or the affiliation cannot impose any condition in furtherance of its own needs or in pursuit of the Directive Principles of State Policy."

(v) In **Sushmita Basu v. Ballygunge Siksha Samity and others** reported in **2004 (4) LLN 195 (SC)**, the teachers of a recognised Private School filed a Writ Petition for implementation of the third pay commission. The management, though implemented the recommendations of the third pay commission in the sense that salaries of the teachers were hiked in terms of the said report, the institution refused to give retrospective effect to the enhancement. In other words, the institution refused to give effect to the recommendations of the Third Pay Commission with effect from 1st January 1988, as recommended by the Commission and as implemented by the Government. Though the Hon'ble Supreme Court, accepted the views expressed earlier in **K. Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another** reported in **(1997) 3 SCC**

> **571**, that interference under Article 226 of the Constitution of India for issuing the Writ against the Private Institution like the first respondent therein would be justified if Public law element is involved and in Private law remedy, no Writ Petition would lie and Writ of Mandamus cannot be issued to recognised Private School to fix the salaries to teaching and non-teaching staffs to remove all the anomalies. The Supreme Court, on principle, has affirmed the dictum that Writ Petition would lie against Private Educational Institution, but disallowed the claim of the teachers for giving retrospective effect to the pay fixation."

144. Decisions extracted above, would make it clear that imparting education is a State function and private education institutions supplement the Government. Imparting education by institutions, aided or unaided, is recognised as a public function, taken up by the private institutions, duly recognised by the competent authorities, either under the statute or Government orders, issued from time-to-time. It is no more an independent activity. It is an activity supplemental to the principle activity carried on by the State. No private educational institution can survive or subsist, without recognition and/or affiliation. The permission and recognition are granted by the authorities of the Government. Article 162 of the Constitution of India deals with the Executive Power of the State. Executive function of the State comprises of both determination of the policy and implementation of

the same, by issuing appropriate Government Orders. Even if there is no enactment, covering a particular aspect, the Government can carry on the administration, by issuing administrative directions and instructions, until the legislature makes a law in that behalf.

145. Though the internal administration of aided school vests with its Management, regarding appointment, by the Managers, enforcement of discipline, etc., going through the provisions of the Right of Children to Free and Compulsory Education Act, 2009, the rules framed thereunder, the Kerala Education Act, 1958, and the rules framed thereunder, we are of the view that the institution has to scrupulously follow the same and also the orders issued by the Government, as well as the Director General of Education, Kerala, from time-to-time. Even in the matter of recruitment, the Government Orders issued from time-to-time make it clear that the aided schools, which get permission/recognition from the Government, should act, in conformity with the rules, statutory provisions, and orders issued by the Government. Parliament by enacting the Right of Children to Free and Compulsory Education Act, 2009, has imposed a restriction under Section 27 of the Act. However, in the matter of engaging in political activities and contest in elections, we have an enactment by the State Government, viz., the Legislative Assembly (Removal of Disqualifications) Act, 1951.

146. Now, we would like to refer a few judgments of the Hon'ble Supreme Court, as well as this Court, relied on by the learned counsel for the respective parties.

147. Even before the introduction of Article 21A of the Constitution of India, the Hon'ble Supreme Court has considered 'Right to Education', in **Miss. Mohini Jain v. State of Karnataka and Ors.** reported in **(1992) 3 SCC 666**, as under:

> "7. It is no doubt correct that "right to education" as such has not been guaranteed as fundamental right under Part III of the Constitution but reading the above quoted provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.
>
> 8. The preamble promises to secure justice "social, economic and political" for the citizens. A peculiar feature of the Indian Constitution is that it combines social and economic rights along with political and justiciable legal rights. The preamble embodies the goal which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined an object of the State under Article 38 of the Constitution. Can the objective which has been so prominently pronounced in the preamble and Article 38 of the Constitution be achieved without providing education to the large majority of citizens who are illiterate. The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teaming-million who are illiterate. It is only the education which equips a citizen to participate in achieving the objectives enshrined in the preamble. The preamble further assures the dignity of the individual. The

Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The directive principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period often years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises "Education shall be directed to the full development of the human personality...." Article 41 in Chapter IV of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right...to education...". Although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations. We may quote the words of Dr. Ambedkar in that respect:

> "In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip-service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country." (C.A. D. Vol.VII p.476.)

9. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

10. This Court has interpreted Article 21 of the Constitution of India to include the right to live with human dignity and all that goes alongwith it. In **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi** [1981 CriLJ 306], this Court elaborating the right guaranteed under Article 21 of the Constitution of India held as under:

> "But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self."

11. In **Bandhua Mukti Morcha v. Union of India and Ors.** [1984] 2 SCR 67, this Court held as under:

> "This right to live with human dignity enshrined in Article 21 derives its life breath from the

> Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State - neither the Central Government nor any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essential.
>
> 12. "Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

148. In **Gopala Kurup v. Samuel Arulappan Paul and Others** [AIR 1961 Ker. 242], the issue dealt with was with respect to the disqualification of a teacher of an aided school as a candidate, *vis-a-vis*, the provisions of Representation of the People Act, 1951. A Hon'ble Division Bench of this Court held that a teacher in an aided school cannot be treated as holding office of profit under the Government, and the aided schools were held to be not treated as Government institutions. Ultimately, it was

held that the candidate was not disqualified for that reason. However, the fact remains that, as of now, we are guided by Article 21A of the Constitution of India on and with effect from 01.04.2010 and the Education Act, 2009 and the rules made thereunder, in order to achieve and reap the fruits of Article 21A. Therefore, it can be seen that the situation that was prevailing in the year 1961, is no more in existence, consequent to the introduction of Article 21A and the mandatory and imperative conditions contained in the Education Act, 2009, insofar as a teacher is concerned, in the matter of discharge of various obligations and duties. Therefore, we are of the view that, at this distance of time, it cannot be said that the proposition of law laid down in the decision in **Gopala Kurup** (cited supra) holds the field.

149. In **Bhagwan Dass Sehgal v. State of Haryana and Ors.** [(1975) 1 SCC 249], on the power of the State Legislature to remove the disqualification, at paragraph 12, a the Hon'ble Supreme Court held thus:

> "12. It must be remembered that Article 191(1)(a) of the Constitution gives a wide power to the State Legislature to declare by law what office or offices of profit held under the Government shall not disqualify the holder thereof from being chosen or for being a member of the State Legislature. Classification of such offices for the purpose of removing the disqualification has thus been left primarily to legislative discretion. It follows that so long as this exemptive power is exercised reasonably and with due restraint and in a manner which does not drain out Article

> 191(1)(a) of its real content or disregard any Constitutional guarantee or mandate, the Court will not interfere. Nothing of this kind has been done by the impugned provisions which would justify the invocation of the extraordinary powers of the Court under Article 226 of the Constitution."

150. No doubt, State under Article 19(1)(a) of the Constitution of India, has power, but, as held by the Hon'ble Apex Court, exercise of such power should not be regardless of the constitutional guarantee or mandate under Article 21A of the Constitution.

151. Applying the abovesaid decision to the case on hand, continuation of the Legislative Assembly (Removal of Disqualifications) Act, 1951, would be in derogation of Article 21A of the Constitution of India, a constitutional guarantee, *vis-a-vis*, a statutory right, by virtue of Act, 1951.

152. In **Biharilal Dobray v. Roshan Lal Dobray** reported in **AIR 1984 SC 385 : (1984) 1 SCC 551**, the Hon'ble Supreme Court had an occasion to consider the true test for the determination of office of profit and held that it depends on the degree of Government control over the office, the degree of its dependence on Government for its financial needs, and functional aspects. At paragraphs 16, 18 & 20, the Hon'ble Apex Court held as under:

> "16. The respondent was originally working as an assistant teacher in the Basic Primary Schools, Sengarmau, Tehsil

Kanauj, District Farrukhabad. That institution was being run and managed by the Zila Parishad of Farrukhabad and the respondent was therefore an employee of the said Zila Parishad. On the promulgation of the U.P. Ordinance No. 14 of 1972 which was replaced by the Act, he became an employee of the Board under Section 9(1) of the Act which provided for the transfer of employees of the local bodies to the Board. Section 9(1) of the Act reads thus :

> "**9. Transfer of employees**. - (1) On and from the appointed day every teacher, officer and other employee serving under a local body exclusively in connection with basic schools (including any supervisory or inspecting staff) immediately before the said day shall be transferred to and become a teacher, officer or other employee of the Board and shall hold office by the same tenure, at the same remuneration and upon the same other terms and conditions of service as he would have held the same if the Board had not been constituted and shall continue to do so unless and until such tenure, remuneration and other terms and conditions are altered by the rules made by the State Government in that behalf :
>
> Provided that any service rendered under the local body by any such teacher, officer or other employer the appointed day shall be deemed to be service render under the Board :
>
> Provided further that the Board may employ any such teacher, officer or other employee in the discharge of such functions under this Act as it may think proper and every such teacher, officer or other employee shall discharge those functions accordingly."

18. It is seen that all officers mentioned in column 3 and column 4 of the above Schedule are either the State

Government or officers appointed by the State Government. The said officers are all officers of the Government Department who hold the posts in the Board ex officio, that is, by virtue of the corresponding post held by them under the Government. The rules provide for the procedure to be followed in disciplinary proceedings and the punishments that may be imposed when an employee is found guilty of any act of misconduct. Rule 5 of the said rules provides for an appeal against any order imposing punishment to the prescribed authority. The procedure laid down in civil Services (Classification, Control and Appeal) Rules as applicable to servants of the Uttar Pradesh Government is required to be followed as far as possible in the case of the employees of the U.P. Board of Basic Education. The funds of the Board mainly come from the contribution made by the State Government. The school in question is not a privately sponsored institution which is recognised by the Board. The Statement of Objects and Reasons attached to the Bill which was passed as the Act clearly says that the Act was passed in order to enable the State government to take over the administration of schools imparting primary education which were being run by the local authorities into its own hands. Even though the representatives of local authorities are associated in the administration of such schools after the Act was passed, the final control of the schools is vested in the Government and such control is exercised by it through the Director and Deputy Director of Basic Education (Member Secretary) and other District Basic Education Officers appointed by the Government.

> 20. We are of the view that the present case is governed by the principles laid down by the judgment of this Court in **State of Gujarat and Ors. v. Raman Lal Keshav Lal Soni and Ors.** [(1983) 2 SCC 33]. The functions of the employees of the Board are in connection with the affairs of the State. The expenditure of the Board is largely met out of the monies contributed by the State Government to its funds. The teachers and other employees are to be appointed in accordance with the rules by officers who are themselves appointed by the Government. The disciplinary proceedings in respect of the employees are subject to the final decision of the State Government or other Government officers, as the case may be. This Court, as mentioned earlier, held in **Divya Prakash v. Kultar Chand Rana and Ors.** [1975] 2 SCR 749, that the officers of the Board of School Education constituted under Himachal Pradesh Board of School Education Act, 1968 which was a body corporate having perpetual succession and a common seal held their offices under the government although in that particular case it was held that the office was not an office of profit as the person concerned was working in an honorary capacity. We have gone through the Himachal Pradesh Board of School Education Act, 1968 and we find that the provisions of that Act are almost similar in pattern to the provisions of the Act with which we are concerned in this case."

153. We find from the decision in **Biharilal Dobray** (cited supra) that the issue raised therein was with respect to a teacher holding an office

of profit, in a basic primary school run by the Uttar Pradesh Board of Basic Education constituted under the Uttar Pradesh Basic Education Act, 1972 and, therefore, disqualified for being chosen as a member of the State Legislative Assembly under Article 191(1)(a) of the Constitution of India. The Hon'ble Apex Court held therein that the teacher was holding an office of profit under the State Government and his nomination was rightly rejected by the Returning Officer. Though, in the writ petitions on hand, petitioners are attempting to forbear the teachers of aided institutions, run by the private managements, to contest in election to the local bodies, Assembly and Parliament, legal principles evolved in the judgment, have a clear bearing to the issue on hand, and the principles delineate the aspects, to be considered, in the matter of deciding as to whether, a teacher, working in an aided school, is holding an office of profit, under the Government, and consequently, to arrive at a just conclusion.

154. In **Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and Ors.** (1992) 4 SCC 404, the Hon'ble Supreme Court had occasion to consider an issue, as to whether holding an office of profit under Government, comes in conflict with the duties of a legislator, is decisive. After considering the constitutional provisions, at paragraphs 4, 7, 8, 10 to 12, 14 to 17 & 20, the Hon'ble Apex Court observed thus:

"4. Evidence was led in by both the sides. The main contention of the appellant was that the ITDA was only a registered society and even assuming that the Government has some control over the sanction of posts and composition of the governing body of the ITDA it cannot be said to be the Government or part of it or to be an instrumentality of the Government. Therefore the appellant cannot be said to have been holding an office of profit and the mere fact that he was appointed as a teacher by the Project Officer of the Society he cannot be deemed to have been appointed by the Government. The learned Judge after referring to the relevant clauses of memorandum of association of the Society held that (i) Although the Society appears to be independent of the State Government but in substance its activities are controlled by the officers of the Government who are ex-officio members of the governing body. The Chairman as well as the Project Officer are the officers of the State Government. A majority of the members of the governing body are the officers holding posts in the Government by virtue of which they became the ex-officio members of the governing body. Thus for all practical purposes it is the officers of the Government who control the activities of the society: (ii) though the Project Officer is the appointing authority of the appellant but he is only a Secretary of the Society by virtue of his being an officer in the Government; (iii) the Government sanctions the number of posts of teacher, fixes their scales of pay; (iv) although the rules provide to have funds of its own by way of

recurring and non-recurring grants made by the Government of India but it is the Government who sanctions the funds: (v) since the Civil Services (Classification, Control and Appeal) Rules of the State Government are being applied to the teachers of the Society, they must be deemed to have been treated as the employees of the Government. The State has to provide free and compulsory education to all the children and primary education is also the responsibility of the State Government and it is meeting expenditures out of its funds. Therefore the function of appointment of the teachers in the Society by the Project Officer is one of the Governmental functions and thus the State Government exercises almost full control. For the aforesaid reasons the High Court held that the appellant was holding an office of profit and thus incurred the disqualification.

7. Article 191(1)(a) of the Constitution of India which imposes disqualifications is as follows:

"**191. Disqualifications for membership**- (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State-

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

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The scope and the meaning of the words "holds any office of profit under the Government..." have been considered in a

number of cases. In **Ravanna Subana v. G.S. Kageerappa AIR 1954 SC 653**, it was held that an office of profit must be held under the Government to which any pay, salary, emoluments are attached. In **Maulana Abdul Shakur v. Rikhab Chand and Anr. [1958] 1 SCR 387** the appellant held the post of Manager of a school run by a committee constituted under the provisions of Durgah Khawaja Sahib Act (36 of 1955) under the Central Government. Under the provisions of the said Act, all the Committee members are to be appointed by the Central Government which is also empowered to supersede the Committee and the appellant was appointed as Manager by the said Committee. When the appellant was elected to the Council of States, the unsuccessful candidate questioned the election on the ground that the appellant was appointed by a committee of management which in turn was appointed by the Central Government and that the Committee of the Management could be removed by the Central Government, therefore the appellant was holding an office under the Central Government. The Election Tribunal accepted the said contention and set aside the election of the appellant. On appeal, this Court reversed the decision of the Tribunal holding thus:

> "No doubt, the Committee of the Durgah Endowment is to be appointed by the Government of India, but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the Committee or the members of the Committee are removable by the Government of India or the Committee can make by-laws prescribing

> the duties and powers of its employees, cannot convert the servants of the committee into the holders of profit under the Government of India. The appellant is neither appointed by the Government of India nor is removable by the Government of India nor paid out of the revenues of Government of India."

It was further held that:

> "The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether a person is holding an office of profit under the Government though payment from a source other than the Government revenues is not always a decisive factor. But the appointment of the appellant does not come within this test."

8. In **Dr. Deorao Laxman Anande v. Keshav Laxman Borkar** [AIR 1958 Bom 314], it was observed that:

> "Before a person can be held to be disqualified under Article 191(1)(a), three things must be proved that (1) he, held an office: (2) that it was an office of profit: and (3) that it was an office under the Government of India or the State Government."

The Hon'ble Supreme Court further observed that:

> "In our opinion, the principle tests for deciding whether an office is under the Government, are (1) what authority has the power to make an appointment to the office concerned, (2) what authority can take disciplinary action and remove or dismiss the holder of the office and (3) By whom and from what source is his remuneration paid? Of these, the first two are, in our opinion, more important than the third one."

Applying the aforesaid tests, it was held that an Insurance Medical Practitioner functioning under the Employees State Insurance Act, 1948 is holder of an office under the State Government. In **M. Ramappa v. Sangappa and Ors.** [1959]1 SCR 1167, the Hon'ble Supreme Court observed that "Patels and Shanbhogs who are the holders of hereditary village offices governed by the Mysore Village Offices Act, 1908 are officers who are appointed to their offices by the Government though it may be that the Government has no option in certain cases but to appoint an heir of the last holder; that they hold their office by reason of such appointment only, that they work under the control and supervision of the Government; that their remuneration is paid by the Government out of Government funds and assets; and that they are removable by the Government, and that there is no one else under whom their offices could be held."

In **Gopala Kurup v. S.A Paul** [AIR 1961 Ker 242], the contention was that the appellant, a teacher in an aided school, was disqualified to stand for the election as he is a person holding an office of profit under the Government, after the Kerala Education Act and the exemption from disqualification granted earlier in favour of persons holding an office in any educational institution other than the Government institution has no application after the Kerala Education Act. Repelling the contention, it was held that even after the Kerala Education Act, "The aided schools with their own properties, their own funds and their separate

personalities, cannot be treated as Government institutions and in absence of such merger, the employees of such institutions would still enjoy the benefits allowed to any other educational institution other than a Government Institution: and that therefore, they are entitled for exemption.

In **Joti Prasad v. Kafka Prasad** [AIR 1962 All 128], it was held that "Vice-Chancellor of the Agra University, holding an office which is a whole time job carrying a salary, is appointed by the Government of Uttar Pradesh in his capacity as the Chancellor of the University under the provisions of the Agra University Act, 1926. Even so, the Vice-Chancellor is not disqualified to stand as a Member of the U.P. Legislative Council from the U.P. Graduates Constituency on the ground that he holds the office of profit under the State Government. The provisions of the Agra University Act reveal the intention of the Legislature not to regard the Chancellor to be a part of the State Government. While exercising his powers under the said Act, the Chancellor does not exercise the executive powers of the State and the office of the Vice Chancellor cannot be said to be under the State Government by virtue of the appointment having been made by the Governor in another capacity."

In **Kona Prabhakar Rao v. M. Seshagiri Rao** [AIR 1981 SC 658], this Court after referring to **Gurugobinda Basu v. Sankari Prasad Ghosal** [1964] 4 SCR 311 and **Maulana Abdul Shakur's case** accepted the ratio therein that the

factors which are held to be decisive were (a) the power of the Government to appoint a person to an office of profit or to continue him in that office or to revoke his appointment at their discretion, and (b) payment from out of Government revenues, though it was pointed out that payment from a source other than Government revenues was not always a decisive factor.

10. Learned Counsel for the appellant submitted that even assuming that the Government has control over the ITDA because of several factors like sanctioning of posts and funds, the appellant was only appointed by the Project Officer and he alone has the power to revoke his appointment. According to the learned Counsel, in a case of this nature, the decisive test is whether the Government has power to appoint a person or to revoke his appointment and that learned Judge of the High Court has not kept the same in view while holding that the appellant was holding an office of profit under the Government." Learned Counsel further submitted that the office held by the appellant under ITDA does not in any manner come into conflict with his duties as a legislator as he does not have any direct obligations with the Government. Therefore, it cannot be said that he was holding an office of profit under the Government since he is neither appointed by the Government nor his appointment can be revoked by the Government.

11. On a careful examination of the ratio laid down in the above mentioned cases some of the tests or principles that

emerge for determining whether a person holds an office of profit under the Government, may be summarised thus:

(1) The power of the Government to appoint a person in office or to revoke his appointment at the discretion. The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature.

(2) The payment from out of the government revenues; are important factors in determining whether a person is holding an office of profit or not of the Government. Though payment from a source other than the government revenue is not always a decisive factor.

(3) The incorporation of a body corporate and entrusting the functions to it by the Government may suggest that the statute intended it to be a statutory corporation independent of the Government. But it is not conclusive on the question whether it is really so independent. Sometimes, the form may be that of a body corporate independent of the Government, but in substance, it may be the just alter ego of the Government itself.

(4) The true test of determination of the said question depends upon the degree of control, the Government has over it, the extent of control exercised by very other bodies or committees, and its composition, the degree of its dependence on the Government for its financial needs and the functional aspect, namely, whether the body is discharging any important Governmental function or just some function which is merely optional from the point of view of the Government.

12. It can be seen that one of the main tests of determination of the question is the degree and extent of control i.e. direct or remote over the ITDA by the Government particularly with reference to making the appointment of the persons in office or to revoke the same

at its discretion. In this context it is necessary to refer to some later decisions of this Court which are directly on this point and some of which have not been cited before the High Court. Before doing so we may, however, usefully refer to the object underlying Articles 102(1)(a) and 191(1)(a) of the Constitution. These two Articles deal with disqualifications of a person being chosen as a member of the Parliament or the State Legislatures respectively on the ground of holding office of profit under the Government. Generally it is understood that an office means a position to which certain duties are attached. An office of profit involves two elements namely that there should be such an office and that it should carry some remuneration. It is not the same as holding a post under the Government and therefore for holding an office of profit under the Government, a person need not be in the service of the Government. It is well-settled now that the object of enacting Articles 102(1)(a) and 191(1)(a) is that there should not be any conflict between the duties and interests of an elected member and to see that such an elected member can carry on freely and fearlessly his duties without being subjected to any kind of governmental pressure, thereby implying that if such an elected person is holding an office which brings him remunerations and if the Government has a voice in his functions in that office, there is every likelihood of such person succumbing to the wishes of the Government. These Articles are intended to eliminate the possibility of such a conflict between duty and interest so that the purity of

legislature is unaffected. In **Bihari Lal Dobray v. Roshan Lal Dopray** [1984] 1 SCR 877, this Court observed thus:

> "The object of enacting Article 191(1)(a) is plain. A person who is elected to a legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office, there is every likelihood of such a person succumbing to the wishes of the Government. Article 191(1)(a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the Legislatures."

14. In this background, we shall examine the ratio laid down in some of the cases with respect to other general tests to be applied. As already noticed that in order to determine whether a person holds an office of profit under the Government. Several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder of the office, whether the Government pays the remuneration, whether the functions performed by the holder are carried on by him for the Government and whether the Government has control over the duties and functions of the holder. In ***Maulana Abdul Shakur's*** case as noted above one of the main tests laid down is that the power of the Government to appoint a person to an office or profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors and that in determining whether a person is holding an office of profit

under the Government the source of payment is not always a decisive factor. In ***Gurugobinda Basu's*** case it was held that for holding an office of profit under the Government, a person need not be in the service of the Government and there need not be any relationship of master and servant. While upholding the disqualification the Court held that:

> "It is clear from the aforesaid observations that in Maulana Abdul Shakur's case, [1958] SCR 387 the factors which were held to be decisive were (a) the power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion, and (b) payment from out of Government revenues, though it was pointed out that payment from a source other than Government revenues was not always a decisive factor. In the case before us the appointment of the appellant as also his continuance in office rests solely with the Government of India in respect of the two companies."

In **D.R. Gurushantappa v. Abdul Khaddus Anwar and Ors.**, [1969] 3 SCR 425, once again these tests are reiterated. After referring to the above-mentioned cases and while rejecting the contention that the amount of control which the Government exercises could be the main test, it was held thus:

> "We are unable to accept the proposition that the mere fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the Company can lead to the inference that every employee of the Company is under the control of the Government. The power of appointment and dismissal of respondent No. 1 vested in the Managing Director of the Company and not in the Government. Even the directions

for the day-to-day work to be performed by respondent No. 1 could only be issued by the Managing Director of the Company and not by the Government. The indirect control of the Government which might arise because of the power of the Government to appoint the Managing Director and to issue directions to the Company in its general working does not bring respondent No. 1 directly under the control of the Government. In ***Gurugobinda Basu's*** case, [1964] 4 SCR 311, the position was quite different. In that case, the appellant was appointed by the Government and was liable to be dismissed by the Government. His day-to-day working was controlled by the Comptroller and Auditor-General who was a servant of the Government and was not in any way an office-bearer of the two Companies concerned. In fact, the Court had no hesitation in holding that the appellant in that case was holding an office of profit under the Government, because the Court found that the several elements which existed were the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed, and the power to determine the question of remuneration. All these elements being present, the Court did not find any difficulty in finding that the appellant was holding an office of profit under the Government. In the case before us, the position is quite different. The power to appoint and dismiss respondent No. 1 does not vest in the Government or in any government servant. The power to control and give directions as to the manner in which the duties of the office are to be performed by respondent No. 1 also does not vest in the Government, but in an officer of the Company. Even the power to determine the question of remuneration payable to respondent No. 1 is not vested in the Government which can only lay down rules relating to the conditions of service of

the employees of the Company. We are unable to agree that, in these circumstances, the indirect control exercisable by the Government because of its powers to appoint the Directors and to give general directions to the Company can be held to make the post of Superintendent, Safety Engineering Department, an office of profit under the Government."

15. It was further observed that:

"In this connection, a comparison between Articles 58(2) and 66(4), and Articles, 102(1) and 191(1)(a) of the Constitution is of significant help. In Articles 58(2) and 66(4) dealing with eligibility for election as President or Vice-President of India, the Constitution lays down that a person shall not be eligible for election if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments. In Articles 102(1)(a) and 191(1)(a) dealing with membership of either House of Parliament or State Legislature, the disqualification arises only if the person holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament or Stage Legislature by law not to disqualify its holder. Thus, in the case of election as President or Vice-President, the disqualification arises even if the candidate is holding an office of profit under a local or any other authority under the control of the Central Government or the State Government, whereas, in the case of a candidate for election as a Member of any of the Legislatures, no such disqualification is laid down by the Constitution if the office of profit is held under a local or any other authority under the control of the Governments and not directly under any of the Governments. This clearly indicates that in the case of eligibility for election as a member of a Legislature, the holding of an office of profit

> under a corporate body like a local authority does not bring about disqualification even if that local authority be under the control of the Government. The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature in the manner in which such disqualification comes into existence for being elected as the President or the Vice-President. The Company, in the present case, no doubt did come under the control of the Government and respondent No. 1 was holding an office of profit under that Company, but, in view of the distinction indicated above, it is dear that the disqualification laid down under Article 191(1)(a) of the Constitution was not intended to apply to the holder of such an office of profit."
>
> (emphasis supplied)

16. To the same effect is the ratio in this context laid down in ***Bihari Lal Dobray's*** case (cited supra), wherein it was observed as under:

> "In order to determine whether a person holds an office of profit under the Government several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder of the office...."

17. Articles 102(1)(a) and 191(1)(a) are incorporated in order to eliminate or reduce the risk of conflict between the duty and interest amongst the members of the Legislature and to ensure that the Legislature does not contain persons who have received benefits from the Executive and who consequently being under an obligation might be amenable to its influence. Therefore this object

must be borne in mind in interpreting these Articles. It is in this context the words "under the Government" so far as the present case is concerned, become more relevant and should be examined from that perspective keeping in view the necessary power to appoint or remove.

20. In the case before us, the appellant was holding an office of profit but the matter does not end there. As already noted the next and most important requirement is whether that office was under the Government. In appreciating this aspect, we have to bear in mind, in interpreting these Articles, the object namely to avoid conflict between duty and interest and to eliminate the misuse of official position to advance private benefit and to avoid likelihood of influence of the Government to promote personal advantage. It must also be borne in mind that under these provisions the right to contest is being taken away on the ground of the said disqualification. Such a ban on candidature must have a substantial and reasonable nexus to the object that is to be achieved namely the elimination of possibility of misuse of the position. It is from this point of view that the right to appoint and right to remove the holder of the office in many cases becomes an important and decisive test. The source of payment for the office may also be taken into consideration but is not always a decisive factor. Likewise the control exercised by the Government may be one of the tests but as mentioned above that by itself is not a decisive test."

155. In **University of Delhi and Another v. Anand Vardhan Chandal** reported in **(2000) 10 SCC 648**, a Five Member Constitution Bench of the Hon'ble Supreme Court dealt with a case of students participating in Union elections and, after taking into account Articles 19(1)(a), 19(1)(b), 19(1)(c) and 21 of the Constitution of India, held that the right to participate in elections, is not a fundamental right and only a statutory right, and further held that right to education does not include in its ambit the right to participate in student union activities and to contest union elections.

156. In **Shibu Soren v. Dayanand Sahay and Ors.** [(2001) 7 SCC 425], the Hon'ble Apex Court held as under:

> ".....In common parlance, the expression 'profit' connotes an idea of some pecuniary gain. If there is really some gain, its labile - 'honorarium' - 'remuneration' - 'salary' is not material - it is the substance and not he form which matters and even the quantum or amount of "pecuniary gain" is not relevant - what needs to be found out is whether the amount of money receivable by the concerned person in connection with the office he holds, gives to him some "pecuniary gain", other than an 'compensation' to defray his out of pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him."

157. In **Jaya Bachchan v. Union of India (UOI) and Ors.** [(2006) 5 SCC 266], the Hon'ble Supreme Court held as under:

> "6. Clause (1)(a) of Article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The term 'holds an office of profit' though not defined, has been the subject matter of interpretation, in several decisions of this Court. An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is 'holding an office of profit'. The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word 'honorarium' cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is

whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the "pecuniary gain" is "receivable" in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a). This position of law stands settled for over half a century commencing from the decisions of Ravanna Subanna v. G.S. Kaggeerappa (AIR 1954 SC 653), Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa [(1971) 3 SCC 870], Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev (AIR 1992 SC 1959), and Shibu Soren v. Dayanand Sahay and Ors. [(2001) 3 SCR 1020].

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11. A careful examination of the decisions relied upon by learned Counsel on behalf of the petitioner shows that each of those cases turned on its own facts and did not lay down any proposition of law contrary to what has been laid down in a series of decisions starting from Ravanna Subanna to Shibu Soren. It is well settled that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled to certain emoluments, then it will be an office of profit, even if the holder of the office chooses not to receive/draw such emoluments. What is relevant is whether pecuniary gain is

> "receivable" in regard to the office and not whether pecuniary gain is, in fact, received or received negligibly."

158. In **Election Commission of India v. St. Mary's School and Ors.** reported in **AIR 2008 SC 655**, the Hon'ble Supreme Court, taking into account the constitutional provisions, including the Representation of People Act, 1951, held that all the teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching days. It was also held therein that teachers should not ordinarily be put on duty on teaching days and within teaching hours and non-teaching staff may be put on such duties on any day at any time, if permissible in law. Therein, the Hon'ble Apex Court has also considered the conflict in two constitutional aspects, education and election, and held that right to exercise franchise is an important right, but right to education is also no less important right being a fundamental right, and further that, holding of an election undoubtedly is of paramount importance, but not at the cost of education of the children. Therein the issue was in relation to an unaided school governed by the provisions of the Delhi School Education Act, 1973. Paragraphs 19 to 29 of the said decision read thus:

> "19. On the other hand, however, right to education is held to be a fundamental right. It was so stated in **Mohini Jain v. State of Karnataka** [1992] 3 SCR 658, in the following terms:

> "12. "Right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

20. The aforementioned ratio has been affirmed with certain modification by this Court in **Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.** [1993] 1 SCR 594, expressly stating:

> "Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, agreeing with the statement in **Bandhua Mukti Morcha v. Union of India (UOI) and Ors.** (AIR 1984 SC 802) that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In Mohini Jain, the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail...."

21. Article 45 is the only provision in our Constitution which

fixes a time limit during which the State is to provide for free and compulsory education for children until they complete the age of 14 years. The Constitution has been amended keeping in view the aforementioned provisions as also the decision of this Court in ***Unni Krishnan*** *(supra)* by inserting Article 21A of the Constitution of India, which reads as under:

> "The right to education which flows from Article 21 is not an absolute right. It must be construed in the light of directive principles. A true democracy is one where education is universal, where people understand what is good for them and the nation and the right to education has to be determined. Right to education, understood in the context of Articles 45 and 41, means that every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. It is significant that among the several articles in Part IV, only Article 45 speaks of a time limit; no other article does. It is not a mere pious wish and the state cannot flout the said direction even after 44 years on the ground that the article merely calls upon it to "endeavor to provide" the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. The passage of 44 years more than four time the period stipulated in Article 45 has converted the obligation created by the article into an enforceable right. At least now the State should honour the command of Article 45. It must be made a reality."

22. Sixty years of independence, however, has not brought about the desired result of imparting compulsory education to all the children. Education is one of the most important

functions of the State. The State has a basic responsibility in regard thereto.

23. In **Brown v. Board of Education 98 L.Ed. 873 : (1954) 347 US 483**, Earl Warren, CJ, speaking for the US Supreme Court emphasized the right to education in the following terms:

> "12. Today, education is the most important function of the State and local Governments.... It is required in the performance of our most basic responsibility, even services in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

24. The provisions of the 1950 and 1951 Acts although were enacted in terms of Article 324 of the Constitution of India, the same must be given restricted meaning. Holding of an election is no doubt of paramount importance. But for the said purpose the education of the children cannot be neglected. therefore, it is necessary to maintain the balance between the two.

25. With an advent of technology requisitioning of a large number of people for carrying out the election may not be necessary. We may notice that the Election Commission has different roles to play. Preparation of electoral rolls, revision of electoral rolls, when objections are filed, hearing the parties and determining the objections, enumeration of the voter list and to hold elections as and when due. The Election Commission and its officers, in our opinion, can formulate an

effective scheme to see that the services of a large number of teachers are not required. The State admittedly is not in a position to perform its sovereign function of imparting education. Such functions necessarily are required to be performed by the private actors. Those students who are in a position to get admission in the public schools presumably would also be in a position to appoint tutors whereas those students who are admitted to the Government schools ordinarily would be from the middle or lower middle class or poor families. The state of primary education in India is in deplorable condition. There admittedly is a heavy drop outs from the schools particular from amongst the girl schools. The question of right to exercise franchise whereupon the emphasis is laid by Mr. Venugopal is an important one, right to education is also no less important being a fundamental right.

26. The Human Rights Conventions have imposed a duty on the Contracting States to set up institutions of higher education which would lead to the conclusion that the citizens thereof should be afforded and an effective right of access to them. In a democratic society, a right to education is indispensable in the interpretation of the right to development as a human right. [See **Leyla Sahin v. Turkey**, decided by the European Court of Human Rights on 10th November, 2005]. Thus, right to development is also considered to be a basic human right.

27. It is probably with that end in view the counsel appearing for the Election Commission had also joined the other counsel appearing for the respondents, to suggest the court that the services of the teachers may not be requisitioned on the days

on which the schools are open. Submission of Mr. Venugopal that such a contention had not been made by the learned Counsel appearing on behalf of the Election Commission cannot be accepted.

28. We have, however, considered the matter at some details as the question in regard to the application of the constitutional right and in particular fundamental right cannot be thwarted only by reason of a concession made by a counsel.

29. We would, however, notice that the Election Commission before us also categorically stated that as far as possible teachers would be put on electoral roll revision works on holidays, non-teaching days and non- teaching hours; whereas non-teaching staff be put on duty any time. We, therefore, direct that all teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching days. Teachers should not ordinarily be put on duty on teaching days and within teaching hours. Non-teaching staff, however, may be put on such duties on any day or at any time, if permissible in law."

159. In **Shrikant v. Deputy Director of Education, Nagpur Division and Ors**. reported in **2012 (3) MhLj 916**, while dealing with the case of suspension of a teacher, engaged in political activities, a Hon'ble Division Bench of the Bombay High Court observed thus:

"Prima facie, we are of the opinion that a Government Servant or person in employment in an educational

> Institution is not required to have any political association or connection till he is in such service. The provisions, which we have incorporated above, are required to be considered from the aforesaid angle. If an employee is actively associated with any political Organization, he may bring influence of his political ideas while imparting education, which cannot be ruled out totally. If a Government Servant while in service is actively associated with any political Organization, one can say that his conduct is not befitting of a Government servant. So far as the post of teacher is concerned, a teacher's role is to impart education to the students in an impartial manner. In a given case, there may be an apprehension that if a teacher is actively associated with any political party, it may hamper the educational atmosphere of a School. Simply because teacher is not charging any remuneration for his political activities, it cannot be treated as a ground by which such parallel political activities can be said to be permitted. In any case, this is not a case wherein suspension order passed by the Management on the ground that the petitioner is actively associated with political Organization can be struck down by holding that petitioner is free to continue his political activities along with his teaching job in the Institution. So far as education is concerned, it should be kept away from politics and educational field should not be allowed to be polluted in any manner by bringing politics. There are some Institutions, which are required to be kept away from politics and Academic Institution is one of such Institutions."

160. In **State of Uttar Pradesh v. Shiv Kumar Pathak and Others** reported in **(2014) 15 SCC 606**, relied on by Mr. George Abraham, learned counsel for the petitioner in W.P.(C) No.27993/2015, importance of Article 21A of the Constitution of India is dealt with. In the said decision, the Hon'ble Apex Court held that primary education can be equated to the primary health of a child and when a child is educated, the

Nation marches towards civilization. It was further held therein that no student can inculcate or cultivate education without guidance and definitely not a child, who is supposed to get primary guidance from a teacher, for him he is like a laser beam. The Hon'ble Apex Court finally held that the State, as the guardian of all the citizens and also with a further enhanced and accentuated responsibilities for the children, have a sacrosanct obligation to see that the children are educated.

161. Thus, if a person holds an office of profit under the Government of India or under the Government of Kerala such person is disqualified for being chosen as, and for being a member of the Legislative Assembly of Kerala. To constitute an 'office of profit', within the meaning of Article 191 (1)(a) of the Constitution, pecuniary advantage measurable in terms of money is an essential element.

162. In **U.C. Raman v. P.T.A. Rahim** [(2014) 8 SCC 934], the Hon'ble Apex Court held as under:

> ".....This Court has given categorical clarification on more than one occasion that an 'office of profit' is an office which is capable of yielding a profit or pecuniary gain. The word 'profit' has always been treated equivalent to or a substitute for the term 'pecuniary gain'. The very context, in which the word 'profit' has been used after the words 'office of', shows that not all offices are disqualified but only those which yield pecuniary gains as profit other than mere compensatory allowances, to the holder of the office....."

163. In **Asharaf Kokkur v. K.V. Abdul Khader and Ors**. [2015 (2) KLT 559], a learned single Judge of this Court considered a question whether the members of Waqf Board are holding any office of profit under the Government of Kerala, to incur the disqualification for being chosen as a member of the Kerala Legislative Assembly. After considering the principles applicable to the facts of the case, this Court held that though Waqf Board is created under a statute, the members of Waqf Board are holding office of profit, but not office of profit under the Government of Kerala. The Court further held that Waqf Board is not an *alter go* of the State Government and that Waqf Board is not discharging any Governmental function. On the contrary, in the case on hand, aided and unaided schools perform duties similar to the Government, in imparting education.

164. In **Tamil Nadu Primary School Teachers Federation, Chennai v. The Home Secretary, Government of India, New Delhi** reported in **2016 KHC 2739**, the petitioner therein prayed for a mandamus to forbear the respondents therein from taking the service of the Elementary Teachers of the Directorate of Elementary Education for the work of updating of National Population Register(NPR) & Seeding of Aadhar Number in the NPR database. After considering the rival submissions

and taking note of Section 27 of the Right of Children to Free and Compulsory Education Act, 2009. At paragraph 11 of the said decision, a Hon'ble Division Bench of this Court held as under:

> "10. We would accept the contention of learned Assistant solicitor General that communication of Tahsildhar, Musiri dated 25.01.2016, requiring the primary school teachers to carry out the work of updating of National Population Register (NPR) and seeding of Aadhaar number in the NPR database during the school hours should be seen as a mistake. We record the submissions of learned Assistant Solicitor General that members of the petitioner Federation would not be required to carry out the work during school hours.
>
> 11. Accordingly, this Writ Petition is disposed of with the observation that the members of the petitioner federation shall not be required to carry out the work entrusted to them during school hours. No costs. Consequently, connected Miscellaneous Petition stands closed."

165. Placing reliance on the decision in **Kanta Kathuria v. Mank Chand Surana** reported in **(1969) 3 SCC 268**, Mr. T. K. Aravinda Kumar Babu, learned Senior Government Pleader, made submissions to sustain the Legislative Assembly (Removal of Disqualifications) Act, 1951. In the abovesaid decision, the Hon'ble Apex Court held thus:

> "13. This position being firmly grounded we have to look for limitations, if any, in the Constitution. Art.191 (which has been quoted earlier) itself recognises the power of the Legislature of the State of declare by law that the holder of an office shall not be disqualified for being chosen as a member. The Article says that a person shall be disqualified if he holds an office of profit under the Government of India or the Government of any State

unless that office is declared by the Legislature not to disqualify the holder. Power is thus reserved to the Legislature of the State to make the declaration. There is nothing in the words of the article to indicate that this declaration cannot be made with retrospective effect. It is true that it gives an advantage to those who stand when the disqualification was not so removed as against those who may have kept themselves back because the disability was not removed. That might raise questions of the propriety of such retrospective legislation but not of the capacity to make such laws. Regard being had to the legislative practice in this country and in the absence of a clear prohibition either express or implied we are satisfied that the Act cannot be declared ineffective in its retrospective operation.

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25. It seems to us that the High Court erred in holding that the appellant held an office. There is no doubt that if her engagement as Special Government Pleader amounted to appointment to an office, it would be an office of profit under the State Government of Rajasthan. The word 'office' has various meanings and we have to see which is the appropriate meaning to be ascribed to this word in the context. It seems to us that the words 'its holder' occurring in Art.191(1)(a), indicate that there must be an office which exists independently of the holder of the office. Further, the very fact that the Legislature of the State has been authorised by Art.191 to declare an office of profit not to disqualify its holder, contemplates existence of an office apart from its holder. In other words, the Legislature of a State is empowered to declare that an office of profit of a particular description or name would not disqualify its holder and not that a particular holder of an office of profit would not be disqualified.

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29. That case in no way militates against the view which we have taken in this case. That case is more like the case of a standing Counsel disqualified by the House of Commons. It is stated in Rogers (on Elections Vol. II) at page 10 :-

> "However, in the Cambridge case (121 Journ. 220), in 1866, the return of Mr. Forsyth was avoided on the ground that he held a new office of profit under the Crown, within the 24th section. In the scheme submitted to and approved by Her Majesty in Council was inserted the office of standing counsel with a certain yearly payment (in the scheme called "salary") affixed to it, which Mr. Forsyth received, in addition to the usual fees of counsel. The Committee avoided the return."

34. The learned Counsel for the respondent, Mr. Chagla, urges that we should keep in view the fact that the object underlying Art.191 of the Constitution is to preserve purity of public life and to prevent conflict of duty with interest and give an interpretation which will carry out this object. It is not necessary to give a wide meaning to the word "office" because if Parliament thinks that a legal practitioner who is being paid fees in a case by the Government should not be qualified to stand for an election as a Member of Legislature Assembly, it can make that provision under Art.191(1)(e) of the Constitution.

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41. It is also urged that by enacting the impugned Act the State Legislature has amended the 1951 Act. We are unable to appreciate this contention. The State Legislature has exercised its powers under Art.191 to declare a certain office not to have ever disqualified its holder. The impugned Act does not amend or alter the 1951 Act, in any respect whatsoever. It is said that under the 1951 Act as it existed before the impugned Act was passed, the appellant was not qualified to be chosen for this particular election. By enacting the impugned Act the appellant's disqualification has been removed and the 1951 Act is, so to say, made to speak with another voice. But that is what the State Legislature is entitled to do, as long as it does not touch the wording of the 1951 Act. The answer given by the 1951 Act may be different but this is because the facts on which it operates have by valid law been given a different garb.

> 42. It is further urged that the impugned Act, violates Art.14 of the Constitution because the Central Government might have appointed Government Pleader under R.8B of O.27 and the impugned Act, nowhere mentions the alleged offices held by them. No material has been placed to show that any such offices exist. We cannot therefore entertain this point. In view of the above reasons we are of the opinion that the impugned Act is valid and removes the disqualification if it existed before."

166. Said decision relates to a legislation passed to nullify a decision of the Court and correctness of the same was tested therein.

167. The decision of a Hon'ble Division Bench of this Court in **Mini Venugopal v. State of Kerala and others** reported in [2011 (4) KHC 860], would lend support to the case of the petitioners that teachers, working in all the schools, are similarly placed, and that, the State Government have a deep and pervasive control over the aided schools. In the said decision, this Court held as under:

> "10. The Supreme Court considered the question whether the teachers employed in various recognised private schools in the State of Himachal Pradesh are entitled to the pay scales which are being paid to their counter parts in the Government Schools. In the decision reported in State of H.P. v. Recognised & Aided Schools Managing Committee, 1995 KHC 1198 : 1995 (4) SCC 507 : 1995 SCC (L&S) 1049 tracing the history of aided schools in the country and more particularly in the State of H.P., the Supreme Court found that the aided schools have the same syllabus and curriculum and prescribe the same books and courses as per Government directions and prepared students for the very same examinations for which the students studying in Government schools are prepared. The qualification of the teachers in the Aided

> Schools are also prescribed by the State Government and appointments are made with the approval of the State Government. Fees levied and concessions allowed are under the instructions issued by the Education Department and even the Managing Committees of Aided schools required the approval of the State Government. The service conditions of the teachers including disciplinary proceedings and award of punishment are also governed by the Rules framed by the State Government. The situation in the State of Kerala is more or less similar. Finding that the State Government has a deep and pervasive control over the aided schools, the Supreme Court held on its own and on the strength of precedents that:
>
> > " It is therefore late in the day to say that the teachers in the aided schools are not entitled to parity in the matter of salary and allowances etc., with their counterparts in the Government School."

168. In ***Shiv Kumar Pathak and Others*** (cited supra), significance of education has been explained by the Hon'ble Supreme Court, which is extracted hereunder:

> "5. Primary education can be equated to the primary health of a child. When a child is educated, the nation marches towards civilisation. No student can inculcate or cultivate education without guidance. Definitely not a child, who is supposed to get primary guidance from a teacher, for him he is like a laser beam. The State, as the guardian of all citizens and also with further enhanced and accentuated responsibilities for the children, has a sacrosanct obligation to see that the children are educated. Almost two thousand years back, Kautilya had stated that the parents who do not send their children to have the teachings, deserve to be punished. Similar was the climate in England almost seven centuries back. Thus, the significance of education can be well recognised. In such a situation, we cannot conceive that the posts would lie vacant, students go untaught and the schools look like

> barren fields in a desert waiting for an oasis. The teacher shall serve the purpose of oasis in the field of education. Hence, the aforesaid directions."

169. Some of the tests required to be considered for deciding as to whether a person "holds an office" are as under:

i. Whether the Government makes the appointment.
ii. Whether the Government can remove or dismiss the holder.
iii. Whether the Government pays remuneration (Budget fully provided by State Funds)
iv. Whether the holder is performing Government function.
v. Whether the Government have any control over the performance of such function.

170. It is not necessary that all the tests have to be satisfied for deciding the issue, as to whether a person is holding an office of profit in the Government. Indisputably, as stated supra, there is a pervasive control by the State over the schools, whether Government or aided or unaided, the salary of the teachers in aided schools is paid by the Government, and other aspects, discussed in the foregoing paragraphs.

171. As discussed above, the disqualifications for membership of local bodies are largely dependent on the disqualifications made under any law for the purpose of election to the Legislature of the State concerned. As we have already held that Section 2(iv) of Act, 1951 cannot be constitutionally sustained and that the post of a teacher of an aided school

is an office of profit, under the Central or the State Government, for the reasons assigned, the teachers working in aided schools, have to be treated as disqualified from contesting in the election to the local bodies also.

172. That, apart, Section 30 of the Kerala Panchayat Raj Act, 1994 dealing with disqualification of officers and employees of Government, local authorities etc., provides that no officer or employee in the service of State or Central Government or of a local authority or a Corporation controlled by the State or Central Government or of a local authority or any company in which the State or Central Government or a local authority has not less than fifty one percent share or of a Statutory Board or of any University in the State, shall be qualified for election or for holding office as a member of a Panchayat, at any level. Likewise, Section 86 of the Kerala Municipalities Act, 1994 dealing with disqualification of officers and employees of Government, local authorities etc., creates prohibition to contest in the elections to the Municipalities.

173. It is also equally important to note that in the Parliament (Prevention of Disqualification) Act, 1959, a person holding an office of an educational institution other than a Government institution, is not removed from the disqualification, for being chosen as a member of Parliament. If

that be the provision, in respect of a member of a Parliament, what is the logic and reason, from being a member of the local body or the Legislative Assembly. We see no reason to distinguish a Member of a Legislative Assembly from a Member of Parliament. Above all, preamble of the Removal of Disqualification Bill dated 31.03.1951 makes it clear that it intended to remove the disqualification, not only a person holding an office, in any educational institution other than a Government education, but for the removal of disqualification of a person, who is the holder of an office, which is not remunerated either by salary or by fees payable out of the consolidated fund of India or of a State and also of a person, who holds an office in any educational institution other than a Government institution.

174. Section 2(iv) of the Legislative Assembly (Removal of Disqualifications) Act, 1951, was enacted at the time, when there was no law on the fundamental rights of children. At the risk of repetition, Article 21A of the Constitution of India is reproduced.

> "**21-A. Right to education**.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

175. Consequently, giving effect to the Constitutional right guaranteed to the children, the Right of Children for Free and Compulsory

Education Act, 2009, has been enacted and the rules framed. Political right of a teacher, working in an aided school, to contest in an election, cannot, in any manner, override the Constitutional right guaranteed under Article 21A of the Constitution of India, i.e., the fundamental right of the children.

176. One of the contentions advanced, by the learned Senior Government Pleader, as well as the learned counsel appearing for the 7th respondent in W.P.(C) No.27993/2015, is that the policy decision of the Government, cannot be interfered with. Even taking it for granted, that a policy decision has been taken by the Government, in the year 1951, by bringing in a legislation, when the said legislation runs contrary to the Constitutional mandate under Article 21A of the Constitution of India, and the rules framed thereunder, in particular, Section 27 of the Act, the said legislation cannot be allowed to stand.

177. Article 21A of the Constitution of India enables a student to get education, in the light of the provisions of relevant statutes, especially the Education Act, 2009. A student of an aided school, therefore, is entitled as of right, to have his education, as visualised by the framers of the Education Act, 2009. Moreover, Article 21A came into force on and with effect from 01.04.2020, in order to provide free and compulsory

education to all the children of the age of 6 to 14 years in such manner as the State may, by law, determine. In our view, the said provision is introduced in Part III of the Constitution of India, as per the obligation for discharging the duties enshrined under Part IV-Directive Principles of State Policy, and also the fundamental duties under Part-IVA of the Constitution of India. Therefore, in order to achieve the objectives of the aforesaid constitutional mandate and the Education Act, 2009, a teacher has to continuously attend the school. A teacher cannot take a break to attend the meetings of the local bodies or Assembly Sessions, and simultaneously claim that he/she can discharge his/her duties, as contemplated under the Right of Children for Free and Compulsory Education Act, 2009 and the rules framed thereunder.

178. Right of the teachers working in aided schools, to engage in political activities and contest in elections, rests on the Legislative Assembly (Removal of Disqualifications) Act, 1951 which is impugned in one of the writ petitions. But, for the law, the Legislative Assembly (Removal of Disqualifications) Act, 1951, in particular, Section 2(iv), teachers working in aided schools have no right to participate in political activities and contest in elections. Policy decision has been taken by the Government, giving rise to an enactment viz., the Legislative Assembly (Removal of

Disqualifications) Act, 1951, with reference to existing laws in force in 1951. Now, there is change in scenario, after the introduction of Article 21A of the Constitution of India and the provisions of the Right of Children to Free and Compulsory Education Act, 2009. Test is whether, the Legislative Assembly (Removal of Disqualifications) Act, 1951 shall be valid and enforceable, even after the introduction of Article 21A of the Constitution of India, the Right of Children to Free and Compulsory Education Act, 2009, and the rules framed thereunder, which we have discussed in the foregoing paragraphs.

179. Contention of the 7th respondent Union, that the petitioners cannot maintain the instant writ petitions, on the ground that their fundamental rights are not infringed, cannot be countenanced, for the reason that the writ petitions are filed as Public Interest Litigations, to enforce the Constitutional mandate guaranteed under Articles 21 and 21A of the Constitution of India, and the provisions of Right of Children to Free and Compulsory Education Act, 2009.

180. Contention of the 7th respondent that teachers appointed in Government schools, will be transferred from one school to another, whereas, the teachers working in aided schools are not, except in the case of corporate management, is not a valid ground to sustain the Legislative

Assembly (Removal of Disqualifications) Act, 1951, and that is not the contention of the Government of Kerala.

181. Substitution of another teacher, was not a reason assigned by the Government of Kerala, while, the Legislative Assembly (Removal of Disqualifications) Act, 1951, was promulgated. When we analyse the reasons and objects, for bringing out an amendment, in 1951, it was solely to remove the difficulties for those persons in the aided institutions, to participate in political activities, and consequently, to contest in elections to local bodies and Legislative Assembly. Substitution is only an arrangement to fill up the gap.

182. As we have discussed earlier, even though the teachers have a larger role to play, in shaping the democracy, and preserve the democratic principles, envisioned by the framers of the Constitution, in our view, it should be confined to moulding and shaping the student community, so as to make them educated, in all respects, for the overall development of the nation. Therefore, rather than the teachers themselves indulging in political activities or contest in the elections, and discharge their democratic obligations, teachers are to be more dutiful and dedicated to the cause of education, fundamentally required for contributing an educated society for the better and effective administration. When the obligation of a teacher, to

protect democracy and its principles, contesting in elections, comes in conflict with the duty of a teacher, to impart education to the student community, we are of the view that the duty of the teacher to impart education should prevail upon the obligation of the teacher, to contest in an election to the State Legislature or to the Local bodies. This we say so because, a teacher can never discharge the duty as a teacher, in piecemeal, or as a part time engagement, since the devotion, attention, regularity, and dedication, envisioned by the framers under Articles 21 and 21A of the Constitution of India, Education Act, 2009, and the State laws, intend that a teacher has to attend the school and impart education to the students continuously, sincerely, uninterruptedly, and without fail.

183. That apart, as we have pointed out above, the functions and duties of an elected member of a Legislative Assembly and local bodies are so complex, dutiful, attentive, time consuming, and unless and until an elected member devotes fully to the cause of the citizens, since being elected as their representatives, he would be failing to discharge his duties. A teacher working in an aided school, desirous of being elected as a member of the Legislative Assembly or a Councilor or a Ward Member of local bodies, as the case may be, can never devote his/her attention to the cause of the students, during the election period, and once they are chosen

would spend time, to discharge his/her duties as representatives. Above all, the field of education has become globally competitive as most of the countries have opened up opportunities thus enabling students to undertake education around the globe and therefore the children are to be taught accordingly in the formative ages.

184. Taking into account the aforesaid aspects, and the decisions considered, it cannot be said that a teacher, working in an aided school, is not a person holding 'office of profit', under the State Government.

185. In the light of the above discussion and decisions, we are of the view that Section 2(iv) of the Legislative Assembly (Removal of Disqualifications) Act, 1951 cannot be said to be a provision constitutionally valid and, therefore, Section 2(iv) of the Act, 1951 is declared as *ultra vires* to Article 21A of the Constitution of India. We further hold that a teacher of an aided educational institution, within the State of Kerala, in terms of the provisions of Kerala Education Act, 1958, and the rules framed thereunder, is a person holding an 'office of profit', under the Government of the State of Kerala. Having held so, we are of the view that Rule 56 of Chapter XIVA of the Kerala Education Rules, 1959, providing the teachers to take leave, to contest in the elections to various bodies, would be

redundant and inconsequential. However, taking into account the complex situations that may arise, we make it clear that this judgment would be prospective in nature from the date of this judgment.

Writ petitions are disposed of as above.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

krj

APPENDIX IN W.P.(C) NO.16198/2010

PETITIONER'S EXHIBITS:-

P1:- COPY OF THE DETAILS FURNISHED TO THE MANAGER, VARAM U.P SCHOOL BY THE PUBLIC INFORMATION OFFICER, DISTRICT PANCHAYAT, KANNUR DATED 19.6.2014.

RESPONDENTS' EXHIBITS:- 'NIL'

APPENDIX IN W.P.(C) NO.17534/2010

PETITIONER'S EXHIBITS:-

P1:- COPY OF THE G.O(P) NO.231/67/EDN. DATED 29.5.1967.

P2:- COPY OF THE RELEVANT CHAPTER OF THE REPORT DATED 6.8.2008.

RESPONDENTS' EXHIBITS:

R2(A):- COPY OF THE G.O.(P) NO.231/67/G.EDN. DATED 29.05.1967.

APPENDIX IN W.P.(C) NO.29964/2010

PETITIONER'S EXHIBITS:-

P1:- COPY OF THE REPRESENTATION DATED 17/9/10 SUBMITTED BY THE PETITIONER BEFORE RESPONDENTS 1 AND 2.

P2:- COPY OF THE RELEVANT CHAPTER OF THE REPORT DATED 6.8.2008.

RESPONDENTS' EXHIBITS: 'NIL'

APPENDIX IN W.P.(C) NO.27993/2015

PETITIONER'S EXHIBITS:-

P1:- COPY OF THE ORDER IN CRMP NO.3907/11/LA2/2015/KESCPCR DATED 06.10.2015 OF THE COMMISSION FOR PROTECTION OF CHILD RIGHTS.

P2:- COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P-1.

RESPONDENTS' EXHIBITS:

R4(A):- COPY OF G.O(P) NO.231/67/G.EDN. DATED 29.05.1967.

R4(B):- COPY OF THE LEGISLATIVE ASSEMBLY (REMOVAL OF DISQUALIFICATIONS) ACT, 1951.

APPENDIX IN W.P.(C) NO.27670/2015

PETITIONER'S EXHIBITS:-

P1:- COPY OF THE G.O(RT) NO.2593/EDN DATED 25/08/1967.

P2:- COPY OF ORDER F. NO.1/3/2020/EE4 DATED 13.09.2020.

P3:- COPY OF THE GOVERNMENT ORDER G.O(MS) NO.345/03/GAD DATED 26/11/2003.

P4:- COPY OF EXTRACT OF THE BACKGROUND PAPER ON SELECTED INITIATIVES IN EDUCATION PREPARED BY THE SUB COMMITTEE UNDER THE MODERNIZING GIVERNMENT PROGRAM.

P5:- COPY OF THE DECISION SHRIKANT S/O. SUBHASH PANDE V/S. NUTAN ADARSH JUNIOR COLLEGE IN W.P.NO.5896/2011.

RESPONDENTS' EXHIBITS: 'NIL'

//TRUE COPY//

P.A. TO C.J.