Anjali and Anr. V. University of Delhi and Anr.

W.P.(C)-13007/2025

Oral Submissions

1. Ultra Vires & Arbitrary

My Lords, the power to prescribe conditions for contesting elections lies with DUSU constitution under the Representation of the People Act or with a statute governing student bodies. A Registrar, by administrative fiat, cannot create a new financial disqualification. This personal bond is therefore ultra vires, arbitrary and beyond jurisdiction.

2. Monetisation of Student Politics

Far from cleansing elections, this measure monetises democracy at its very nursery. The Supreme Court in University of Kerala v. Council, Principals of Colleges (2006) emphasised curbing money power by restricting expenditure to ₹5,000/-. Imposing a ₹1,00,000/- bond turns that mandate upside down. It privileges the wealthy, excludes the modest, and converts elections into a game of financial muscle.

3. Criminalisation Not Addressed

The real evil identified by the Lyngdoh Committee was criminalisation and external political interference. Instead of addressing those, the University targets ordinary students through monetary barriers. Such a policy fails the test of rational nexus under Article

4. Chilling Effect on Article 19 Rights

The right to participate in student democracy is part of the larger freedom of association under Article 19(1)(c). A ₹1,00,000/- bond imposes a chilling effect, silencing deserving but economically weaker voices. This Court has struck down such chilling restrictions in Shreya Singhal v. Union of India and similar cases.

5. Conclusion

My Lords, instead of reform, this bond breeds exclusion. The law demands cleansing student politics of crime and corruption, not pricing out democracy at its very foundation.

Main Arguments: -

1. Chilling Effect:

- It deters students from modest and economically weaker backgrounds, for whom the sum is prohibitive, e.g., a student paying annual fees of merely ₹10,000 cannot reasonably be expected to furnish a bond ten times that amount.
- Such a disproportionate financial barrier silences student voices at the threshold, curtailing their right to free speech and representation guaranteed under Article 19(1)(a).
- In ***Shreya Singhal v. Union of India*** **(2015) 5 SCC 1,** the Supreme Court held that overbroad restrictions that cause a 'chilling effect' on free speech are unconstitutional. Likewise, the impugned ₹1,00,000 bond precondition chills student participation by imposing a prohibitive financial barrier, deterring especially weaker sections from exercising their democratic right under Article 19(1)(a) (Right to Expression)."

Quote:

"83. ...In point of fact, Section 66 A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the Section, and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total.

90. These two Constitution Bench decisions bind us and would apply directly on Section 66A We, therefore, hold that the Section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth."

2. Barrier for the Poor, License for the Rich:

- Wealthy students, who already spend extravagantly *(in lakhs or crores),* feel no hesitation in furnishing the bond. For them, it is neither a deterrent nor a restraint.
- Such candidates may still engage in defacement or violations, confident that the financial precondition poses no real consequence.

- Conversely, economically weaker students are effectively excluded at the threshold. For them, the bond is not just a financial burden but a barrier that jeopardizes their right to equal opportunity, participation, and representation.

3. Registrar Acting Beyond Jurisdiction

- The Registrar has no legal or statutory authority under the Delhi University Act, 1922 ***(pg. 66)***, its Statutes, or the DUSU Constitution ***(pg.134)*** to impose financial preconditions for elections.
- As per the governing framework, the **Chief Election Officer**, appointed by the Vice-Chancellor, is the competent authority to regulate and conduct DUSU elections.***(pg. 170)***
- Clause 'v' of the impugned notification, issued unilaterally by the Registrar, is thus an act of administrative overreach, void ab initio, and ultra vires the statutory scheme

4. **Wall of Wealth in Campus Politics**- Disproportionate and Arbitrary Preventive Measure

- Clause 'v' creates an artificial classification between affluent students who can afford the ₹1,00,000 bond and economically weaker students who cannot.
- This differentiation is based solely on financial capacity, which has no rational nexus with the stated objective of preventing defacement.
- By making money the gatekeeper to student democracy, the measure violates the principle of equality under Article 14 and amounts to impermissible class legislation.
- The Supreme Court in ***Association for Democratic Reforms v. Union of India, W.P.(c) no. 880 of 2017,*** observed that any restriction on rights must have a reasonable connection to the intended objective and must not be excessive in scope, and should adopt the least intrusive means available.

5. Preventive action cannot exceed legislative penalties (*poena sine crimine*).

S.NO.	Type	Deposit Amount	Multiple
1.	Lok Sabha Security Bond	Rs. 25,000	4 times
2.	Assembly Elections Security Bond	Rs. 10,000	10 times

3.	DUSU Demand Draft	Rs.500	200 times
4.	Average DU Fees	Rs.10,000	10 times
5.	Limit of Expenditure under the Lyngdoh Committee Guidelines	Rs. 5,000	20 times
6.	Delhi Prevention of Defacement of Property Act, 2007, Section 3(1) ***(pg.164)***	Rs.50,000	2 times

6. Ultra Vires Lyngdoh Committee & Judicial Mandates

- Lyngdoh caps expenditure at ₹5,000 and prohibits external funding, thereby protecting accessibility. Clause *v*, by demanding a pre-deposit of ₹1,00,000, turns this very principle on its head. (***Clause 6.6.4 – pg no. 37-48)***
- Clause 6.6.4 prohibits students from seeking external assistance. This creates a significant financial dilemma for those who rely on their families for support, as they are required to pay Rs. 1,00,000—a sum that exceeds the annual income of some families. The restrictions on external assistance make it particularly challenging for these students to meet this financial obligation..
- The Supreme Court in *University of Kerala* (supra) ***(PG. NO. 53)*** made Lyngdoh binding. Delhi High Court in *Prashant Manchanda v. UOI* (2024 orders) ***(PG NO. 157)*** allowed for the recovery of damages for defacement from the candidates. Hence, punitive measure already exists.

Table: Different Types of Fines Charged by the Delhi University

Institution & Date	Offense	Disciplinary Action	Fine/Penalty	Links
Hindu College, April 2023	Property damage during protest	2-month suspension	₹10,000 per student	https://timesofindia.indiatimes.com/city/delhi/delhi-universitys-hindu-college-students-say-30-suspended-for-2-months/articleshow/100144956.cms
Hindu College, September 2024	Destruction of institutional property during elections	Rustication up to 4 months	No monetary fine	https://timesofindia.indiatimes.com/city/delhi/delhi-universitys-hindu-college-students-say-30-suspended-for-2-months/articleshow/100144956.cms
MA Student, July 2024	"Scrap NTA" graffiti on campus walls	6-month expulsion (later stayed by Delhi High Court)	None specified	https://timesofindia.indiatimes.com/education/news/delhi-university-expels-student-for-six-months-over-scrap-nta-graffiti-sparking-protests/articleshow/115471786.cms
AISA Students, July 2025	Graffiti with slogans on college walls	FIR filed; threat of suspension	Can be fined Up to ₹50,000 under Delhi Prevention of Defacement Act, 2007	https://timesofindia.indiatimes.com/city/delhi/du-identifies-students-in-graffiti-case-fir-filed/articleshow/122959233.cms

IN THE HIGH COURT OF DELHI AT NEW DELHI
WRIT PETITION (CIVIL) NO. OF 2025.
(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ANJALI AND ANR. ……. PETITIONER

VERSUS

UNIVERSITY OF DELHI
AND ANR. …...RESPONDENTS

Paper Book

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Raja Choudhary

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IN THE HIGH COURT OF DELHI AT NEW DELHI
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NOTICE OF MOTION

TAKE NOTICE that the accompanying Petition will be listed before Court on _____ 2025 at 10:30 O'Clock in the forenoon or soon thereafter as may be convenient to the Court.

[Raja Choudhary]
Advocate for the Petitioner
Office. Second Floor, C-15B, Jangpura Extension, 110014.
Mb. 8826075914
Email. adv.rajachoudhary@gmail.com]

Filed on: 23.08.2025
New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI
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URGENT APPLICATION

To,
The Registrar,
Delhi High Court,
New Delhi

Sir,
Kindly treat the accompanying petition as urgent in accordance with the provisions of the Delhi High Court Rules.
The grounds of urgency are as per prayed.

[Raja Choudhary]
Advocate for the Petitioner
Office. Second Floor, C-15B, Jangpura Extension, 110014.
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Email. adv.rajachoudhary@gmail.com]

Filed on: 23.08.2025
New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI
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IN THE MATTER OF:

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Memo of Parties

1. **Anjali**
   D/o Abhay Kumar
   Permanent Add: Village Tajpur, Tajpur,
   Gaya, Bihar - 804407

2. **Abhishek Kumar**
   S/o Amit Kumar
   Permanent Add: Village Bari Manjhgany (Bind Tola)
   Post – Bari Manjhgany, Thana-Haveli,
   Kharagpur, Munger, Bihar – 811213

…PETITIONERS

Versus

1. **University of Delhi**
   Through the Registrar,
   North Campus, Delhi - 110007

2. **Union of India**
   Through the Secretary,
   Department of Higher Education

Ministry of Human Resource Development
Shastri Bhawan, New Delhi – 110001.

…RESPONDENTS

FILED THROUGH COUNSEL:



[Raja Choudhary]
Advocate for the Petitioner
Office. Second Floor, C-15B, Jangpura Extension, 110014.
Mb. 8826075914
Email. adv.rajachoudhary@gmail.com

Filed on: 23.08.2025
New Delhi

Synopsis

The Petitioners, Anjali and Abhishek Kumar, bona fide students of the Department of Buddhist Studies and Hindu College, respectively, at the University of Delhi, hail from humble rural backgrounds. Anjali belongs to the Economically Weaker Section (EWS) category, further accentuating her financial constraints, challenge the constitutional validity of Clause ‘v’ of the Notification dated 08.08.2025 ("Impugned Notification") issued by the Registrar, University of Delhi (Respondent No. 1). Titled "Guidelines/Measures for Anti-Defacement in and Around University/College Campus and for DUSU Elections," the Impugned Notification mandates a Rs. 1,00,000 security bond as a pre-condition for contesting the Delhi University Students' Union (DUSU) Elections 2025. This clause, which requires candidates to execute a bond for potential defacement or violations by themselves or supporters, is ultra vires the Lyngdoh Committee Recommendations (accepted by the Hon'ble Supreme Court in *University of Kerala v. Council of Principals of Colleges in Kerala*, (2006) 8 SCC 304, and binding nationwide), which emphasize accessibility, minimal expenditure (capped at Rs. 5,000), and punitive (not preventive) measures for infractions.

The Petitioners, aspiring to contest DUSU elections to amplify student voices on issues like affordable education, hostel facilities, and campus safety, hail from economically modest families reliant on agriculture and daily wages. Their annual university fees are Rs. 8,087 and Rs. 28,670, respectively, rendering the Rs. 1,00,000 bond an insurmountable barrier. This preventive financial imposition creates an arbitrary classification based on wealth, excluding ordinary students while favoring the affluent, in violation of Articles 14 (equality

and non-arbitrariness), 19(1)(a) (free speech in democratic participation), and 21 (right to life with dignity and equal opportunity) of the Constitution.

The challenge is narrowly targeted at Clause 'v', as it deviates from Lyngdoh's framework (e.g., Clause 6.7.8 mandates post-facto joint liability for defacement, not upfront bonds), lacks statutory authority under the Delhi University Act, 1922, or DUSU Constitution, and fails the proportionality test (as enunciated in *Association for Democratic Reforms v. Union of India*, (2024) 3 SCC 1, and *Sunil Kumar v. State of Bihar*, 2025 SCC OnLine SC 221). Less restrictive alternatives, such as affidavits, sensitization programs, and post-election recovery (as directed by this Hon'ble Court in *Prashant Manchanda v. Union of India*, W.P.(C) 7824/2017, orders dated 26.09.2024 and 11.11.2024), exist and align with Lyngdoh.

The Impugned Clause 'v' subverts the democratic ethos of student unions, transforming elections into an elitist arena, contrary to judicial mandates for inclusivity (*Ashok Shankarrao Chavan v. Madhavrao Kinhalkar*, (2014) 7 SCC 99). Despite representations to Respondents on 10.08.2025 and 15.08.2025, no relief has been granted, necessitating this Petition. The Petitioners seek quashing of Clause v, stay of its operation, and directions for elections per Lyngdoh, to preserve the integrity of student democracy.

List of Dates

Date	Particulars
2006	Hon'ble Supreme Court accepts and mandates implementation of Lyngdoh Committee Recommendations for student

	elections nationwide *(University of Kerala v. Council of Principals of Colleges in Kerala*, (2006) 8 SCC 304). Key provisions: Expenditure cap at Rs. 5,000 (6.6.1); punitive joint liability for defacement (6.7.8); no preventive financial barriers.
2009	Delhi Prevention of Defacement of Property Act, 2007 enacted, capping fines at Rs. 50,000 post-offence.
2017	Hon'ble Delhi High Court in W.P.(C) 7824/2017 initiates proceedings on defacement during DUSU elections.
2023	Previous DUSU guidelines reflect security deposit of Rs. 500 (Annexure P-7).
26.09.2024	This Hon'ble Court in *Prashant Manchanda v. Union of India & Ors*., W.P.(C) 7824/2017, directs strict enforcement of Lyngdoh Guidelines, including post-facto recovery of defacement costs proportionally from candidates, without preventive bonds.
11.11.2024	Further order in *Prashant Manchanda* reiterates DU's obligation to adhere to Lyngdoh, emphasizing recovery mechanisms over pre-emptive financial impositions.
08.08.2025	Respondent No. 1 issues the Impugned Notification, introducing Clause v mandating Rs. 1,00,000 security bond for DUSU candidates as a "preventive measure" against defacement.

10.08.2025	Petitioners make first representation to Respondents seeking withdrawal of Clause v, highlighting its unconstitutionality and impact on economically weaker students.
15.08.2025	Petitioners make second representation, reiterating demands and providing evidence of modest fees/family income. No response received.
	Hence, the present Writ Petition. DUSU Elections 2025 nominations imminent; urgent relief sought to prevent irreparable harm.

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TO
THE HON'BLE CHIEF JUSTICE
AND THE COMPANION JUDGES
OF THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

THE HUMBLE PETITION
OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

The Petitioner respectfully submits the following facts for the kind consideration of this Hon'ble Court:

1. That Petitioner No. 1, Anjali, is a bona fide student enrolled in the Master of Arts program in the Department of Buddhist Studies at the University of Delhi, North Campus, pursuing her academic course with dedication. She hails from Economically Weaker Section (EWS) category and is paying annual fees of Rs. 8,087, and relies on family support without an independent source of income. She aspires to contest the Delhi University Students' Union (DUSU) Elections 2025 to represent her peers and contribute to student welfare.

   A true copy of the Petitioner No. 1's student identity proof (Fee Receipt) is annexed herewith and marked as **ANNEXURE P-1**.

2. That Petitioner No. 2, Abhishek Kumar, is a bona fide student enrolled in B.A. (Hons.) History program of Hindu College, University of Delhi, North Campus, known for its academic excellence and vibrant student community. He pays annual fees of Rs. 28,670 and comes from a humble background with no independent income. His ambition to participate in the DUSU Elections 2025 is driven by a commitment to democratic values and student representation.

   A true copy of the Petitioner No. 2's student identity proof is annexed herewith and marked as **ANNEXURE P-2**.

3. That the petitioners, Anjali, a student from the Economically Weaker Section (EWS) category enrolled in the Department of Buddhist Studies, and Abhishek Kumar, a student of Hindu College, both hailing from humble rural backgrounds, contest the DUSU Elections 2025 in good faith to represent their

peers. They are economically incapable of furnishing a Rs. 1,00,000 bond, given their limited family income and reliance on modest financial support for annual fees of Rs. 14,000-15,000. The imposition of such a substantial sum as a preventive measure places an undue burden on students acting in good faith, effectively barring them from participating in the democratic process.

4. That the petitioners are aggrieved by Clause 'v' of the Notification dated 08.08.2025 issued by the Registrar, University of Delhi (hereinafter "Impugned Notification", Annexure P-3), which mandates that " *Each contesting candidate shall be required to execute a bond of Rs. 1.00 Lakh for the offence of any defacement/ violation of provisions of these Guidelines by themselves or their supporters, at the time of filing nomination for any post of DUSU*."

A true copy of the Impugned Notification dated 08.08.2025 issued by the Registrar, University of Delhi is annexed herewith and marked as **ANNEXURE P-3**.

5. That the petitioners challenge Clause 'v' of the Impugned Notification as ultra vires the *Lyngdoh Committee Recommendations* dated 28.11.2006 issued by Department of Higher Education, Ministry of Human Resource Development, unconstitutional, arbitrary, and violative of Articles 14, 19(1)(a), and 21 of the Constitution of India. They seek a writ of certiorari to quash the said clause and a writ of mandamus directing the respondents to conduct the DUSU Elections 2025 strictly in accordance with the Lyngdoh Guidelines without imposing the Rs. 1,00,000 bond.

A true copy of Lyngdoh Committee Recommendations dated 28.11.2006 issued by Department of Higher Education, Ministry of

Human Resource Development is annexed herewith and marked as **ANNEXURE P-4**.

6. That the Lyngdoh Committee Recommendations, accepted by the Hon'ble Supreme Court in *University of Kerala v. Council of Principals' Colleges, Kerala*, (2006) 8 SCC 304, constitute the comprehensive and binding framework governing student union elections across all universities and colleges in India. These guidelines aim to ensure free, fair, and accessible elections while curbing malpractices such as defacement of property, excessive expenditure, and external influences.

A true copy of the judgement in *University of Kerala v. Council of Principals' Colleges, Kerala*, (2006) 8 SCC 304 is annexed herewith and marked as **ANNEXURE P-5**.

7. That Clause 'v' of the Impugned Notification imposes an unprecedented financial barrier by requiring a Rs. 1,00,000 security bond as a 'preventive measure' against potential defacement. This requirement is neither contemplated nor authorized by the Lyngdoh Guidelines, rendering it ultra vires and an overreach of administrative authority.

8. That Clause 6.6.1 of the Lyngdoh Guidelines caps election expenditure at Rs. 5,000 per candidate to ensure that student elections remain accessible to ordinary students without financial extravagance. Clause 6.6.4 further prohibits candidates from accepting external funds from political parties or other sources, mandating reliance on personal resources. For students like the petitioners, who pay annual fees of approximately Rupees 8,000 and 28,000 respectively, and lack independent income, furnishing a Rs. 1,00,000 bond, 20 times the

permissible expenditure is an insurmountable barrier that excludes them from contesting.

9. That the Lyngdoh Guidelines address defacement through Clause 6.7.8, which provides that "All candidates shall be held jointly and severally liable for any destruction/defacing of any university/college property." This punitive measure ensures accountability post-offence without preemptively burdening candidates with excessive financial obligations. The imposition of a preventive bond of Rs. 1,00,000 contravenes this framework by introducing a disproportionate precondition that undermines the democratic ethos of student elections.

10. That the Delhi University Act, 1922, along with its Statutes and Ordinances (as provided in the document "act-2002.pdf"), does not confer explicit powers on the Registrar to set guidelines for the Delhi University Students' Union (DUSU) elections. Specifically, the Registrar's role, as outlined in the document, is primarily administrative and does not include the authority to issue election-related guidelines, such as those contained in Clause v of the Impugned Notification dated 08.08.2025, which mandates a Rs. 1,00,000 security bond for DUSU election candidates.

    A true copy of University of Delhi Act, 1922, along with its Statues and Ordinances is annexed herewith and marked as **ANNEXURE P-6**.

11. That under Statute 34 of the University of Delhi (page 34 of the document), the Registrar is designated as an officer of the University, responsible for maintaining records, managing correspondence, and performing duties assigned by the Vice-Chancellor or the Executive Council. The Statute states:

"*The Registrar shall be the ex-officio Secretary of the Court, the Executive Council, and the Academic Council, and shall perform such duties as may be assigned to him by the Vice-Chancellor or the Executive Council*." However, there is no provision in the Act, Statutes, or Ordinances that explicitly empowers the Registrar to formulate or issue guidelines governing DUSU elections, particularly those imposing financial conditions like a security bond.

12. That the authority to regulate DUSU elections is impliedly vested in the Chief Election Officer, appointed by the Patron (Vice-Chancellor), as per the DUSU Constitution and past practices as reflected in the 'Guidelines for the conduct of D.U.S.U. Elections: 2023-24' showed election guidelines were issued by the Chief Election Officer for the 2023-24 DUSU elections. The Lyngdoh Committee Recommendations (Annexure P-2), accepted by the Hon'ble Supreme Court in University of Kerala v. Council of Principals' Colleges, Kerala, (2006) 8 SCC 304, further mandate that student elections be regulated by statute (Clause 6.10.2). The Impugned Notification, issued by the Registrar, lacks such statutory backing and is an administrative overreach.

    A true copy of Delhi University Students' Union (DUSU) Constitution is annexed herewith and marked as **ANNEXURE P-7.**

13. That the Delhi University Students' Union (DUSU) Constitution does not confer any authority on the Registrar to formulate rules or guidelines for DUSU elections, including the imposition of a security bond for defacement, such as the Rs. 1,00,000 bond mandated by Clause v of the Impugned Notification dated 08.08.2025. Specifically, the DUSU Constitution vests the oversight of the Union's functioning in the Patron (Vice-Chancellor) under Clause 5, who is tasked with ensuring compliance with the Constitution, but it nowhere

authorizes the Registrar to issue election-related guidelines or impose financial preconditions like a defacement bond.

14. That the DUSU Constitution outlines the aims, objects, and activities of the Union (Clauses 3 and 4, pages 2-3), focusing on promoting democratic values, student welfare, and intellectual development, without any provision mandating candidates to furnish security bonds as a condition for contesting elections. The absence of such a provision underscores that Clause v of the Impugned Notification is an ultra vires act, lacking legal foundation in the DUSU Constitution or the Delhi University Act, 1922.

15. That this Hon'ble Court in *Prashant Manchanda v. Union of India & Ors.,* W.P.(C) 7824/2017 vide order dated 26.09.2024, observed that: *" 15. It also seems to this Court that the senior management of Delhi University and colleges of Delhi University have been remiss in appreciating the true import and significance of Lyngdoh Committee Guidelines accepted by this Court. Further, the officials of Delhi University and colleges have neglected to enforce the Lyngdoh Committee Guidelines and perform their duties*," thereby binding the respondents to adhere strictly to the guidelines. Para 16 further affirmed that "*the Delhi University has the right to recover the expenses incurred for restoration of property from the respective candidates in accordance with Lyngdoh Committee Guidelines*," endorsing post-facto measures over preventive barriers.

A true copy of the order dated 26.09.2024 in in *Prashant Manchanda v. Union of India & Ors.,* W.P.(C) 7824/2017 is annexed herewith and marked as **ANNEXURE P-8**.

16. That this Hon'ble Court in *Prashant Manchanda* (supra) vide order dated 11.11.2024, reiterated the need for sensitization programs and adherence to Lyngdoh, emphasizing less intrusive measures such as post-defacement recovery over excessive preventive conditions. The Impugned Notification's Clause 'v', by imposing a financial precondition, directly contravenes these judicial directives.

    A true copy of the order dated 11.11.2024 in in *Prashant Manchanda v. Union of India & Ors.,* W.P.(C) 7824/2017 is annexed herewith and marked as **ANNEXURE P-9**.

17. That Section 3(1) of the Delhi Prevention of Defacement of Property Act, 2007 prescribes a penalty for defacement as imprisonment up to one year or a fine up to Rs. 50,000, or both, only after the offence is committed and proven. The Rs. 1,00,000 bond is double the statutory maximum and imposes a preventive penalty without due process, exceeding legislative limits and violating Articles 14 and 21 of the Constitution of India.

    A true copy of the Delhi Prevention of Defacement of Property Act, 2007 is annexed herewith and marked as **ANNEXURE P-10.**

18. That the security deposit for Lok Sabha elections under Section 3/4 of the *Representation of the People Act, 1951* is only Rs. 25,000, one-fourth of the bond demanded by the University of Delhi. This stark disparity questions the rationality of Clause 'v', as a student election cannot impose a financial barrier four times higher than National Parliamentary Elections, which are significantly larger in scope and impact.

19. That previous DUSU election guidelines stipulated a security deposit of only Rs. 500, making the escalation to Rs. 1,00,000, a 200-fold increase is arbitrary and without reasoned justification. Such a hike lacks transparency and fails to align with the principle of proportionality, as held in *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

A true copy of the guidelines for the conduct of D.U.S.U. Elections**:** 2023-24 is hereby annexed and marked as **ANNEXURE P-11**.

A true copy of the judgement in *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3 is annexed herewith and marked as **ANNEXURE P-12**.

20. That Clause 6.10.2 of the Lyngdoh Guidelines mandates that student elections "should be regulated by statute." However, the Impugned Notification is an administrative order by the Registrar, unsupported by any provision in the Delhi University Act, 1922, or the DUSU Constitution, rendering it ultra vires and void, as per *Javed v. State of Haryana*, (2003) 8 SCC 369, where the Hon'ble Supreme Court of India upheld the constitutional validity of a Haryana Panchayati Raj Act provision that disqualifies individuals with more than two children from contesting Panchayat elections. The Court ruled that this disqualification is a reasonable restriction on the right to contest an election, which is a statutory rather than a fundamental right, and serves the public interest by promoting population control and sustainable development.

A true copy of the judgement in *Javed v. State of Haryana*, (2003) 8 SCC 369 is annexed herewith and marked as **ANNEXURE P-13**.

21. That under the DU Statutes and DUSU Constitution, the authority to issue election guidelines vests in the Chief Election Officer, appointed by the Patron-

in-Chief (Vice-Chancellor). The Registrar's unilateral imposition of Clause ‘v’ is without jurisdiction.

22. That Clause ‘v’ creates an unreasonable classification by discriminating against Economically Weaker students like the Petitioners, who cannot afford the bond, while favoring affluent candidates. This violates Article 14, as it lacks intelligible differentia and rational nexus to the object of preventing defacement, as per *Ajay Hasia v. Khalid Mujib Sehravardi,* (1981) 1 SCC 722, and *State of West Bengal v. Anwar Ali Sarkar*, (1952) SCR 284.

23. That the right to contest student elections, though statutory, is protected under Article 14 from arbitrary restrictions, as held in *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 691 where statutory rights were safeguarded against discrimination. Clause ‘v’, by imposing a financial barrier, curtails this right and infringes Articles 19(1)(a) and 21 by restricting free speech in electoral processes (*Association for Democratic Reforms v. Union of India*, (2024) 3 SCC 1) and personal liberty (*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248).

24. That the measure fails the proportionality test under Article 14, as elucidated in *Association for Democratic Reforms v. Union of India* (2024 INSC 113, as it was held: " *31. The measure should be proportional and less intrusive measures are available to achieve the same ends, aiming for minimal impairment*". Less intrusive alternatives, such as post-facto recovery under Lyngdoh 6.7.8 or the Defacement Act, achieve the same objective without excluding students like the petitioners.

25. That the petitioners have no other efficacious remedy and approach this Hon'ble Court under Article 226, as the grievance involves violation of fundamental rights and does not pertain to a "dispute with respect to recruitment" under Article 323A or the Administrative Tribunals Act, 1985.

26. That the Petitioner has not filed any other Petition/Petitions with similar or same reliefs before any Court, including this Hon'ble Court or any other Court.

QUESTION OF LAW

27. Whether Clause v of the Impugned Notification dated 08.08.2025 is ultra vires the Lyngdoh Committee Guidelines and unconstitutional under Articles 14, 19(1)(a), and 21?

28. Whether the Rs. 1,00,000 security bond is arbitrary, disproportionate, and lacks statutory backing, violating fundamental rights?

29. Whether the Registrar has authority to issue such guidelines, or does it vest exclusively in the Chief Election Officer?

GROUNDS FOR THE PETITION

30. Because the University, by introducing Clause 'v' of the Notification dated 08.08.2025, has arrogated to itself a power it does not possess. The Lyngdoh Committee Recommendations, accepted, adopted, and enforced by the Hon'ble Supreme Court in *University of Kerala v. Council of Principals' Colleges* (2006) 8 SCC 304, constitute a binding and exhaustive code for regulating student elections across the country. Once the Supreme Court has elevated these recommendations to the status of enforceable law, no university authority can

dilute, amend, or supplant them through an administrative fiat. Any deviation from the Lyngdoh framework is constitutionally impermissible, rendering Clause 'v' ultra vires, arbitrary, and void ab initio.

31. Because the imposition of a ₹1,00,000 bond as security against defacement is nothing short of manifest arbitrariness and disproportionality. The Lyngdoh Committee framework itself is a testament to the financial vulnerability of students: it caps permissible election expenditure at a modest ₹5,000 (Clause 6.6.1) and prohibits external funding (Clause 6.6.4) precisely to ensure a level playing field. To now demand a bond twenty times this statutory ceiling is to invert that very principle and to erect an artificial wall between the affluent and the disadvantaged. Such a measure has no rational nexus with the stated objective of curbing defacement; instead, it serves only to exclude a large class of students solely on the basis of their economic means. This Court has consistently held that arbitrariness is anathema to equality, and financial barriers that segregate the wealthy from the less privileged strike at the very heart of Article 14.

32. **Because** the Lyngdoh Committee Clause 6.10.2 categorically mandates that student elections must be "regulated by statute", and the Supreme Court in *Javed v. State of Haryana*, (2003) 8 SCC 369 has unequivocally established that "the right to contest an election is neither a fundamental right nor a common law right but is a right conferred by a statute", the Impugned Notification issued by the Registrar constitutes an ultra vires administrative action that finds no support whatsoever in the Delhi University Act, 1922, the University Statutes, or the DUSU Constitution, thereby rendering it constitutionally invalid for want of legislative sanction; furthermore, under the established framework governing

student union elections, it is the **Chief Election Officer who is statutorily empowered to conduct elections and issue directions for the smooth and orderly conduct of elections**, whereas the Registrar, being merely an administrative officer without specific electoral jurisdiction, lacks the competence to usurp such exclusive statutory functions, and any attempt to do so through administrative fiat violates both the principle of separation of powers within the university's governance structure and the mandatory requirement that electoral processes derive their authority from proper statutory enactment rather than arbitrary administrative discretion, making the Impugned Notification not only jurisdictionally incompetent but also a direct contravention of the binding framework established by the Supreme Court's acceptance of Lyngdoh Committee recommendations as mandatory guidelines that must be "followed scrupulously" by all universities.

33. Because Lyngdoh Clause 6.7.8 already provides for joint and several liability of candidates for defacement, thereby ensuring accountability through post-facto recovery rather than preventive financial barriers. This Hon'ble Court, in *W.P.(C) 7824/2017* (order dated 26.09.2024, para 16), specifically affirmed post-facto recovery as the constitutionally appropriate mechanism, making the imposition of a pre-deposit wholly unnecessary and excessive. The requirement of a ₹1,00,000 bond effectively penalises candidates in advance, without any adjudication of guilt or evidence of wrongdoing, thereby pre-empting due process and infringing Article 21. Such a measure is contrary to the settled principle in *Modern Dental College v. State of Madhya Pradesh,* (2016) 7 SCC 353 that restrictions must be proportionate, fair, and least intrusive.

34. Because although the University purports to prevent defacement through the Impugned Notification, the imposition of a mandatory ₹1,00,000 bond lacks the intelligible differentia required under Article 14. Unlike traditional electoral security deposits such as ₹500 for DUSU elections or ₹25,000 for Lok Sabha elections under Section 34 of the Representation of the People Act, 1951, which serve the legitimate purpose of deterring frivolous candidates and are forfeited only if a minimum vote threshold is not achieved, the defacement bond operates on an entirely different and more onerous footing. It applies indiscriminately to all candidates as a precondition for nomination, without regard to their electoral performance, prior conduct, or propensity to commit defacement. The quantum is exorbitant 200 times the existing DUSU deposit and four times the Lok Sabha requirement and bears no rational nexus to the stated objective. By transforming a targeted regulatory mechanism into a blanket financial barrier, Clause 'v' violates the settled test of reasonable classification.

35. Because Section 3(1) of the Delhi Prevention of Defacement of Property Act, 2007 prescribes a maximum penalty of ₹50,000, to be imposed only after the commission of the offence and upon proof of culpability through due process of law. In contrast, Clause V of the Impugned Notification obliges every aspirant, irrespective of any misconduct, to deposit a sum of ₹1,00,000, double the statutory maximum as a precondition to participation in the electoral process. The University may contend that the bond is refundable; however, the very requirement of furnishing such an onerous sum as a condition precedent is constitutionally indefensible. The refundable character of the deposit does not mitigate its exclusionary impact, for economically weaker students are effectively denied the opportunity to contest at the threshold. The measure, in substance, transforms a post-conviction penalty into a pre-emptive punishment,

amounting to *poena sine crimine* (punishment without crime). By demanding more than what the legislature itself has deemed the maximum proportionate sanction for an actual offence, the University transgresses the will of the Delhi Legislative Assembly and arrogates to itself a jurisdiction it does not possess. Preventive action cannot exceed, let alone double, the quantum of punishment prescribed for the offence itself. Such a requirement is not regulation but prohibition in disguise, for it places the democratic right of participation behind an impermissible financial barrier.

36. Because the University's objective of preventing property defacement is undoubtedly a legitimate aim that serves the public interest in preserving institutional infrastructure and maintaining a conducive academic environment. However, the method chosen, imposing a mandatory security deposit of ₹1,00,000 fails to meet the constitutional test of proportionality. As established by this Hon'ble Court in *Justice K.S. Puttaswamy v. Union of India,* (2017) 10 SCC 1 and reaffirmed in *Association for Democratic Reforms v. Union of India* (2024), any restriction on rights must have a rational connection to the intended objective, must not be excessive in scope, and should adopt the least intrusive means available. Clause 'v' violates all of these requirements: the means employed are clearly excessive, bear no reasonable relation to the modest goal of preventing defacement, and disregard less restrictive alternatives. By imposing an onerous and exclusionary precondition of a ₹1 lakh bond, the measure fails to meet the standards of necessity and minimal impairment, rendering it unconstitutional under Articles 14 and 21.1

37. Because the condition of furnishing a ₹1,00,000 bond effectively reserves the democratic space of student elections for the wealthy, creating an impermissible

form of *economic apartheid* that excludes meritorious but economically weaker students like the petitioners from participating in the fundamental democratic process of their educational institution. An ordinary student who pays annual fees of about ₹10,000, with no independent source of income, is inexplicably expected to deposit an amount ten times their yearly educational expenditure, while simultaneously being prohibited under Lyngdoh Committee Clause 6.6.4 from receiving any external financial assistance. This creates an impossible financial paradox that effectively disenfranchises the economically disadvantaged student population. Such a classification, based solely on financial capacity rather than academic merit, leadership potential, or any criteria relevant to student representation, constitutes class legislation which is constitutionally impermissible. It fails both limbs of the settled test under Article 14. Instead of ensuring inclusivity, the condition transforms what should be a democratic process into an exclusionary mechanism that entrenches socio-economic hierarchies within the university system.

38. That the Hon'ble Supreme Court in *State of UP v. Singhara Singh*, (1964) 4 SCR 485, has held that administrative actions lacking statutory authority are ultra vires and void. Consequently, the Registrar's issuance of Clause 'v' is without jurisdiction, as the power to set election guidelines resides with the Chief Election Officer under the framework of the DU Statutes and DUSU Constitution, rendering the Impugned Notification legally unsustainable.

39. Because the recovery of such a large sum from students, who are typically young, unemployed, and reliant on limited resources, violates the principles of proportionality and fairness under Article 14. The previous DUSU security deposit of Rs. 500 further underscores the unjustified escalation to Rs. 1,00,000,

which no student acting in good faith can reasonably manage. The Hon'ble Supreme Court in *Association for Democratic Reforms & Anr. V. Union of India & Ors.*, W.P. (C) No. 880 of 2017 held:

> *" 30. The first two prongs of proportionality resemble a means-ends review of the traditional reasonableness analysis, and they are applied relatively consistently across jurisdictions. Courts first determine if the ends of the restriction serve a legitimate purpose, and then assess whether the proposed restriction is a suitable means for furthering the same ends, meaning it has a rational connection with the purpose.*
>
> *31. In the third prong, courts examine whether the restriction is necessary to achieve the desired end. When assessing the necessity of the measure, the courts consider whether a less intrusive alternative is available to achieve the same ends, aiming for minimal impairment. As elaborated above, this Court Anuradha Bhasin (supra), relying on suggestions given by some jurists, emphasised the need to employ a moderate interpretation of the necessity prong. To conclude its findings on the necessity prong, this Court is inter alia required to undertake an overall comparison between the measure and its feasible alternatives."*

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

1. Issue a writ of certiorari quashing Clause 'v' of the Impugned Notification dated 08.08.2025 issued by Registrar, University of Delhi as unconstitutional, ultra vires, and void ab initio;
2. Issue a writ of mandamus directing Respondents to conduct DUSU Elections 2025 strictly per Lyngdoh Committee Guidelines without the Rs. 1,00,000 bond under Clause 'v';
3. Declare Clause 'v' violative of Articles 14, 19(1)(a), and 21 of the Constitution of India;

AND/OR

4. Pass such other and further orders as may be deemed just and proper in the interests of justice, equity, and good conscience in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN AND FILED BY:

Raja Choudhary

[Raja Choudhary]
Advocate for the Petitioner
Office. Second Floor, C-15B, Jangpura Extension, 110014.
Mb. 8826075914
Email. adv.rajachoudhary@gmail.com

Filed on: 23.08.2025

New Delhi

IN THE DELHI HIGH COURT AT NEW DELHI

WRIT PETITION (CIVIL) NO _____ OF 2025

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ANJALI & ANR. ....PETITIONER

VERSUS

UNIVERSITY OF DELHI & ORS. .....RESPONDENT

AFFIDAVIT

I, Anjali, D/O Sh. Abhay Kumar, Aged 24 R/O Village Tajpur, Tajpur, Gaya, Bihar - 804407. Do hereby solemnly affirm and declare as under:

1. That the deponent is petitioner in the above noted case and is well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the content of accompanying petition and interim application, has been drafted by my counsel under my instruction and same have been read over to me in my vernacular language and contents of the same are understood by me and the same are true and correct to my knowledge and belief.
3. That contents of the accompanying petition are not repeated here for the sake of brevity and same may kindly be read as part and parcel of this affidavit.

Anjali

DEPONENT

NOTARY
RAMZAN AHMAD ANSARI
(DELHI)
Regn. No. 16940
Expiry Date 30-01-2030
GOVT. OF INDIA

VERIFICATION

I, the above Deponent, hereby verify that the contents of the above affidavit are true to my knowledge. No part of it is wrong and nothing has been kept concealed. Verified at on this 22nd Day of August 2025.

Anjali

DEPONENT

Raja Chowhan D/26/04/21
I Identify the Deponent who has Signed/Put T.I. Before me

NOTARY GOVT. OF INDIA
RAIZAN AHMAD
(DELHI)
Regn. No. 10940
Expiry Date
30.01.2030

CERTIFIED THAT THE DEPONENT has solemnly affirmed before me that the contents of the above which have been read & explained to him/her are true and correct to his/her knowledge.

NOTARY GOVT. OF INDIA

23 AUG 2025

IN THE DELHI HIGH COURT AT NEW DELHI

WRIT PETITION (CIVIL) NO _____ OF 2025

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ANJALI & ANR. ....PETITIONER

VERSUS

UNIVERSITY OF DELHI & ORS. .....RESPONDENT

AFFIDAVIT

I, Abhishek Kumar, S/O Sh. Amit Kumar, Aged 19 R/O Village Bari Manjhgany (Bind Tola), Post- Bari Manjhgany, Thana – Haweli Kharagpur, Munger, Bihar- 811213. Do hereby solemnly affirm and declare as under:

1. That the deponent is petitioner in the above noted case and is well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the content of accompanying petition and interim application, has been drafted by my counsel under my instruction and same have been read over to me in my vernacular language and contents of the same are understood by me and the same are true and correct to my knowledge and belief.
3. That contents of the accompanying petition are not repeated here for the sake of brevity and same may kindly be read as part and parcel of this affidavit.

NOTARY
RAMZAN AHMAD ANSARI
(DELHI)
Regn. No. 16940
Expiry Date 30-01-2030
GOVT. OF INDIA

Abhishek Kumar

DEPONENT

VERIFICATION

I, the above Deponent, hereby verify that the contents of the above affidavit are true to my knowledge. No part of it is wrong and nothing has been kept concealed. Verified at _____ on this 22nd Day of August 2025.

Raja Choudhary D/26/04/21
I Identify the Deponent who has Signed/Put T.I. Before me

Abhishek Kumar

DEPONENT

NOTARY GOVT. OF INDIA

CERTIFIED THAT THE DEPONENT has solemnly affirmed before me that the contents of the above which have been read & explained to him/her are true and correct to his/her knowledge.

NOTARY GOVT. OF INDIA

23 AUG 2025

ANNEXURE P-1

FEE RECEIPT OF PETITIONER NO. 1

Home

Print

दिल्ली विश्वविद्यालय
University of Delhi

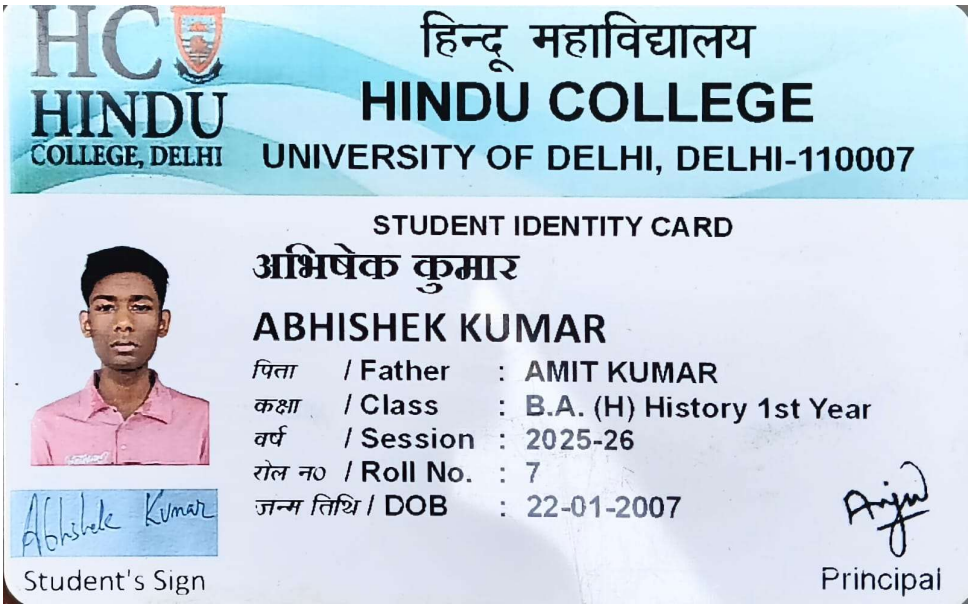
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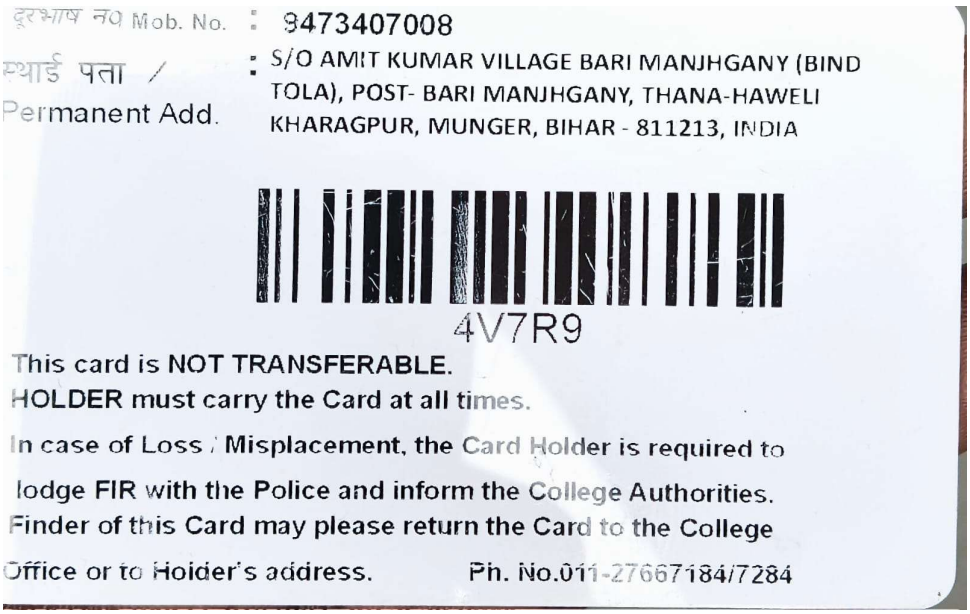
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Gender	Female
Applicant Category	EWS
Program Fee (in INR)	8087.00
Transaction Date	2025-06-21 23:10:36

Note: Please retain the print of the acknowledgement slip for further reference.

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COLLEGE IDENTITY CARD OF PETITIONER NO. 2





ANNEXURE P-3

दिल्ली विश्वविद्यालय
University of Delhi

कुलसचिव | Registrar

DU/124/LEGAL-6272(17)/2025/2377
08th August, 2025

NOTIFICATION

(GUIDELINES/MEASURES FOR ANTI DEFACEMENT IN AND AROUND UNIVERSITY / COLLEGE CAMPUS AND FOR DUSU ELECTIONS)

In order of preparedness/awareness of the DUSU Elections and to avoid any defacement of the property by the contesting candidate/their supporter, the following 'GUIDELINES' are notified taking into consideration of provisions of various Acts/Court's orders/Lyngdoh Committee, for the strict compliance by the Students and the University/ College.

i. Like anti-ragging affidavit, an anti-defacement of walls affidavit be taken from the students at the time of admission.

ii. Each College and associated Centre/Department of the University shall organize orientation/sensitization programmes for the students about the discipline, for maintaining the sanctity of the College walls & public property and their good conduct in and around the campus even during the DUSU elections also.

iii. Each College and the associated Departments/Centres shall increase the size of wall(s) of democracy to the extent possible only at two notified places, for the utilization of the contesting candidates. This will avoid the misuse/defacement of walls.

iv. A dedicated portal pertaining to defacement issues shall be created at the University/ College level to sensitize the students about their rights and duties. The students may report any violation on this portal.

v. Each contesting candidate shall be required to execute a bond of Rs. 1.00 Lakh for the offence of any defacement/ violation of provisions of these Guidelines by themselves or their supporters, at the time of filing nomination for any post of DUSU.

दिल्ली विश्वविद्यालय, उत्तरी परिसर, दिल्ली - 110007, भारत
University of Delhi, North Campus, Delhi-110007, India
दूरभाष Tel.: +91-11-27667853 | फैक्स Fax: + 91-11-27666350 | ई-मेल E-mail: registrar@du.ac.in

vi. In the case of impersonation of candidate/ student for offence of defacement (including the practice of resorting to spelling errors in the name of candidates), it will be the duty of the concerned candidate/ student to remove it immediately and to report the matter with the nearest Police Station immediately within 24 Hrs, and produce the copy of the such reported information to the College/ University. Failure to do so, the candidate/ student shall be liable to pay fine of Rs 25,000/- or as decided by the University/ College or suspension from College/ Department including rustication for a specified period or expulsion from the College and may also be debarred from contesting elections.

vii. Other than the walls of democracy, the students are permitted for legitimate use of electronic media for the purpose of campaigning.

viii. Canvassing by the students/contestants through posters, rallies, road-shows and Shakti Pradarshan, loud-speakers, vehicles are strictly prohibited.

ix. The name of the candidate mentioned in the Secondary and Senior Secondary certificate shall be considered for admission and contesting for the DUSU elections.

x. Any change in name of a student after taking admission in the Colleges / Departments/ Centre is admissible only if it has been changed after following due process as per the Government norms and accepted by the University.

xi. A **'College Committee for Prevention of Defacement of Property'** at the College level and a similar Committee at the University level called as **'University Committee for Prevention of Defacement of Property'** will be constituted. The details of its members shall be displayed on the College/ University website and notice boards. The said Committees shall remain functional till new Committee is constituted.

xii. The Colleges/Departments/Centres should promote and organize the debates for the contesting candidates. Such debate/speech may be uploaded on the website of the College/University.

xiii. The use of Dhols, Loudspeakers are not allowed in and around the premises of a College/ Department. This Rule will remain in force even after the declaration of election results.

दिल्ली विश्वविद्यालय, उत्तरी परिसर, दिल्ली - 110007, भारत
University of Delhi, North Campus, Delhi-110007, India
दूरभाष Tel.: +91-11-27667853 | फैक्स Fax: + 91-11-27666350 | ई-मेल E-mail: registrar@du.ac.in

xiv. The outsiders are not allowed in the premises of any College/ Department, except entry authorized by the Administration. In order to avoid any unauthorized entry, the Biometric/ Facial Recognition machine may be installed for the attendance and for the entry of students to the premises of the College/ Department/ University.

2. Any act of Defacement/Damage to public property and non-adherence to these Guidelines shall amount to gross indiscipline. It shall attract consequent punishment provisions in the relevant Ordinance of the University.

3. The Election Committee constituted by the University/College shall be responsible for strict adherence to the above Guidelines and other measures directed by Lyngdoh Committee, Hon'ble NGT Orders, Hon'ble High Court of Delhi orders and the Statutes/ Ordinances of the University.

4. DUSU office-bearers are permitted to book only three venues, namely, Conference Centre, Shankar Lal Hall, Room No. 22 of Arts Faculty for their official program, with due justification and recommendations of the DUSU Advisor on payment of prescribed fee.

5. Booking of rooms in University Guest Houses/ University maintained hostels by the DUSU office-bearers are not permitted. If any such incident is reported or noticed by the Administration, the Proctor, after an inquiry, may debar the office-bearer to enter such premises of the University/ College/ Department, during the remaining term of their DUSU office bearers. This may also lead to rustication for a specified period.

6. These Guidelines are to be read along with the Statutory provisions laid down under ***(a)*** *Metro Rail (Operation and Maintenance) Act, 2002,* ***(b)*** *Prevention of Damage to Public Property Act, 1984* ***(c)*** *The Delhi Prevention of Defacement of Property Act, 2007* Act, ***(d)*** *The Delhi University Act, Statute & Ordinances* ***(e)*** *Hon'ble National Green Tribunal Order in O.A. No. 402/ 20215 Nithin Chandran Vs Union of India & Ors., and* ***(f)*** *Hon'ble High Court of Delhi orders in WPC No. 7824/ 2017 Prashant Manchanda vs Union of India & Ors. & WPC No. 13538/ 2024 Akhilesh Kumar Mishra &* Ors. *Vs University of Delhi & Ors.*

REGISTRAR

दिल्ली विश्वविद्यालय, उत्तरी परिसर, दिल्ली - 110007, भारत
University of Delhi, North Campus, Delhi-110007, India
दूरभाष Tel.: +91-11-27667853 | फैक्स Fax: + 91-11-27666350 | ई-मेल E-mail: registrar@du.ac.in

(MRS.) ANUPAMA BHATNAGAR
DIRECTOR (HE)
ROOM No. 522 (C-Wing)
TELE#23388641 (O)
Email # anupamab@nic.in

भारत सरकार
मानव संसाधन विकास मंत्रालय
उच्चतर शिक्षा विभाग
शास्त्री भवन
नई दिल्ली - 110 001
GOVERNMENT OF INDIA
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
DEPARTMENT OF HIGHER EDUCATION
SHASTRI BHAVAN
NEW DELHI-110 001

D.O.No. F 9-6/2005-U.5

Dear Dr. Kem.

Pursuant to an order of the Hon'ble Supreme Court dated 2nd December 2005, the Ministry of Human Resource Development had constituted a Committee under Shri J.M. Lyngdoh, (former Chief Election Commissioner) to examine and recommend upon certain aspects of student body and student union election conducted in universities, colleges and other institutions of higher education across India. The Committee submitted its report on 26th May 2006. The Hon'ble Supreme Court in its order dated 22nd Sept. 2006 directed the recommendations of the Committee to be implemented (enclosed as annex.A) and shall be followed in all College/University Elections, to be held hereinafter.

I would like to request you that necessary steps may be taken to ensure compliance of Hon'ble Supreme Court's direction and also to give it widest publicity and put it on UGC's website.

With regards.

Yours sincerely,

(Anupama Bhatnagar)
Director(HE)

J.S.(PS/AC)
Diary No. 65
Date 28/11/06

Dr. T.R.Kem,
Secretary,
U.G.C.

Secretary Secretariat
Diary No. 277
Date 23/11/06

24/12

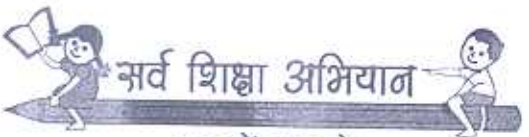
JS(A)

US(CAP-II)

28.11.2006

US (CAP-II)

P.O (Web Site)



The recommendation of the Committee accepted by the Hon'ble Supreme Court for implementation:

6.1.1 **Universities and colleges across the country must ordinarily conduct elections for the appointment of students to student representative bodies. These elections may be conducted in the manner prescribed herein, or in a manner that conforms to the standards prescribed herein.**

6.1.2 **Where the atmosphere of the university campus is adverse to the conduct of peaceful, free and fair elections, the university, its constituent colleges and departments must initiate a system of student representation based on nominations, especially where elections are being held at present. It would be advisable, however, not to base such nomination system on purely academic merit, as is being practiced throughout the country.**

6.1.3 **In cases where elections are not being held, or where the nomination model prevails, the nomination model should be allowed to continue for a limited period of time. It is to be noted that the nomination system suffers from several flaws, and must only be resorted to as an INTERIM MEASURE.**

6.1.4 **Subject to the recommendations in respect of the possible models of elections, all institutions must, over a period of 5 years, convert from the nomination model to a structured election model, that may be based on a system of parliamentary (indirect) elections, or on the presidential (direct) system, or a hybrid of both. It is highly desirable that all institutions follow this mechanism of gradual conversion, especially for privately funded institutions that prefer a status quo situation.**

6.1.5 **All institutions must conduct a review of the student representation mechanism. The first review may be conducted after a period of 2 years of the implementation of the mechanism detailed above, and the second review may be conducted after the 3rd or the 4th year of implementation. The primary objective of these reviews will be to ascertain the success of the representation and election mechanism in each individual institution, so as to decide whether or not to implement a full-fledged election structure. Needless to say these reviews will be based on a consideration of the views and suggestions of all stakeholders, such as students, faculty, administration, student bodies, and parents.**

6.1.6 **Institutions must, as a primary objective, subject to the pertinent issue of discipline on campus, seek to implement a structured system of student elections by the conclusion of a period of 5 years from the date of the implementation of these recommendations.**

6.1.7 **Subject to the autonomy of the universities in respect of the choice of the mode of election, all universities must institute an apex student representative body that represents all students, colleges, and departments coming under the particular university. In the event that the university is geographically widespread, individual colleges may constitute their own representative bodies, which would further elect representatives for the apex university body.**

6.1.8 **The union/representative body so elected shall only comprise of regular students on the rolls of the institution. No faculty member, nor any member of the administration shall be permitted to hold any post on the executive of such representative body, nor shall be allowed to be a member of any such representative body.**

6.2 **Modes of Elections**

6.2.1 **A system of direct election of the office bearers of the student body whereby all students of all constituent colleges, as well as all students of the university departments vote directly for the office bearers. This model may be followed in smaller universities with well-defined single campuses (for e.g. JNU/University of Hyderabad), and with a relatively smaller student population. A graphic representation of this model is annexed herewith at Annexure IV-A.**

In respect of universities with large, widespread campuses and large student bodies, either of the following models may be adopted:

6.2.2 **A system of elections, where colleges and campuses directly elect college and campus office bearers, as well as university representatives. The university representatives form an electoral college, which shall elect the university student union office bearers. A graphic representation of this model is annexed herewith at Annexure IV-B.**

6.2.3 **A system of elections where on one hand, directly elected class representatives elect the office bearers of the college as well as the university representatives, and the campus itself directly elects the campus office bearers and the university representatives. The university representatives shall form an electoral college, which shall**

elect the office bearer of the university student union. A graphic representation of this model is annexed herewith at Annexure IV-C.

6.2.4 **A system of election wherein class representatives shall be directly elected in the colleges and universities campus and they in turn shall elect the office bearers for the college unions and the university campus union. Also they shall elect their representatives for university student union. These elected representatives from colleges and university campus shall form the Electoral College, which shall elect the office bearers of the university student union. This model shall be applicable to large university with large number of affiliated colleges. A graphic representation of this model is annexed herewith at Annexure IV-D.**

6.3 **Disassociation of Student Elections and Student Representation from Political Parties**

6.3.1 **During the period of the elections no person, who is not a student on the rolls of the college/university, shall be permitted to take part in the election process in any capacity. Any person, candidate, or member of the student organisation, violating this rule shall be subject to disciplinary proceedings, in addition to the candidature, as the case may be, being revoked.**

6.4 **Frequency and Duration of the Election Process**

6.4.1 **It is recommended that the entire process of elections, commencing from the date of filing of nomination papers to the date of declaration of results, including the campaign period, should not exceed 10 days. 6.4.2 It is further recommended that elections be held on a yearly basis and that the same should be held between 6 to 8 weeks from the date of commencement of the academic session.**

6.5 **Eligibility Criteria for Candidates**

6.5.1 **Under graduate students between the ages of 17 and 22 may contest elections. This age range may be appropriately relaxed in the case of professional colleges, where courses often range between 4 to 5 years.**

6.5.2 **For Post Graduate Students the maximum age limit to legitimately contest and election would be 24 – 25 years.**

6.5.3 **For research Students the maximum age limit to legitimately contest an election would be 28 years.**

6.5.4 **Although, the Committee would refrain from prescribing any particular minimum marks to be attained by the candidate, the candidate should in no event have any academic arrears in the year of contesting the election.**

6.5.5 **The candidate should have attained the minimum percentage of attendance as prescribed by the university or 75% attendance, whichever is higher.**

6.5.6 **The candidate shall have one opportunity to contest for the post of office bearer, and two opportunities to contest for the post of an executive member.**

6.5.7 **The candidate shall not have a previous criminal record, that is to say he should not have been tried and/or convicted of any criminal offence or misdemeanor. The candidate shall also not have been subject to any disciplinary action by the University authorities.**

6.5.8 **The candidate must be a regular, full time student of the college / university and should not be a distance/proximate education student. That is to say that all eligible candidates must be enrolled in a full time course, the course duration being at least one year.**

6.6 **Election - Related Expenditure and Financial Accountability**

6.6.1 **The maximum permitted expenditure per candidate shall be Rs. 5000/-**

6.6.2 **Each candidate shall, within two weeks of the declaration of the result, submit complete and audited accounts to the college / university authorities. The college/university shall publish such audited accounts, within 2 days of the submission of such accounts, through a suitable medium so that any member of the student body may freely examine the same.**

6.6.3 **The election of the candidate will be nullified in the event of any noncompliance or in the event of any excessive expenditure.**

6.6.4 **With the view to prevent the inflow of funds from political parties into the student election process, the candidates are specially barred from utilizing funds from any other sources than voluntary contributions from the student body.**

6.7 **Code of Conduct for Candidates and Elections Administrators**

6.7.1 **No candidate shall indulge in, nor shall abet, any activity, which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic, or between any group(s) of students.**

6.7.2 **Criticism of other candidates, when made, shall be confined to their policies and programs, past record and work. Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the other candidates or supporters of such other candidates. Criticism of other candidates, or their supporters based on unverified allegations or distortion shall be avoided.**

6.7.3 **There shall be no appeal to caste or communal feelings for securing votes. Places of worship, within or without the campus shall not be used for election propaganda.**

6.7.4 **All candidates shall be prohibited from indulging or abetting, all activities which are considered to be "corrupt practices" and offences, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing or the use of propaganda within 100 meters of polling stations, holding public meetings during the period of 24 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.**

6.7.5 **No candidate shall be permitted to make use of printed posters, printed pamphlets, or any other printed material for the purpose of canvassing. Candidates may only utilize hand-made posters for the purpose of canvassing, provided that such hand-made posters are procured within the expenditure limit set out herein above.**

6.7.6 **Candidates may only utilize hand-made posters at certain places in the campus, which shall be notified in advance by the election commission / university authority.**

6.7.7 **No candidate shall be permitted to carry out processions, or public meetings, or in any way canvass or distribute propaganda outside the university/college campus.**

6.7.8 **No candidate shall, nor shall his/her supporters, deface or cause any destruction to any property of the university / college campus, for any purpose whatsoever, without the prior written permission of the college / university authorities. All candidates shall be held jointly and severally liable for any destruction / defacing of any university / college property.**

6.7.9 **During the election period the candidates may hold processions and / or public meetings, provided that such processions and / or public meetings do not, in any manner, disturb the classes and other academic and co curricular activities of the college / university. Further, such procession / public meeting may not be held without the prior written permission of the college / university authority.**

6.7.10 **The use of loudspeakers, vehicles and animals for the purpose of canvassing shall be prohibited.**

6.7.11 **On the day of polling, student organizations and candidates shall -:**

(i) **co-operate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction;**

(ii) **not serve or distribute any eatables, or other solid and liquid consumables, except water on polling day;**

(iii) not hand out any propaganda on the polling day.

6.7.12 **Excepting the voters, no one without a valid pass / letter of authority from the election commission or from the college / university authorities shall enter the polling booths.**

6.7.13 **The election commission / college/ university authorities shall appoint impartial observers. In the case of deemed universities and self-financed institutions, government servants may be appointed as observers. If the candidates have any specific complaint or problem regarding the conduct of the elections they may bring the same to the notice of the observer. Observers shall also be appointed to oversee the process of nomination of students in institutions that are following the nomination model of student representation.**

6.7.14 **All candidates shall be jointly responsible for ensuring the cleaning up of the polling area within 48 hours of the conclusion of polling.**

6.7.15 **Any contravention of any of the above recommendations may make the candidate liable to be stripped of his candidature, or his elected post, as the case may be. The election commission / college / university authorities may also take appropriate disciplinary action against such a violator.**

6.7.16 **In addition to the above-mentioned code of conduct, it is also recommended that certain provisions of the Indian Penal Code, 1860**

(Section 153A and Chapter IXA – "Offences Relating to Election"), may also be made applicable to student elections.

6.8 Grievance Redressal Mechanism

6.8.1 There should be a Grievances Redressal Cell with the Dean (Student Welfare) / teacher in charge of student affairs as its chairman. In addition, one senior faculty member, one senior administrative officer and two final year students – one boy and one girl (till the election results declared, students can be nominated on the basis of merit and/or participation in the co-curricular activities in the previous year). The grievance cell shall be mandated with the redressal of election-related grievances, including, but not limited to breaches of the code of conduct of elections and complaints relating to election-related expenditure. This cell would be the regular unit of the institution.

6.8.2 In pursuit of its duties, the grievance cell may prosecute violators of any aspect of the code of conduct or the rulings of the grievance cell. The grievance cell shall serve as the court of original jurisdiction. The institutional head shall have appellate jurisdiction over issues of law and fact in all cases or controversies arising out of the conduct of the elections in which the grievance cell has issued a final decision. Upon review, the institutional head may revoke or modify the sanctions imposed by the grievance cell

6.8.3 In carrying out the duties of the office, the Grievance cell shall conduct proceedings and hearings necessary to fulfill those duties. In executing those duties they shall have the authority:

(i) to issue a writ of subpoena to compel candidates, agents, and workers, and to request students to appear and give testimony, as well as produce necessary records; and

(ii) to inspect the financial reports of any candidate and make these records available for public scrutiny upon request.

6.8.4 Members of the Grievance cell are prohibited from filing complaints. Any other student may file a complaint with the Grievance cell, within a period of 3 weeks from the date of declaration of results. All complaints must be filed under the name of the student filing the complaint. The Grievance cell shall act on all complaints within 24

hours after they are received by either dismissing them or calling a hearing.

6.8.5 **The Grievance cell may dismiss a complaint if:**

(i) **the complaint was not filed within the time frame prescribed in Recommendation 8.4 above;**

(ii) **the complaint fails to state a cause of action for which relief may be granted;**

(iii) **the complainant has not and / or likely will not suffer injury or damage.**

6.8.6 **If a complaint is not dismissed, then a hearing must be held. The Grievance cell shall inform, in writing, or via e-mail, the complaining party and all individuals or groups named in the complaint of the time and place of the hearing. The parties are not considered notified until they have received a copy of the complaint.**

6.8.7 **The hearing shall be held at the earliest possible time, but not within twenty-four (24) hours after receipt of the notice described above, unless all parties agree to waive the 24-hour time constraint.**

6.8.8 **At the time notice of a hearing is issued, the Grievance cell, by majority vote, may issue a temporary restraining order, if it determines that such action is necessary to prevent undue or adverse effects on any individual or entity. Any restraining order, once issued, will remain in effect until a decision of the Grievance cell is announced after the hearing or until rescinded by the Grievance cell.**

6.8.9 **All Grievance cell hearings, proceedings, and meetings must be open to the public.**

6.8.10 **All Parties of the Grievance cell hearing shall present themselves at the hearing, may be accompanied by any other student from which they can receive counsel, and have the option to be represented by that counsel.**

6.8.11 **For any hearing, a majority of sitting Grievance cell members must be in attendance with the Chair of the Grievance cell presiding. In the**

absence of the Chair, the responsibility to preside shall fall to an Grievance cell member designated by the Chair.

6.8.12 **The Grievance cell shall determine the format for the hearing, but must require that both the complaining and responding parties appear physically before the board to discuss the issues through a complaint, answered, rebuttal, and rejoinder format. The purpose of the hearing is to gather the information necessary to make a decision, order, or ruling that will resolve an election dispute. To effectuate this purpose, the following rules should prevail at all hearings:**

- **Complaining parties shall be allowed no more than two witnesses, however the Grievance cell may call witnesses as required. If said witnesses are unable to appear at the hearing, signed affidavits may be submitted the the Grievance cell Chair for the purpose of testifying by proxy.**

- **All questions and discussions by the parties in dispute shall be directed to the Grievance cell.**

- **There shall be no direct or cross-examination of any party or witness by complaining or responding parties during hearings.**

- **Reasonable time limits may be set by the Grievance cell, provided they give fair and equal treatment to both sides.**

- **The complaining party shall bear the burden of proof.**

- **Decisions, orders, and rulings of the Grievance cell must be concurred to by a majority of the Grievance cell present and shall be announced as soon as possible after the hearing. The Grievance cell shall issue a written opinion of the ruling within 12 hours of announcement of the decision. The written opinion must set forth the findings of fact by the Grievance cell and the conclusions of law in support of it. Written opinions shall set a precedent for a time period of three election cycles for Grievance cell rulings, and shall guide the Grievance cell in its proceedings. Upon consideration of prior written opinions, the grievance cell may negate the decision, but must provide written documentation of reasons for doing so.**

- **If the decision of the Grievance cell is appealed to the institutional head , the Grievance cell must immediately submit its ruling to the commission.**

- **The Grievance cell shall select the remedy or sanction most appropriate to both the type and severity of the infraction, as well as the state of mind or intent of the violator as determined by the Grievance cell. Possible remedies and sanctions include, but are not limited to, fines, suspension of campaigning privileges, and disqualification from the election.**

- **Any fine or total amount of fines against a candidate in an election cycle may not exceed the spending limit as defined herein above.**

- **If, after a hearing, the Grievance cell finds that provisions of this Code were violated by a candidate, or a candidate's agents or workers, the Grievance cell may restrict the candidate, or the candidates agents or workers, from engaging in some or all campaign activities for some or all of the remainder of the campaign. If an order is issued covering only part of the remaining campaign period, it shall take effect immediately so that after its termination, the candidate will have an opportunity to resume campaigning during the days immediately prior to and including the election days.**

- **If, after a hearing, the Grievance cell finds that provisions of either this Code or decisions, opinions, orders, or rulings of the Grievance cell have been willfully and blatantly violated by a candidate, or a candidate's agents or workers, the Grievance cell may disqualify the candidate.**

- **Any party adversely affected by a decision of the Grievance cell may file an appeal with the institutional head within twenty-four (24) hours after the adverse decision is announced. The institutional head shall have discretionary appellate jurisdiction over the Grievance cell in all cases in which error on the part of the Grievance cell is charged.**

- **The decision of the Grievance cell shall stand and shall have full effect until the appeal is heard and decided by the institutional head.**

- **The institutional head shall hear appeals of Grievance cell rulings as soon as possible, but not within twenty-four (24) hours after the Grievance cell delivers to the Appellant and the institutional head a copy of its written opinion in the case. Appeal may be heard prior to this time, but only if the Appellant waives the right to a written opinion and the institutional head agrees to accept the waiver.**

- **The institutional head can issue suitable orders to suspend or halt the operation of the ruling issued by the Grievance cell until the appeals are decided.**

- **The institutional head shall review findings of the Grievance cell when appealed. The institutional head may affirm or overturn the decision of the Grievance cell, or modify the sanctions imposed.**

6.9 Maintaining Law and Order on the Campus during the Election Process

6.9.1 Any instance of acute lawlessness or the commission of a criminal offence shall be reported to the police by the university / college authorities as soon as possible, but not later than 12 hours after the alleged commission of the offence.

6.10 Miscellaneous Recommendations

6.10.1 Student representation is essential to the overall development of students, and, therefore, it is recommended that university statutes should expressly provide for student representation.

6.10.2 Student representation should be regulated by statute (either a Central Statue, State Statute or individual university statutes), incorporating the recommendations prescribed herein.

6.10.3 The institution should organize leadership-training programs with the help of professional organizations so as to groom and instill in students leadership qualities.

6.10.4 In the event of the office of any major post of office bearer falling vacant within two months of elections, re-elections should be conducted; otherwise the Vice President may be promoted to the post of President and Joint Secretary to the post of Secretary, as the case may be.

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(2006) 8 Supreme Court Cases 304 : 2006 SCC OnLine SC 1002

(*Record of Proceedings*)

(BEFORE DR ARIJIT PASAYAT AND L.S. PANTA, JJ.)

UNIVERSITY OF KERALA (1) . . Petitioner;

Versus

COUNCIL, PRINCIPALS', COLLEGES, KERALA AND OTHERS . . Respondents.

SLPs (C) No. 24295 of 2004[†] with Nos. 24296-99 of 2004, decided on September 22, 2006

A. Universities — Election — Students' union elections — Guidelines for holding of — Supreme Court accepting in toto recommendations (detailed in para 3) made by Lyngdoh Committee, with some minor modifications (specified in para 4) as an interim measure — Directions issued that said guidelines be implemented and followed in all college/university elections to be held post the date of this order, until further orders — ASG directed to communicate this order to the States and Union Territories so that necessary steps could be taken to ensure compliance with this order — Meanwhile, learned counsel for the parties are permitted to submit their suggestions/views regarding elaborations in respect of the recommendations as well as other suggestions/views given by the Committee as regards the grievances mechanism and the other suggestions as regards the schedules, etc. — Suggestions/views to be filed within 4 weeks

(Paras 1, 3, 7, 8 and 5)

B. Universities — Election — Students' union elections — Security of members of academic community involved in — Suggestions of ASG accepted that Police Supdt. in charge of area to provide enough police protection as and when necessity arose

(Para 7)

D-M/35108/C

ORDER

1. Heard.

2. We have perused the report of the Committee constituted by the Ministry of Human Resource Development, Government of India in terms of the order of this Court dated 12-12-2005. The Committee headed by Mr J.M. Lyngdoh has submitted the report making recommendations and suggestions relating to Students' Union Elections. We are, prima facie, of the view that the recommendations

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need acceptance and as an interim measure, we direct the following recommendations to be implemented, subject to such modifications indicated hereinafter.

3. The recommendations are:

"*6.1.1*. Universities and colleges across the country must ordinarily conduct elections for the appointment of students to student representative bodies. These elections may be conducted in the manner

Page: 305

prescribed herein, or in a manner that conforms to the standards prescribed herein.

6.1.2. Where the atmosphere of the university campus is adverse to the conduct of peaceful, free and fair elections, the university, its constituent colleges and departments must initiate a system of student representation based on nominations, especially where elections are being held at present. It would be advisable, however, not to base such nomination system on purely academic merit, as is being practised throughout the country.

6.1.3. In cases where elections are not being held, or where the nomination model prevails, the nomination model should be allowed to continue for a limited period of time. It is to be noted that the nomination system suffers from several flaws, and must only be resorted to as an INTERIM MEASURE.

6.1.4. Subject to the recommendations in respect of the possible model of elections, all institutions must over a period of 5 years, convert from the nomination model to a structured election model, that may be based on a system of parliamentary (indirect) elections, or on the presidential (direct) system, or a hybrid of both. It is highly desirable that all institutions follow this mechanism of gradual conversion, especially for privately-funded institutions that prefer a status quo situation.

6.1.5. All institutions must conduct a review of the student representation mechanism. The first review may be conducted after a period of 2 years of the implementation of the mechanism detailed above, and the second review may be conducted after the 3rd or the 4th year of implementation. The primary objective of these reviews will be to ascertain the success of the representation and election mechanism in each individual institution, so as to decide whether or not to implement a full-fledged election structure. Needless to say these reviews will be based on a consideration of the views and

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suggestions of all stakeholders, such as students, faculty, administration, student bodies, and parents.

6.1.6. Institutions must, as a primary objective, subject to the pertinent issue of discipline on campus, seek to implement a structured system of student elections by conclusion of a period of 5 years from the date of the implementation of the recommendations.

6.1.7. Subject to the autonomy of the universities in respect of the choice of the mode of election, all universities must institute an apex student representative body that represents all students, colleges and departments coming under the particular university. In the event that the university is geographically widespread, individual colleges may constitute their own representative bodies, which would further elect representatives for the apex universities' bodies.

6.1.8. The union/representative body so elected shall only comprise of regular students on the rolls of the institution. No faculty member, nor any member of the administration shall be permitted to hold any post on

Page: 306

the executive of such representative body, nor shall be allowed to be a member of any such representative body.

6.2. Modes of elections

6.2.1. A system of direct election of the office-bearers of the student body, whereby all students of all constituent colleges, as well as all students of university departments vote directly for the office-bearers. This model may be followed in smaller universities with well-defined single campuses (for e.g. JNU/University of Hyderabad), and with a relatively smaller student population. A graphic representation of this model is annexed herewith at Annexure IV-A.

In respect of universities with large, widespread campuses and large student bodies either of the following models may be adopted.

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the campus office-bearers and the university representatives. The university representatives shall form an electoral college, which shall elect the office-bearer of the university student union. A graphic representation of this model is annexed herewith at Annexure IV-C.

6.2.4. A system of election wherein class representatives shall be directly elected in the colleges and universities' campus and they in turn shall elect the office-bearers for the college unions and the university campus union. Also they shall elect their representatives for university student union. These elected representatives from colleges and university campus shall form the electoral college, which shall elect the office-bearers of the university student union. This model shall be applicable to large universities with a large number of affiliated colleges. A graphic representation of this model is annexed herewith at Annexure IV-D.

6.3. Disassociation of student elections and student representation from political parties

6.3.1. During the period of the elections no person, who is not a student on the rolls of the college/university, shall be permitted to take part in the election process in any capacity. Any person, candidate, or member of the student organisation, violating this rule shall be subject to disciplinary proceedings, in addition to the candidature, as the case may be, being revoked.

6.4. Frequency and duration of election process

6.4.1. It is recommended that the entire process of elections, commencing from the date of filing of nomination papers to the date of

declaration of results, including the campaign period, should not exceed 10 days.

6.4.2. It is further recommended that elections be held on a yearly basis and that the same should be held between 6 to 8 weeks from the date of commencement of the academic session.

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6.5.1. Undergraduate students between the ages of 17 and 22 may contest elections. This age range may be appropriately relaxed in the case of professional colleges, where courses often range between 4 to 5 years.

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6.5.3. For research students the maximum age-limit to legitimately contest an election would be 28 years.

6.5.4. Although the Committee would refrain from prescribing any particular minimum marks to be attained by a candidate, the candidate should in no event have any academic arrears in the year of contesting the election.

6.5.5. The candidate should have attained the minimum percentage of attendance as prescribed by the university or 75% attendance, whichever is higher.

6.5.6. The candidate shall have one opportunity to contest for the post of office-bearer, and two opportunities to contest for the post of an executive member.

6.5.7. The candidate shall not have a previous criminal record, that is to say he should not have been tried and/or convicted of any criminal offence or misdemeanour. The candidate shall also not have been subject to any disciplinary action by the university authorities.

6.5.8. The candidate must be a regular, full-time student of the college/university and should not be a distance/proximate education student. That is to say that all eligible candidates must be enrolled in a full-time course, the course duration being at least one year.

6.6. Election-related expenditure and financial accountability

6.6.1. The maximum permitted expenditure per candidate shall be Rs 5000.

6.6.2. Each candidate shall, within two weeks of the declaration of the result, submit complete and audited accounts to the college/university authorities. The college/university shall publish such audited accounts within 2 days of submission of such accounts, through a suitable medium so that any member of the student body may freely examine the same.

6.6.3. The election of the candidate will be nullified in the event of any non-compliance or in the event of any excessive expenditure.

6.6.4. With the view to prevent the inflow of funds from political parties into the student election process, the candidates are specially

barred from utilising funds from any other sources than voluntary contributions from the student body.

6.7. Code of conduct for candidates and election administrators

6.7.1. No candidate shall indulge in, nor shall abet, any activity, which may aggravate existing differences or create mutual hatred or

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cause tension between different castes and communities, religious or linguistic, or between any group(s) of students.

6.7.2. Criticism of other candidates, when made, shall be confined to their policies and programs, past record and work. Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the other candidates or supporters of such other candidates. Criticism of other candidates, or their supporters based on unverified allegations or distortion shall be avoided.

6.7.3. There shall be no appeal to caste or communal feelings for securing votes. Places of worship, within or without the campus shall not be used for election propaganda.

6.7.4. All candidates shall be prohibited from indulging or abetting, all activities which are considered to be 'corrupt practices' and offences, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing or the use of propaganda within 100 metres of polling stations, holding public meetings during the period of 24 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling stations.

6.7.5. No candidate shall be permitted to make use of printed posters, printed pamphlets, or any other printed material for the purpose of canvassing. Candidates may only utilise handmade posters for the purpose of canvassing, provided that such handmade posters are procured within the expenditure limit set out hereinabove.

6.7.6. Candidates may only utilise handmade posters at certain places in the campus, which shall be notified in advance by the Election Commission/university authority.

6.7.7. No candidate shall be permitted to carry out processions, or public meetings, or in any way canvass or distribute propaganda outside the university/college campus.

6.7.8. No candidate shall, nor shall his/her supporters, deface or cause any destruction to any property of the university/college campus, for any purpose whatsoever, without the prior written permission of the college/university authorities. All candidates shall be held jointly and severally liable for any destruction/defacing of any university/college property.

6.7.9. During the election period the candidates may hold processions and/or public meetings, provided that such processions and/or public meetings do not, in any manner, disturb the classes and other academic and co-curricular activities of the college/university.

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Further, such procession/public meeting may not be held without the previous written permission of the college/university authority.

6.7.10. The use of loudspeakers, vehicles and animals for the purpose of canvassing shall be prohibited.

6.7.11. On the day of polling, student organisations and candidates shall—

(*i*) cooperate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction;

(*ii*) not serve or distribute any eatables, or other solid and liquid consumables, except water on polling day;

(*iii*) not hand out any propaganda on the polling day.

6.7.12. Excepting the voters, no one without a valid pass/letters of authority from the Election Commission or from the college/university authorities shall enter the polling booths.

6.7.13. The Election Commission/college/university authorities shall appoint impartial observers. In the case of deemed universities and self-financed institutions, government servants may be appointed as observers. If the candidates have any specific complaint or problem regarding the conduct of the elections they may bring the same to the notice of the observer.

Observers shall also be appointed to oversee the process of nomination of students in institutions that are following the nomination model of student representation.

6.7.14. All candidates shall be jointly responsible for ensuring the cleaning up of the polling area within 48 hours of the conclusion of polling.

6.7.15. Any contravention of any of the above recommendations may make the candidate liable to be stripped off his candidature, or his elected post, as the case may be. The Election Commission/college/university authorities may also take appropriate disciplinary action against such a violator.

6.7.16. In addition to the abovementioned code of conduct, it is also recommended that certain provisions of the Penal Code, 1860 (Section 153-A and Chapter IX-A 'Offences relating to election'), may also be made applicable to student elections.

6.8. Grievances redressal mechanism

6.8.1. There should be a Grievances Redressal Cell with the Dean

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(Student Welfare)/teacher in charge of student affairs as its Chairman. In addition, one senior faculty member, one senior administrative officer and two final year students — one boy and one girl (till the election results are declared, students can be nominated on the basis of merit and/or participation in the co-curricular activities in the previous year).

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The Grievance Cell shall be mandated with the redressal of election-related grievances, including, but not limited to breaches of the code of conduct of elections and complaints relating to election-related expenditure. This cell would be the regular unit of the institution.

6.8.2. In pursuit of its duties, the Grievance Cell may prosecute violators of any aspect of the code of conduct or the rulings of the Grievance Cell. The Grievance Cell shall serve as the court of original jurisdiction. The institutional head shall have appellate jurisdiction over issues of law and fact in all cases or controversies arising out of the conduct of the elections in which the Grievance Cell has issued a final decision. Upon review, the institutional head may revoke or modify the sanctions imposed by the Grievance Cell.

6.8.3. In carrying out the duties of the office, the Grievance Cell shall conduct proceedings and hearing necessary to fulfil those duties. In executing those duties it shall have the authority:

(*i*) to issue a writ of subpoena to compel candidates, agents and workers, and to request students to appear and give testimony, as well as produce necessary records; and

(*ii*) to inspect the financial reports of any candidate and make these records available for public scrutiny upon request.

6.8.4. Members of the Grievance Cell are prohibited from filing complaints. Any other student may file a complaint with the Grievance Cell, within a period of 3 weeks from the date of declaration of results. All complaints must be filed under the name of the student filing the complaint. The Grievance Cell shall act on all complaints within 24 hours after they are received by either dismissing them or calling a hearing.

6.8.5. The Grievance Cell may dismiss a complaint if:

(*iii*) the complaint was not filed within the time-frame prescribed in recommendation 6.8.4 above;

(*iv*) the complaint fails to state a cause of action for which relief may be granted;

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(*v*) the complainant has not and/or likely will not suffer injury or damage.

6.8.6. If a complaint is not dismissed, then a hearing must be held. The Grievance Cell shall inform, in writing, or via e-mail, the complaining party and individuals or groups named in the complaint of the time and place of the hearing. The parties are not considered notified until they have received a copy of the complaint.

6.8.7. The hearing shall be held at the earliest possible time, but not within twenty-four (24) hours after receipt of the notice described above, unless all parties agree to waive the twenty-four hour time constraint.

6.8.8. At the time notice of hearing is issued, the Grievance Cell, by majority vote, may issue a temporary restraining order, if it determines

that such action is necessary to prevent undue or adverse effects on any individual or entity. Any restraining order, once issued, will remain in effect until a decision of the Grievance Cell is announced after the hearing or until rescinded by the Grievance Cell.

6.8.9. All Grievance Cell hearings, proceedings and meetings must be open to the public.

6.8.10. All parties of the Grievance Cell hearing shall present themselves at the hearing, may be accompanied by any other student from which they can receive counsel, and have the option to be represented by that counsel.

6.8.11. For any hearing, a majority of sitting Grievance Cell members must be in attendance with the Chair of the Grievance Cell presiding. In the absence of the Chair, the responsibility to preside shall fall to a Grievance Cell member designated by the Chair.

6.8.12. The Grievance Cell shall determine the format for the hearing, but must require that both the complaining and responding parties appear physically before the board to discuss the issues through a complaint, answer, rebuttal, and rejoinder format. The purpose of the hearing is to gather the information necessary to make a decision, order, or ruling that will resolve an election dispute. To effectuate this purpose, the following rules should prevail at all hearings:

- Complaining parties shall be allowed no more than two witnesses, however, the Grievance Cell may call witnesses as required. If the said witnesses are unable to appear at the

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hearing, signed affidavits may be submitted to the Grievance Cell Chair for the purpose of testifying by proxy.

- All questions and discussions by the parties in dispute shall be directed to the Grievance Cell.
- There shall be no direct or cross-examination of any party or witness by complaining or responding parties during hearings.
- Reasonable time-limits may be set by the Grievance Cell provided they give fair and equal treatment to both sides.
- The complaining party shall bear the burden of proof.
- Decisions, orders and rulings of the Grievance Cell must be concurred to by a majority of the Grievance Cell members present and shall be announced as soon as possible after the hearing. The Grievance Cell shall issue a written opinion of the ruling within 12 hours of announcement of the decision. The written opinion must set forth the findings of fact by the Grievance Cell and the conclusions of law in support of it. Written opinions shall set a precedent for a time period of three election cycles for the Grievance Cell ruling, and shall guide the Grievance Cell in its proceedings. Upon consideration of prior

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written opinions, the Grievance Cell may negate the decision, but must provide written documentation of reasons for doing so.

- If the decision of the Grievance Cell is appealed to the institutional head, the Grievance Cell must immediately submit its ruling to the Commission.
- The Grievance Cell shall select the remedy or sanction most appropriate to both the type and severity of the infraction, as well as the stand of mind or intent of the violator as determined by the Grievance Cell. Possible remedies and sanctions include, but are not limited to, fines, suspension of campaigning privileges, and disqualification from the election.
- Any fine or total amount of fines against a candidate in an election cycle may not exceed the spending limit as defined hereinabove.
- If, after a hearing, the Grievance Cell finds that provisions of this Code were violated by a candidate, or a candidate's agent or workers, the Grievance Cell may restrict the candidate, or the candidate's agent or workers, from engaging in some or all campaign activities for some or all of the remainder of the

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campaign. If an order is issued covering only part of the remaining period, it shall take effect immediately so that after its termination, the candidate will have an opportunity to resume campaigning during the days immediately prior to and including the election days.

- If, after a hearing, the Grievance Cell finds that provisions of either this Code or decisions, opinions, orders, or ruling of the Grievance Cell have been wilfully and blatantly violated by a candidate, or a candidate's agent or workers, the Grievance Cell may disqualify the candidate.
- Any party adversely affected by a decision of the Grievance Cell may file an appeal with the institutional head within twenty-four (24) hours after the adverse decision is announced. The institutional head shall have discretionary appellate jurisdiction over the Grievance Cell in all cases in which error on the part of the Grievance Cell is charged.
- The decision of the Grievance Cell shall stand and shall have full effect until the appeal is heard and decided by the institutional head.
- The institutional head shall hear appeals from the Grievance Cell rulings as soon as possible, but not within twenty-four (24) hours after the Grievance Cell delivers to the appellant and the institutional head a copy of its written opinion in the case. Appeal may be heard prior to this time, but only if the appellant waives the right to a written opinion and the institutional head agrees to accept the waiver.
-

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The institutional head can issue suitable orders to suspend or halt the operation of the ruling issued by the Grievance Cell until the appeals are decided.

- The institutional head shall review findings of the Grievance Cell when appealed. The institutional head may affirm or overturn the decision of the Grievance Cell, or modify the sanctions imposed.

6.9. Maintaining law and order on the campus during the election process

6.9.1. Any instance of acute lawlessness or the commission of a criminal offence shall be reported to the police by the university/college authorities as soon as possible, but not later than

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12 hours after the alleged commission of the offence.

6.10. Miscellaneous recommendations

6.10.1. Student representation is essential to the overall development of students and, therefore, it is recommended that university statutes should expressly provide for student representation.

6.10.2. Student representation should be regulated by statute (either a Central statute, State statute or individual university statutes), incorporating the recommendations prescribed herein.

6.10.3. The institution should organise leadership-training programs with the help of professional organisations so as to groom and instil in students leadership qualities.

6.10.4. In the event of the office of any major post of office-bearers falling vacant within two months of elections, re-elections should be conducted; otherwise the Vice-President may be promoted to the post of President and Joint Secretary to the post of Secretary, as the case may be."

4. We, however, direct modifications in paras 6.6.2 and 6.9.1. The expression "and audited accounts" in para 6.6.2 shall be substituted by the words "and certified accounts" (to be certified by the candidate). Similarly, the period of "12 hours" indicated in para 6.9.1 i.e. "12 hours" shall be substituted by the words "6 hours".

5. Learned counsel for the parties are permitted to submit their suggestions/views regarding elaborations in respect of the aforesaid recommendations as well as other suggestions/views given by the Committee as regards the grievances mechanism and the other suggestions as regards the schedules, etc. The suggestions/views shall be filed within four weeks.

6. Call these matters on 6-11-2006.

7. During the course of hearing of the petition, Mr Gopal Subramanium, learned Additional Solicitor General brought to our notice the need for a direction to provide security to the academic community who are involved in the process of students' union elections in the universities and the colleges. It was suggested that to ensure protection to them, the Superintendent of Police, in charge of the area shall provide enough police protection and shall ensure that no untoward incident takes place by providing adequate number of

police personnel to be posted near the place of elections. The suggestions appear to be wholesome. We direct that the suggestions

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given be implemented as and when the necessity so arises. It is made clear that the recommendations made, which we have accepted to be adopted as an interim measure, shall be followed in all college/university elections, to be held hereinafter, until further orders.

8. This order shall be communicated to the respective States and Union Territories by Mr Gopal Subramanium, learned Additional Solicitor General so that necessary steps can be taken to ensure compliance with our order.

Court Masters

———

† From the Judgment and Order dated 24-6-2004 in WP No. 30845 of 2003 of the High Court of Kerala at Ernakulam

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UNIVERSITY OF DELHI

Published by Authority

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(Revised up to 2002)

Calendar

(THE ACT, STATUTES AND ORDINANCES)

Statutes

Revised up to Feb., 2004

Volume I

Ordinances

(Revised up to Oct. 2004)



2004

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Act No. VIII of 1922

(As amended by Act No. XXIV of 1943)
(Further amended by Act No. V of 1952)
(Further amended by Act No. 61 of 1961)
(Further amended by Act No. 35 of 1970)
(Further amended by Act No. 48 of 1972)
(Further amended by Act No. 27 of 1981)
(Further amended by the Act No. 43 of 2002)

(AS PASSED BY PARLIAMENT)

(Act No. VIII of 1922 received the assent of the Governor-General on the 5th March, 1922, Act No. XXIV of 1943 received the assent of the Governor-General on the 10th September, 1943. Act No. V of 1952 received the assent of the President on the 23rd February, 1952. Act No. 61 of 1961 received the assent of the President on the 19th December, 1961. Act No. 35 of 1970 received the assent of the President on the 4th September, 1970. Act No. 48 of 1972 received the assent of the President on the 3rd September 1972. Act No. 27 of 1981 received the assent of the President on the 11th September, 1981). Act No. 43 of 2002 received the assent of the President on the 25th September, 2002.

Note: The portions printed in italics represent the amendments made by the Delhi University (Amendment) Act, 1952, the Delhi University (Amendment) Act, 1961, the Delhi University (Amendment) Act, 1970, the Delhi University (Amendment) Act, 1972, and the Delhi University (Amendment) Act, 1981.

AN ACT TO ESTABLISH AND INCORPORATE a *teaching and affiliating University* at DELHI.

WHEREAS it is expedient to establish and incorporate a *teaching and affiliating University* at Delhi; It is hereby enacted as follows:

Short Title and Commencement

1. (1) This Act may be called THE DELHI UNIVERSITY ACT, 1922.

(2) It shall come into force on such date as the Central Government may, by Notification in the 'Gazette of India', direct*

Definition

2. In this Act and in the Statutes, unless there is anything repugnant in the subject or context:

*Act No. VIII of 1922 came into force on I st May, 1922.
Act No. XXIV of 1943 came into force on 10th September, 1943.
Act No. V of 1952 came into force on 1st March, 1952.
Act No. 61 of 1961 came into force on 1st February, 1962.
Act No. 35 of 1970 came into force on 4th September, 1970.
Act No. 48 of 1972 came into force on 22nd June, 1972.
Act No. 27 of 1981 came into force on 11th September, 1981.
Act No. 43 of 2002 came into force on 25th September, 2002

(a) *'College means an institution maintained or admitted to its privileges by the University and includes an Affiliated College and a Constituent College;*

Explanation I. 'Affiliated College' means an insitution recognised by the University in accordance with the provisions of this Act and the Statutes in which instruction is provided in accordance with the provisions of the Statutes and Ordinances up to the Bachelor's degree, but exclusive of Honours and Post-graduate degrees;

Explanation II. 'Constituent College' means an institution recognised as such by the Executive Council in accordance with the provisions of this Act and the Statutes;

(b) *'Hall' means a unit of residence for students of the University provided, maintained or recognised by it;*

(c) 'Patron of the University' means a person who has made a donation of not less than one lakh of rupees to the funds of the University, and has been declared by the Chancellor to be a Patron of the University;

(d) 'Principal' means the head of a College; and includes when there is no Principal, the person for the time being duly appointed to act as Principal, and in the absence of the Principal or the acting Principal, a Vice-Principal duly appointed as such;

(e) *Omitted;*

(f) 'Statutes', 'Ordinances' and 'Regulations' mean, respectively, the Statutes, Ordinances and Regulations of the University made under this Act;

(g) 'Teachers' include Professors, Readers, Lecturers and other persons imparting instructions in the University or in any' College or Hall;

(h) *Teachers of the University' means persons appointed or recognised by the University for the purpose of imparting instruction, in the University or in any College;*

(i) 'University, means the University of Delhi; and

(j) Warden' means the Head of a Hall.

THE UNIVERSITY

The University

3. (1) The first Chancellor and the first Vice-Chancellor of the University and the first members of the Court, the Executive. Council and the Academic Council and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of 'The University of Delhi'.

(2) The University shall have perpetual succession and a Common Seal, and shall sue and be sued by the said name.

Powers of the University

4. The University shall have the following powers, namely:

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge,

(2) *to hold examinations and to grant to, and confer degrees and other academic distinctions on, persons who-*

(a) have pursued a course of study in the University or in any College, or

(b) are Non-collegiate Women students residing within the territorial jurisdiction of the University or

(c) are teachers in educational institutions, under conditions laid down in the Statutes and Ordinances and have passed the examinations of the University under like conditions, or

(d) have pursued a course of study by correspondence, whether residing within the territorial jurisdiction of the University or not, or

(e) have been registered by the University, subject to such conditions as may be laid down in the Statutes. and Ordinances. as external candidates, being persons residing within the territorial limits to which the powers of the University extend.

(3) to confer honorary degrees or other distinctions, on approved persons in the manner laid down in the Statutes,

(4) to grant such diplomas to, and to provide such lectures and instruction for, persons not being members of the University, as the University may determine,

(5) to co-operate with other Universities and Authorities in such manner and for such purposes as the University may determine,

(6) to institute Professorships, Readerships, Lectureships and any other teaching posts required by the University,

(7) to appoint or recognise persons as Professors, Readers, or

Lecturers, or otherwise as teachers of the University,

(8) to institute an award Fellowships, Scholarships, Exhibitions and Prizes* **,

(9) *to maintain Colleges and Halls, to admit to its privileges Colleges not maintained by the University and to withdraw all or any of those privileges, and to recognise Halls, not maintained by the University and to withdraw any such recognition,*

(9-A) to declare. with the consent of the colleges concerned, in the manner specified by the Academic Council, Colleges conducting

courses of study in the Faculties of Medicine, Technology, Music or Fine Arts, as autonomous Colleges;.

Provided that the extent of the autonomy which each such College may have, and matters in relation to which it may exercise such autonomy, shall be such as may be prescribed by the 'Statutes.

(9-B) to set up one or more College Administrative Councils for two or more Colleges with such composition, powers and functions as may be laid down in the Statutes,

(10) to demand and receive payment of such fees and other charges as may be authorised by the Ordinances,

(11) to supervise and control the residence and discipline of students of the University, and to make arrangements for promoting their health and general welfare,

(11-A) to make grants from the funds of the University for assistance to forms of extra-mural teaching,

(12) *to make special arrangements in respect of the residence, discipline and teaching of women students,*

(I2-A) *to acquire, hold, manage and dispose of property, movable or immovable, including trust or endowed property, for the purposes of the University,*

(I2-B) *with the approval of the Central Government, to borrow, on the security of University property, money for the purposes of the University,*

(I2-C) *to create administrative and ministerial and other necessary posts and to make appointments thereto, and*

(13) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University as a teaching and examining body, and to cultivate and promote Arts, Science and other branches of learning.

Territorial Exercise of Powers

5. (1) Save as otherwise provided in this Act, the powers of the University conferred by or under this Act [*other than those conferred by Sub-clause (d) of Section 4*] shall not extend *beyond the limits of the State of Delhi* and notwithstanding anything in any other law for the time being in force, no educational institution beyond *those limits* shall be associated with or admitted to any privileges of the University.

Proviso (Omitted).

(I-A) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is of opinion that it is necessary or expedient so to do in the public interest, direct, by order in writing, the University to admit to its privileges any institution situated outside India and the University shall be bound to comply with such direction.

(2) Notwithstanding anything in any other law for the time being in force, no educational instituion within the *afore-mentioned limits* shall be associated in any way with or be admitted to any privileges of any other University incorporated by law in India, and any such privileges granted by any such other University to any educational instituion within *those limits* prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act:

Provided that the Central Government may by order in writing, direct that the provisions of this sub-section shall not apply in the case of any institution specified in the order.

"Provided further that provisions of this sub-section shall not apply in the case if any educational institution affiliated to the Indraprastha Vishwavidyalaya incorporated under the the Indraprastha Vishwavidyalaya Act, 1998".

University open to all Classes, Castes and Creeds

6. The University shall be open to all persons of either sex and of whatever race, *creed, caste or class,* and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except* * * in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or. other instrument creating such benefaction:

Provided that nothing in this Section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those *who have consented to receive it.*

Teaching of the University

7. (1) All recognised teaching. in connection with the University courses shall be conducted under the control of the Academic Council by teachers of the University, and shall include lecturing, laboratory work and other teaching conducted in accordance with any syllabus prescribed by the Regulations.

(2) *Omitted*

(3) The authorities responsible for organising such teaching, shall be prescribed by the Statutes.

(4) The Courses and curricula shall be prescribed by the Ordinances and, subject thereto, by the Regulations.

(5) *Omitted.*

Visitor

7 -A (1) *The President of India shall be the Visitor of the University.*

(2) *The Visitor shall have the right to cause an inspection to be made by such person or persons as he may direct of the University, its buildings, laboratories and equipment and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the University.*

(3) *The Visitor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.*

(4) *The Visitor may address the Vice-Chancellor with reference to the result of such inspection and inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the Visitor with such advice* as *the Visitor may offer upon the action to* be *taken thereon.*

(5) *The Executive Council shall communicate through the Vice-Chancellor to the Visitor such action, if any,* as *it is proposed to take or has been taken upon the result of such inspection or inquiry.*

(6) *Where the Executive Council does not, within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Executive Council, issue such directions* as *he may think fit and the Executive Council shall* be *bound to comply with such directions.*

(7) *Without prejudice to the foregoing provisions of this Section the Visitor may, by order in writing, annul any proceeding of the University which is not in conformity with this Act, the Statutes or the Ordinances:*

Provided that before making any such order he shall call upon the University to show cause why such an *order should not* be *made and, if any cause is shown within a reasonable time, shall consider the same.*

Chief Rector and Rectors

7-B. (1) *The Chief Commissioner of the State of Delhi shall be the Chief Rector of the University.*

(2) *Such persons,* as *may* be *qppointed in this behalf in accordance with the Statutes, shall* be *the Rectors of the University.*

OFFICERS OF THE UNIVERSITY

Officers of the University

8. The following shall be the Officers of the University:

(i) the Chancellor,

(ii) the. Pro-Chancellor,

(iii) the Vice-Chancellor,

(iv) *the Pro-Vice-Chancellor, if any,*

(v) *the* Treasurer,

(vi) the Registrar,

(vii) the Deans *of* the Faculties, and

(viii) such other persons in the service of the University as may be declared by the Statutes to be officers of the University.

9. *Omitted.*

10. *Omitted.*

11. *Omitted.*

12. *Omitted.*

13 .*Omitted.*

14. *Omitted.*

15. *Omitted.*

16. *Subject to the provisions of this Act, the powers and duties of the Officers of the University, the terms for which they shall hold office and the filling of casual vacancies* in *such offices shall* be *provided for by the Statutes*.

AUTHORITIES OF THE UNIVERSITY

Authorities of the University

17. The following shall be the Authorities of the University :

(i) The Court,

(ii) The Executive Council,

(iii) The Academic Council,

(iii-a) The Finance Committee,

(iv) The Faculties and

(v) such other authorities as may be declared by the Statutes to be authorities of the University.

The Court

18. *The Court shall be the Supreme authority of the University and shall have the power to review the acts of the Executive Council and the Academic Council (save when these authorities have acted in accordance with the power conferred upon them under this Act, the Statutes, or the Ordinances) and shall exercise all the powers of the University not otherwise provided for by this Act or the Statutes.*

19 . *Omitted.*

20. *Omitted.*

The Executive Council

21. The Executive Council shall be the executive body of the University, and its constitution and the terms of office of its members, other than ex-officio members, shall be prescribed by the Statutes.

22 . *Omitted.*

The Academic Council

23.The Academic Council shall be the academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards of instruction, education' and examination within the University, and shall exercise such other, powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters. The constitution of the Academic Council and the term of office of its members, other than *ex-officio* , members, shall be prescribed by the Statutes.

24. *Omitted.*

Powers and Duties of Authorities of the University

25. *Subject to the provisons of this Act, the Constitution, powers and duties of the authorities of the University shall be provided for by the Statutes*

UNIVERSITY BOARDS

University Boards

26. The University shall include a Residence, Health, and Discipline Board and such other Boards as may be prescribed by the Statutes.

Constitutions etc. of Boards to be prescribed by Ordinances

27 .The constitution powers and duties of the Residence, Health and Discipline Board, and all other Boards of the University shall be prescribed by the Ordinances.

STATUTES, ORDINANCES AND REGULATIONS

Statutes

28. *Subject to the provisions of this Act the Statutes may provide for all or any of the following matters namely:*

(a) the Constitution powers and duties of the Court, the Executive Council, the Academic Council, the Finance Committee and such other bodies as may be deemed necessary to constitute from time to time :

(b) the election and continuance in office of the members of the said bodies, including the continuance in office of the first members, and, the filling of vacancies of members and all other matters relative to those bodies for which it may be necessary or desirable to provide;

(c) the appointment, powers and duties of the Officers of the University;

(d) the constitution of a pension or Provident Fund and the establishment of an Insurance Scheme for the benefit of the officers, teachers and other employees of the University.

(e) the conferment of honorary degrees;

(f) the withdrawal of Degrees, Diplomas. Certificates and other Academic distinctions;

(g) the establishment and abolition of Faculties, Departments, Halls. Colleges and Institutions;

(h) the conditions under which Colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges:

(hh) the extent of the autonomy which a College. declared as an autonomous College under Clause 9(a) of Section 4, *may have and the matters in relation to which such autonomy may be exercised;*

(hhh) the composition, powers and functions of College Admistrative Councils:

(i) the institution of Fellowships, Scholarships, Student-ships, Exhibitions, Medals and Prizes; and

(j) all other matters which by this Act are or may be provided for by the Statutes.

Statutes how made

29. (1) On the commencement of the Delhi University (Amendment) Act, 1943, Statutes of the University shall be those set out in the Schedule*.

(2) *The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes :*

Provided that the Executive Council shall not make, amend or repeal any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the Executive Council:

Provided further that except with the prior concurrence of the Academic Council, the Executive Council shall not make, amend or repeal any Statute affecting all or any of the following matters, namely:

(i) the constitution, powers and duties of the Academic Council, and the other powers which may be conferred and duties which may be imposed on the Academic Council;

(ii) the authorities responsible for organising recognised teaching in connection with the University courses;

(iii) the withdrawal of Degrees, Diplomas, Certificates and other academic distinctions;

(iv) the establishment and abolition of Faculties, Departments, Halls, Colleges and Institutions;

**See also Section 26 of Delhi University (Amendment) Act, 1952.*

Act No. V of 1952-Temporary provisions for Amendment of Statutes.

(v) the conditions under which Colleges and other Institutions may be admitted to the privileges of the University and the withdrawal of such privileges;

(vi) the institution of Fellowships, Scholarships, Studentships, Exhibitions, Medals and Prizes;

(vii) the extent of the autonomy which a College may have and the matters in relation to which such autonomy may be exercised;

(viii) the composition, powers and functions of College Administrative Councils; and

(ix) the conditions on the fulfilment of which the teachers of Colleges and Institutions may be recognised as teachers of the University.

(3) *Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction, disallow or return it to the Executive Council for further consideration.*

Ordinances

30. *Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:*

(a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for all Degrees, Diplomas and Certificates of the University;

(c) the Degrees, Diplomas. Certificates and other Academic distinctions to be awarded by the University, the qualifications for the same, and the means to be taken relating to the granting and obtaining of the same;

(d) the fees to be charged for courses of study in the University and for admission to the Examinations, Degrees and Diplomas of the Universty;

(e) the conditions of the award of Fellowships, Scholarships, Studentships, Exhibitions, Medals and Prizes;

(f) the conduct of examinations, including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators;

(g) the maintenance of discipline among the students of the University;

(h) the conditions of residence of students at the University;

(i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students, and prescribing for them of special courses of study;

(j) the giving of religious instruction;

(k) the emoluments and the terms and conditions of service of teachers of the University;

(l) the management of Colleges and other Institutions founded or maintained by the University;

(m) the supervision and inspection of Colleges and other Institution admitted to privileges of the University; and

(n) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

Ordinances how made

31. (1) *The Ordinances of the University as in force immediately before the commencement of the University (Amendment) Act,* 1952, *may be amended, repealed or added to at any time by the Executive Council:*

Provided that-

(i) no Ordinance shall be made affecting the conditions of residence or discipline of students, except after consultation with the Academic Council;

(ii) no Ordinance shall be made-

(a) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations. or

(b) affecting the conditions. mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study;

unless a draft of such Ordinance has been proposed by the Academic Council.

(2) *The Executive Council shall not have power to amend any draft proposed by the Academic Council under the provisions of Sub-section* (1) *but may reject the proposal or return the draft to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest.*

(3) *Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Central Government and the Central Government, may, by order, direct that the proposed Ordinance shall be laid before the next meeting of the Court for its approval and that pending such approval it shall have effect from such date as may be specified in the order* :

Provided that if the Ordinance is not approved by the Court at such meeting, it shall cease to have effect.

(4) *All Ordinances made by the Executive Council shall be submitted, as soon as may be, to the Visitor and the Court, and shall be considered by.the Court at its next meeting and the Court shall have power, by a resolution passed by a majority of not less than two-thirds of the members voting, to cancel any Ordinance made by the Executive Council, and such Ordinance shall from the date of such resolution cease to have effect.*

(5) *The Visitor may, by order, direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance, and any order of suspension under this Sub-section shall cease to have effect on the expiration of one month from the date of such order or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.*

(6) *The Visitor may, at any time after an Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and from the date of receipt by the Executive Council of intimation of such disallowance such Ordinance shall cease to have effect.*

Regulations

32. (1) The authorities** of the University may make Regulations consistent with this Act, the Statutes and the Ordinances:

(a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations; and

(c) providing for all other matters solely concerning such authorities *or committees appointed by them* and not provided for by this Act, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the "members of such authority of the dates of meetings and of the business to be considered at meetings and for the keeping of record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such nanner as it may specify, of any Regulation made under this Section or the annulment of any Regulation made under Sub-section (1) :

Provided that any authority or Board of the University which is dissatisfied with any such direction may appeal to the Court, whose decision in the matter shall be final.

RESIDENCE

Residence

33. Every student of the University *(other than a student who pursues a course of study by correspondence)* shall reside in a College a Hall, or under such conditions as may be prescribed by ***the Ordinances.

Colleges

34. (1) The Colleges shall be such as may, after the commencement of the Delhi University (Amendment), Act, 1943, be recognised by the Executive Council in accordance with this Act and Statutes, but shall include all Colleges recognised at the commencement of the said Act as Colleges of the University so long as such recognition continues.

(2) The conditions of residence in the Colleges shall be prescribed by the Ordinances; and every College shall be subject to inspection by any member of the Residence, Health and Discipline Board authorized in this behalf by the Board and by any Officer of the University authorized in this behalf by the Executive Council.

Halls

35. (1) The Halls shall be such as may be maintained by the University or approved and recognised by the Executive Council on such general or special conditions as may be prescribed by the Ordianances.

(2) The Wardens and superintending staff of the Halls shall be appointed in the manner prescribed by the *Ordinances.*

(3) The conditions of residence in the Halls shall be prescribed by the Ordinances, and every Hall shall be subject to inspection by any member of the Residence, Health and Discipline Board authorized in this behalf by the Board and by any officer of the University or other person authorized in this behalf by the Executive Council.

(4) The Executive Council shall have power to suspend or withdraw the recognition of any Hall which is not conducted in accordance with the conditions prescribed by the Ordinances.

36. *Omitted.*

37. *Omitted.*

ANNUAL REPORT AND ACCOUNTS

Annual Report

38. The Annual Report of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the Court on or before such date as may be prescribed by the Statues, and shall be considered by the Court at its annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council.

Audit of Accounts

39. (1) *The accounts of the University shall. once at least in every year at intervals of not more than fifteen months, be audited by the Comptroller and Auditor General of India.*

(2) *The accounts when audited, shall be published in the 'Gazette of India', and a copy of the accounts together with the audit report shall be submitted by the University to the Visitor.*

SUPPLEMENTARY PROVISIONS

40 .*Omitted.*

Disputes as to Constitution of University Authorities and Bodies

41 .If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Chancellor, whose decision thereon shall be final.

Constitution of Committees

42 .Where any authority of the University is given power by this Act or the Statutes to appoint committees, such committees shall, save as otherwise provided, consist of members of the authority concerned and of such other persons (if any) as the authority in each case may think fit.

Filling of Casual Vacancies

43. All casual vacancies among the members (other than *ex-officio* members) of any authority or other body of the University shall be filled, as soon as conveniently may be, by the person or body who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

Proceedings of University Authorities and Bodies not Invalidated by Vacancies

44. No act or proceedings of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members.

Conditions of Service of Officers and Teachers.

45. (1) *Every salaried officer and teacher of the University shall be appointed under a written contract, which shall be lodged with the University and a copy thereof furnished to the officer or teacher concerned.*

(2) *Any dispute arising out of a contract between the University and any of its officers or teachers shall, at the request of the officer or teacher concerned or at the instance of the University, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an umpire appointed by the Visitor, and the decision of the Tribunal shall be final.*

Pension and Provident Fund

46. (1) The University shall constitute, for the benefit of its officers, teachers, clerical staff and servants, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension, insurance and provident funds as it may deem fit.

(2) Where any such pension, insurance or provident fund has been so constituted or where any such pension, insurance or provident fund has been constituted by a College under rules which have been approved by the Central Government, the Central Government may declare that the provisions *of* the Provident Funds Act, 1925, shall apply to such fund as if it were a Government Provident Fund.

47. *Omitted.*

48. *Omitted.*

TEMPORARY PROVISIONS FOR AMENDMENT OF STATUTES

[Vide Section 26 *of the Delhi University (Amendment) Act, 1952]*

The Central government may, by Notification in the Official Gazette, make such adaptations and modifications in the Statutes in force immediately before the commencement of this Act as in its opinion may be necessary or expedient to bring the provisions of the Statutes into accord with the provisions of the principal Act as amended by this Act:

Provided that nothing in this Section shall be deemed to empower the Central Government to make any adaptation or modification of any such Statutes after the expiration of three months from the date on which this Act is brought into force by the Central Government under Sub-section (2) *of Section* 1.

TRANSITIONAL PROVISIONS

Any officer or authority of the University exercising any functions under the principal Act immediately before the commencement of this Act, shall continue to exercise such functions until the corresponding new officer or authority is appointed, elected or constituted in accordance with the provisions of the principal Act as amended by this Act or the Statutes as adopted or modified under this Act.

THE SCHEDULE

THE STATUTES OF THE UNIVERSITY

[See Section 29 (1)]

Definition

1. In these Statutes, unless there is anything repugnant in the subject or context-

(a) 'The Act' means the Delhi University Act, 1922, as amended from time to time and 'section' means, a section of the Act; and

(b) 'Officers', 'Authorities', 'Professors', 'Readers', 'Lecturers', 'Clerical Staff', and 'Servants' mean, respectively, Officers, Authorities, Professors, Readers, Lecturers, Clerical Staff and Servants of the University*.

Court

2. (1) The Court shall consist of the following persons, namely :

Ex-Officio Members .-

(i) Chancellor;

(ii) Pro-Chancellor;

(iii) Vice-Chancellor;

(iv) Pro- Vice-Chancellor, if any;

(v) Dean of Colleges;

(vi) Director, South Campus;

(vii) Treasurer;

(viii) All former Vice-Chancellors;

(ix) Librarian;

(x) Proctor; and

(xi) Dean of Students' Welfare,

Representatives of Departments and Colleges.-

(xii) Heads of Departments of Studies;

(xiii) Principals of Colleges; and

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*(1) Professors in Statute 7(1) includes 'Honorary Professors',

(2). 'University Teachers', 'Readers and Lecturers', in Statute 2(1) (xv) includes 'University appointed Teachers', and 'Recognised Teachers and Readers'.

(3) 'Colleges' wherever it occurs in the Act or the Statutes applies to 'Recognised Institutions' (E.C. Res. Nos. 60 and 65, dated 30-7-1952).

(4) 'Lecturers' occurring in Statute 9(3) (iv) includes 'recognised teachers' (Lecturer) of Colleges and Institutions. (E.C. Res. No. 90, dated 12-8-1958).

(xiv) 'Professors who are not Heads of Departments and Principals of Colleges, in the following manner:

(a) All Professors from Faculties other than Faculties of Medical Sciences and Technology;

(b) Five Professors from the Faculty of Medical Sciences by rotation according to seniority;

(c) Three Professors from the faculty of Technology by rotation according to seniority.

Representatives of University Teachers other than Professors :

(xv) (a) Two Readers, by rotation according to seniority, who shall be members for a term of three years.

(b) Five Lecturers, by rotation according to seniority, who shall be members for a term of three years.

(xvi) Ten persons elected by the Alumni Association from amongst its members in accordance with the Rules laid down in Appendices E' and 'X' to these Statutes.

Persons Representing certain Professions and Industry and Commerce:

(xvii) Not more than ten persons, belonging to any of the following professions, viz., (1) Law, (2) Medicine, (3) Engineering and Technology and (4) Auditing and Accountancy to be elected by the Court in accordance with the Rules laid down in Appendices 'F' and 'X' to these Statutes.

Explanation: A person shall not be regarded as eligible for election under the foregoing clause unless-

(a) he holds qualifications entitling him to practise the profession concerned; and

(b) immediately prior to the date of his signing the nomination paper.....

(i) has been practising that profession for not less than 5 consecutive years, and

(ii) has also been a member of an association or society of members of that profession for not less than 2 years.

(xviii) Not more than six persons representing Industry and Commerce to be elected by the Court in accordance with the Rules laid down in Appendices 'F'and 'X' to these Statutes.

Representatives of Legislatures :

(xix) Three members of Parliament, two to be elected by the Lok Sabha, from among its own members, in such manner as the Speaker may direct and one to be elected by the Rajya Sabha from among its own members, in such manner as the Chairman may direct.

"Provided further that if a Member of Parliament becoming a Minister or Speaker/Deputy Speaker Lok Sabha or Deputy Chairman, Rajya Sabha his/her nomination/election on the Statutory Body shall be deemed to have been terminated.

Representatives of Dehli Legislative Assembly:

(xxi) Two members to be elected by the Delhi Legislative Assembly of the N.C.T. of Delhi, from among its own members, in such manner as the Speaker may direct.

Representatives of Municipal Bodies :

(xxii) Two members to be elected by the Municipal Corporation, Delhi, from among its own members, in such manner as the Mayor may direct and one member to be elected by the New Delhi Municipal Committee, New Delhi, from among its own members, in such manner as the Chairman may direct.

Representatives of Educational Boards :

(xxiii) The Chairman, Central Board of Secondary Education, New Delhi, and one other member of the Board, nominated by the Board.

Nominated Members :

(xxiv) (a) Not more than five persons to be nominated by the Visitor;

(b) One person to be nominated by the Chief Rector; and

(c) Not more than two persons to be nominated by the Chancellor :

Provided that no employee of the University or of a recognised College or Institution shall be eligible to be a member under any of the items (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii) or (xxiii).

(2) If any body of persons entitled to elect a member fails to do so within the time prescribed by the Court, the Court may appoint as member any person when that body of persons could have elected as a member :

Provided that in the case of the first elections to the Court, after the commencement of the Delhi University (Amendment) Act, 1952, the powers conferred upon the Court by this clause shall be exercisable by the Executive Council.

(3) Save as otherwise expressly provided, a member of the Court shall hold office for a period of five years.

3. An annual meeting of the Court shall be held on a date to be fixed by the Executive Council, unless some other date has been fixed by the Court in respect of any year. Any vacancies among the officers of the University or among the members of the Court or the Executive Council or the Finance Committee which ought to be filled by the Court shall be so filled up either at such annual meeting or at any other meeting convened by the Vice-Chancellor.

Executive Council

4. A report of the working of the University during the previous year, together with a statement of the receipts and expenditure, the balance sheet, as audited, and the financial estimates shall be presented to the Court at its annual meeting.

5. (1) The Executive Council shall consist of the following persons, namely:

(i) Vice-Chancellor;

(ii) Pro- Vice-Chancellor;

(iii) Dean of Colleges;

(iv) Director, South Campus;

(v) Director, Campus of Open Learning;

(vi) Treasurer;

(vii) Proctor; .

(viii) Three Deans as specified below:

(a) Dean of the Faculty of Science;

(b) Dean of the Faculty of Arts or the Dean of the Faculty of Social Sciences, by rotation, according to the seniority of the Faculty with reference to the date of its establishment;

(c) One Dean from among the other Faculties by rotation, according to seniority of the Faculties with reference to the dates of their establishment;

(ix) Three Principals, none of whom is a Dean or is eligible to be a Dean, by rotation, according to seniority, including at least one Principal of a Women's College;

(x) Four persons, none of whom shall be an employee of the University or of a recognised College or Institution, elected by the Court from among its members in accordance with the Rules laid down in Appendices' A' and 'X' to these Statutes, at least one of those so elected being a member of the Alumni Association;

(xi) Two persons elected from amongst themselves by the teachers of the University & Library staff of the rank of Professional Junior and above of the University Library & College Librarians other than the Deans of Faculties, the

Principals of Colleges and the Proctor, the election to be held in accordance with the Rules laid down in Appendices 'H' and 'X' to these Statutes;

(xii) Two persons nominated by the Visitor;

(xiii) One person nominated by the Chancellor.

(2) No person shall be a member under item (ix) or (x) of Clause (1) for more than two terms.

(3) Members referred to in items (vii) (b) & (c), (viii) and (x) of Clause (1) shall hold office for a term of two years while those referred to in items (ix), (xi) and (xii) for a term of three years.

(4) Seven members of the Executive Council shall form a quorum.

Note : When the provisions of items (vii) (c) and (viii) of Clause (1) come into force, the Dean who is representing the Faculty which is junior and the junior-most Principal excluding that belonging to a Women's College in case there is only one, shall cease to be the members of the Council and the other Dean and three remaining Principals shall continue to be members for the unexpired portion of their respective terms.

6. (1) The Executive Council shall, subject to the control of the Court, have the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisons of the Act, the Statutes and the Ordinances, the Executive Council shall in addition to all other powers vested in it, have the following powers, namely:

(i) to appoint, from time to time, the Registrar, Librarian, Principals of Colleges and Institutions established by the University and such Professors, Readers, Lecturers and other members of the teaching staff as may be necessary on the recommendations of Selection Committees constituted for the purpose;

Provided that no action shall be taken by the Executive Council, except in cases covered by the second proviso, in respect of the number, qualifications and the emoluments of teachers otherwise than after consideration of the recommendations of the Academic Council:

Provided further it shall not be necessary to constitute any Selection Committee for making appointment :

(a) to any supernumerary post; or

(b) to the post of a Professor of a person of high academic distinction, eminence and professional attainment invited by the Executive Council to accept the post;

(ii) to create administrative, ministerial and other necessary posts, to determine the number and emoluments of such posts, and to appoint persons to such posts on such terms and conditions of service as may be prescribed by the Ordinances in this behalf, or to delegate the powers of appointments to such authority or authorities or officer or officers as the Executive Council may, from time to time, by resolution, either generally or specially direct;

(iii) to grant leave of absence to any officer of the University, other than the Chancellor, the Pro-Chancellor and the Vice-Chancellor and to make the necessary arrangements for the discharge of the functions of such officer during his absence;

(iv) to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University and, for that purpose to appoint such agents as it may think fit;

(v) to invest any money belonging to the University, including any unapplied income, in such stocks, funds, shares or securities. as it may, from time to time, think fit, or in the purchase of immovable property in India, with the like power of varying such investments from time to time;

(vi) to transfer or accept transfers of any movable or immovable, property on behalf of the University;

(vii) to provide the buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University;

(viii) to enter into, vary, carry out and cancel contracts on behalf of the University, and, for that purpose to appoint such persons as it may think fit;

(ix) to entertain, adjudicate upon, and if it thinks fit, to redress any grievances of the officers of the University, the teaching staff, the students and the University's servants, who may, for any reason, feel aggrieved, otherwise than by an act of the Court;

(x) to appoint Examiners and Moderators and if necessary, to remove them, and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic Council;

(xi) to select a Common Seal for the University and provide for the custody and use of the Seal;

(xii) to make such special arrangements as may be necessary for the residence and discipline of women students, after consulting the Advisory Board of Women's Education, the establishment and functions of which are to be prescribed by the Ordinances; and

(xiii) to exercise such other powers and to perform such other duties as may be conferred or imposed on it by the Act or the Statutes.

Academic Council

7. (1) The Academic Council shall consist of the following members, namely:

(i) Vice-Chancellor;

(ii) Pro- Vice-Chancellor;

(iii) Dean of Colleges;

(iv) Director, South Campus;

(v) Director, Campus of Open Learning;

(vi) Librarian;

(vii) Deans of the Faculties;

(viii) Heads of the Departments, other than Deans of Faculties;

(ix) Eight Professors, other than Heads of the Departments and Principals of the Colleges, in the following manner:

(a) Six Professors from Faculties other than Faculties of Medical Sciences and Technology by rotation according to seniority;

(b) One Professor from the Faculty of Medical Sciences by rotation according to seniority;

(c) One Professor from the Faculty of Technology by rotation according to seniority;

(x) Fifteen Principals of Colleges, other than Deans of Faculties by rotation according to seniority;

(xi) The Dean of Students' Welfare;

(xii) Twenty six persons elected from amongst themselves by the teachers of the University and Library Staff of the rank of Professional Junior and above of the University Library & College Librarians other than those falling under items (i) to (x), the election to be held in accordance with the rules laid down in Appendices 'B' and 'X' to these Statutes:

Provided that there shall be at least:

(a) Four University appointed persons;

(b) Four women;

(c) One teacher from the Faculty of Medical Sciences including Ayurvedic & Unani Systems of Medicines; and

(d) One teacher from the non-medical Faculties imparting instruction in other professional courses;

Provided further that no person shall be elected to the Academic Council more than twice.

(xiii) Five students of the University of whom one shall be a Research student, two Post-graduate and two Under- graduate students.

The student-members shall have such qualifications for eligibility as have been prescribed in Appendix 'C' and shall be elected in accordance with the Rules laid down in Appendices 'C' and 'X' to these Statutes.

(xiv) Two persons, not being employees of the University or of a recognised College or Institution, co-opted by the Academic Council for their special knowledge.

(2) Except student members who shall hold office for one-year and *ex-officio* members, all other members of the Academic Council shall hold office .for a term of two years:

Provided that in the case of members elected under Clause (1) (xi), the Vice-Chancellor may extend their term collectively for a period not exceeding one year at a time but not beyond two years on the whole:

Provided further that during the extended term, the Vice- Chancellor may at any time order holding of election under Clause (1) (xi) in which case the said members shall hold office only till the declaration of the result of that election.

(3) Thirty members of the Academic Council shall form a quorum.

8. Subject to the Act, the Statutes and the Ordinances, the Academic Council shall, in addition to all other powers vested in it, have the following powers, namely:

(i) to report on any matter referred to or delegated to it by the Court or the Executive Council;

(ii) to make recommendations to the Executive Council with regard to-

(a) the creation of teaching posts in the University and Colleges maintained by the University and the abolition thereof; and

(b) the classification of the posts referred to in sub-item (a) and their emoluments and the duties attached thereto;

(iii) to formulate and modify or revise schemes for the organisation of Faculties, and to assign to such Faculties their respective subjects and also to report to the Executive Council as to the expediency of the abolition or sub-division of any Faculty or the combination of one Faculty with another;

(iv) to make special arrangement, if any, for the teaching of women students and for prescribing for them special courses of study, after consulting the Advisory Board of Women's Education;

(v) to make arrangements for the instruction and examination of persons not being members of the University as may be necessary;

(vi) to promote research within the University and to require, from time to time, report on such research;

(vii) to consider proposals submitted by the Facultites;

(viii) to appoint Committees for admission to the University;

*(ix) to recognise Diplomas and Degrees of other Universities and Institutions and to determine their corresponding value in relation to the Diplomas and Degrees of the Delhi University;

(x) to fix, subject to any conditions accepted by the Court, the time, mode and conditions of competition for Fellowships, Scholarships and other prizes and to award the same;

(xi) to make recommendations to the Executive Council in regard to the appointment of Examiners and, if necessary, their removal and the fixation of their fees, emoluments and travelling and other expenses;

(xii) to make arrangements for the conduct of examinations and to fix dates for holding them;

(xiii) to appoint, whenever, necessary Inspectors or Boards of Inspectors for inspecting Colleges, applying for admission to the privileges of the University;

(xiv) to declare the results of the various University examinations, or to appoint Committees or officers to do so, and to make recommendations regarding the conferment or grant of degrees, honours diplomas, licences, titles and marks of honour;

(xv) to award Stipends, Scholarships, Medals and Prizes and to make other awards in accordance with the Ordinances and such other conditions as may be attached to the awards;

*The list of examinations of other Universities, etc. (formerly Appendices I, II and III) recognised for purposes of admission to a course of study in this University, is given in the Regulations part of the University Calendar.

(xvi) to publish lists of prescribed or recommended text-books, and to publish syllabuses of the prescribed courses of study;

(xvii) to prepare such forms and registers as are, from time to time, prescribed by the Ordinances; and

(xviii) to perform, in relation to academic matters, all such duties and to do all such acts as. may be necessary for the proper carrying out of the provisions of the Act, the Statutes and the Ordinances.

Faculties

9. (1) The University will have such Faculties as may be prescribed by these Statutes:

Provided that all Faculties which have been established in accordance faculties with the Act, the Statutes or the Ordinances as in force immediately before the commencement of the Delhi University (Amendment) Act, 1952, shall be deemed to have been established in accordance with these Statutes.*

(2) (a) Each Faculty shall consist of such Departments of Studies as may be assigned to it by the Ordinances;

(b) No Department shall be established or aboilished except by the Statutes :

Provided that all Departments which have been established in accordance with the Act, the Statutes or the Ordinances as in force immediately before the commencement of the Delhi University (Amendment) Act, 1952, shall be deemed to be Departments established by these Statutes.*

* The following Faculties had been established prior to the commencement of the Delhi University (Amendment) Act, 1952 :

(a) the Faculty of Arts.
(b) the Faculty of Sciences.
(c) the Faculty of Law.
(d) the Faculty of Medical Sciences
(e) the Faculty of Education.
(f) the Faculty of Agriculture and Forestry.
(g) the Faculty of Technology, and
(h) the Faculty of Social Sciences.

*The following Departments had been established prior to the commencement of the Delhi University (Amendment) Act, 1952 :

Faculty of Arts :

(1) the Department of English
(2) the Department of Philosophy
(3) the Department of History
(4) the Department of Mathematics
(5) the Department of Sanskrit; Bengali, Punjabi and Sindhi.
(6) the Department of Hindi
(7) the Department of Arabic, Persian and Urdu

		(8)	the Department of Russian
		(9)	the Department of Library Science.
		(10)	the Department of Political Science.
Faculty of Science	:	(1)	the Department of Physics and Astrophysics
		(2)	the Department of Chemistry
		(3)	the Department of Anthropology
		(4)	the Department of Zoology
		(5)	the Department of Botany
		(6)	the Department of Nursing
		(7)	the Department of Home Science
Faculty of Law	:	(1)	the Department of Law.
Faculty of Social Sciences	:	(1)	the Department of Economics
		(2)	the Department of Social Work
Faculty of Education	:	(1)	the Department of Education
Faculty of Medical Sciences	:	(1)	the Department of Anatomy and Physiology
		(2)	the Department of Pathology & Bacteriology
		(3)	the Department of Medicine
		(4)	the Department of Surgery
		(5)	the Department of Tuberculosis.
Faculty of Agriculture and Forestry	:	(1)	the Department of Agriculture
		(2)	the Department of Forestry.
Faculty of Technology	:	(1)	the Department of Electrical Engineering
		(2)	the Department of Mechanical Engineering
		(3)	the Department of Chemical Engineering
		(4)	the Department of Textile Technology
		(5)	the Department of Architecture

(c) Each Department shall consist of the following members, namely:

(i) Teachers of the Department;
(ii) Persons appointed to conduct research in the Department;
(iii) Dean of the Faculty or Deans of the Faculties concerned;
(iv) Honorary Professors, if any, attached to the Department;
(v) Such other persons as may be members of the Department in accordance with the provisions of the Ordinances.

(d) (i) Each Department shall have a Professor as its Head provided that when in a Department there is only one Professor or no Professor eligible to be the Head, a Reader may be appointed as its Head and when there is no Professor or Reader eligible to be the Head, the Dean of the Faculty concerend shall act as the Head of the Department.

(ii) No person shall ordinarily be appointed or continue as the Head of a Department on his attaining the age of sixty two years.

(iii) Subject as aforesaid, the duties and functions, terms and conditions and method of appointment of the Head of a Department shall be prescribed by the Ordinances.

(3) Each Faculty shall consist of the following members, namely:

(i) Dean of the Faculty;

(ii) Heads of Departments of Studies in the Faculty;

(iii) All Professors in the Faculty;

(iv) One Reader and one Lecturer, by rotation according to seniority, from each Department in the Faculty;

(v) One Teacher concerned, by rotation according to seniority, from each College;

Provided that the College provides instruction in any of the subjects assigned to the Faculty;

(vi) Persons not connected with the University and having expert knowledge of the subject or subjects concerned co-opted by the Faculty, not more than one for each Department of the Faculty;

Provided that in the case of Faculties, where the number of Departments established is less than five, the number of persons so co-opted may be up to, but not more than five;

(vii) Five persons ncminated by the Academic Council on the recommendation of the Vice-Chancellor, for their special knowledge of any subject assigned to the Faculty or any allied branch of knowledge.

(4) All members of a Faculty, other than *ex-officio* members, shall hold office for a term of three years.

(5) The conduct of the meeting of a Faculty and the quorum required for each Faculty shall be prescribed by the Ordinances.

9-A. The Faculties established in the University shall be the following :

(1) Faculty of Music and Fine Arts.
(2) Faculty of Mathematical Sciences.
(3) Faculty of Management Studies.
(4) Faculty of Ayurvedic and Unani Medicine.
(5) Faculty of Inter-disciplinary and Applied Sciences.
(6) Faculty of Applied Social Sciences & Humanities.
(7) Faculty of Commerce & Business.
(8) Faculty of Open Learning.
(9) Faculty of Homeopathic Medicine.

9-B. There shall be the following Departments established in the University :

(1) Department of African Studies.
(2) Departments of Electrical Engineering.
(3) Department of Mechanical Engineering.
(4) Department of Civil Engineering.
(5) Department of Architecture and Planning.
(6) Department of Philosophy.
(7) * * * * *
(8) Department of Germanic & Romance Studies.
(9) Department of Sociology.
(10) * * * * *
(11) Department of Geography.
(12) Department of Music.
(13) * * * * *
to
(17) * * * * *
(18) Department of Urdu.
(19) Department of Modern Indian Languages and Literary Studies.
(20) Department of Business Management and Industrial Administration.
(21) Department of Physics and Astrophysics.
(22) Department of Buddhist Studies.
(23) Department of Linguistics.
(24) Department of Geology.
(25) Department of Psychology.
(26) Department of East Asian Studies.
(27) Department of Commerce.
(28) Department of Pharmacy.
(29) Department of Biochemistry.
(30) Department of Microbiology.
(31) Department of Genetics.

(32) Department of Environmental Biology.
(33) Department of Fine Arts.
(34) Department of Computer Science.
(35) Department of Ayurvedic Medicine.
(36) Department of Unani Medicine.
(37) Department of Mathematics.
(38) Department of Statistics.
(39) Department of Operational Research.
(40) Department of Arabic.
(41) Department of Persian.
(42) Department of Library and Information Science.
(43) Department of Business Economics.
(44) Department of Electronics Sciences.
(45) Department of Adult Continuing Education and Extension.
(46) Department of Bio-Physics.
(47) Department of Punjabi.
(48) Department of Electronics and Communication Engineering.
(49) Department of Slavonic & Finno-Ugrian Studies.
(50) Department of Plant Molecular Biology.
(51) Department of Applied Sciences & Humanities.
(52) Department of Computer Engineering.
(53) Department of Instrumentation & Control Engineering.
(54) Department of Anatomy.
(55) Department of Physiology.
(56) Department of Medical Biochemistry.
(57) Department of Pathology.
(58) Department of Medical Microbiology.
(59) Department of Pharmacology.
(60) Department of Forensic Medicine.
(61) Department of Medicine.
(62) Department of Paediatrics.
(63) Department of Psychiatry.
(64) Department of Social & Preventive Medicine.
(65) Department of Obstetrics & Gynaecology.
(66) Department of Radiology, Radio-Therapy, Radio-Diagnosis & Radiation Medicine.
(67) Department of Dermatology & Venereology.
(68) Department of Surgery.
(69) Department of Ophthalmology.
(70) Department of Orthopaedics.
(71) Department of Otolaryngology.
(72) Department of Anaesthesiology & Critical Care.
(73) Department of Tuberculosis & Respiratory Diseases.
(74) Department of Financial Studies.
(75) Department of Production & Industrial Engg.
(76) Department of Distance & Continuing Education.

Powers of the Faculties

10. Faculties shall have such powers and shall perform such duties as may be assigned to them by these Statutes and the Ordinances and shall, from time to time, appoint such and so many Committees of Courses and Studies in different branches of knowledge as may be prescribed by the Ordinances. They shall also consider and make such recommendations to the Academic Council on any question pertaining to their respective spheres of work as may appear to them necessary or on any matter referred to them by the Academic Council.

Finance Committee

10-A. (1) The Finance Committee shall consist of the following members, namely:

(i) Vice-Chancellor *(Chairman);*

(ii) Pro- Vice-Chancellor, if any;

(iii) Two persons nominated by the Visitor;

(iv) Two persons, who are not employees of the University or of a recognised College or Institution, elected by the Court in accordance with the Rules laid down in Appendices 'D' and 'X' to these Statutes at least one of those so elected shall be a person who is not a member of the Executive Council;

Provided that no person shall be elected to the Finance Committee more than twice.

(v) Treasurer *(Convener).*

(2) Three members of the Finance Committee shall form a quorum.

(3) All members of the Finance Committee, other than *ex-officio* members, shall hold office for a term of three years.

(4) The Vice-Chancellor shall preside at the meetings of the Finance Committee. In the absence of the Vice-Chancellor, the Pro-Vice-Chancellor shall preside at a meeting thereof. In the absence of both the Vice-Chancellor and the Pro- Vice-Chancellor, the Treasurer shall preside at a meeting thereof.

(5) A member of the Finance Committee shall have the right to record a minute of dissent if he dissents from his colleagues.

(6) The Finance Committee shall meet at least twice every year to examine accounts and to scrutinise proposals for expenditure.

(7) The annual accounts and the financial estimates of 'the University prepared by the Treasurer shall be laid before the Finance Committee for consideration and comments and thereafter submitted to the Executive Council for approval.

(8) The Finance Committee shall fix limits for the total recurring expenditure and the total non-recurring expenditure for the .year, based on the income and resources of the University (which in the case of productive works, may include the proceeds of loans). No expenditure shall be incurred by the University in excess of the limits so fixed.

(9) No expenditure other than that provided for in the budget shall be incurred by the University without the approval of the Finance Committee.

10-B. In addition to the Residence, Health and Discipline Board, there shall be separate Boards of Research Studies in Humanities, Sciences, Medical Sciences, Law, Music, Technology and Inter- disciplinary and Applied Sciences.

Standing Committees etc.

11. Subject to the provisions of the Act and the Statutes, any Authority of the University may, from time to time, appoint such and so many Standing Committees or Sub-Committees or Boards as it may deem fit and may, if it deems fit, appoint to them persons who are not members of such Authority. Such Committees and Boards may deal with any subject delegated to them, subject to subsequent confirmation by the Authority appointing them.

Rectors

11-A. The Visitor may, on his own motion or on the recommendation .of the Court, appoint such persons as he may think fit to be the Rectors of the University.

Chancellor

11-B. The Vice-President of India shall be the Chancellor of the University.

11-C. (1) The Chancellor shall, by virtue of his office, be the head of the University.

(2) The Chancellor shall, if present, preside at the Convocation of the University for conferring degrees and at all meetings of the Court.

Pro-Chancellor

11-D. The Chief Justice of the Supreme Court of India shall be the Pro-Chancellor of the University.

11-E. In the absence of the Chancellor, the Pro-Chancellor, if present, shall preside at a meeting of the Court.

Vice-Chancellor

11-F. (1) The Vice-Chancellor shall be appointed by the Visitor from a panel of not less than three persons selected by a Committee as constituted under Clause (2).

(2) The Committee referred to in Clause (1) shall consist of three persons two of whom shall be persons not connected with the University or a recognised College or Institution nominated by the Executive Council and one person nominated by the Visitor. The Visitor shall appoint one of the three persons to be the Chairman of the Committee :

Provided that if the Visitor does not approve of any of the persons so recommended he may call for fresh recommendations.

(3) The Vice-Chancellor shall be a whole-time salaried officer of the University.

(4) The Vice-Chancellor shall hold office for a term of five years and shall not be eligible for re-appointment.

Provided that, notwithstanding the expiry of the said period of five years, he shall continue in office until his successor is appointed and enters upon his office.

Provided further that the Visitor may direct that a Vice-Chancellor, whose term of office has expired, shall continue in office for such period, not exceeding one year, as may be specified in the direction.

Provided, however, a person appointed as Vice-Chancellor shall retire from office, if, during the term of his office or any extension thereof, he completes the age of 65 years.

(5) The emoluments and the other terms and conditions of service of the Vice-Chancellor shall be prescribed by the Ordinances.

(6) In the case of a casual vacancy in the office of the Vice- Chancellor, the Pro- Vice-Chancellor, if any, shall until the appointment of a new Vice-Chancellor, perform the functions of the Vice-Chancellor.

However, if there is no Pro-Vice-Chancellor or there is a casual vacancy also in the Office of the Pro-Vice-Chancellor, the Dean of Colleges/Director, South Delhi Campus shall, until the appointment of a new V ice-Chancellor, perform the functions of the Vice-Chancellor according to their seniority from the date of appointment. In the event of the date of appointment of the two officers in their offices being the same, the senority will be determined according to their date of birth.

In case of non-availability of the above-mentioned senior officer, the other officer shall perform the functions of the Vice-Chancellor.

Provided that if there is no Pro-Vice-Chancellor, no Dean of Colleges/ Director, South Delhi Campus, the Registrar shall carry on the current duties of the office of the Vice-Chancellor and take action under item (g) of Statute 11-K.

Powers of the Vice-Chancellor

11-G. (1) The Vice-Chancellor shall be the principal Executive and Academic Officer of the University and shall take rank in the University next to the Pro-Chancellor. He shall be the *ex-officio* Chairman of the Executive Council, the Academic Council and the Finance Committee, and shall, in the absence of the Chancellor and the Pro-Chancellor, preside at the Convocation to confer degrees. In the absence of the Chancellor and the Pro-Chancellor, he shall also preside at the meetings of the Court. He shall be entitled to be present at and to address any meeting of any authority or other body of the University but shall not be entitled to vote thereat unless he is a member of such authority or body.

(2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all powers necessary for that purpose.

(3) He shall have the power of convening meetings of the Court, the Executive Council and the Academic. Council and shall

perform all such acts, as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.

(4) If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:

Provided further if the action taken by the Vice-Chancellor is not approved by the authority concerned he may refer the matter to the Visitor whose decision thereon shall be final :

Provided further that where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council.

(5) The Vice-Chancellor shall exercise general control over the affairs of the University and shall give effect to the decisions of the Authorities of the University.

(6) All powers relating to the proper maintenance of discipline, in the University shall stand vested in the Vice-Chancellor.

Pro-Vice-Chancellor

11-H. (1) The Pro-Vice-Chancellor, if the Executive Council decides that there should be one, shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and on such terms as may be laid down in the Ordinances :

Provided that where the recommendation of the Vice-Chancellor is not accepted by the Executive Council, the matter shall be referred to 'the Visitor who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another person to the Executive Council.

(2) The term of office of the Pro-Vice-Chancellor shall ordinarily be coterminous with the office of the Vice-Chancellor:

Provided that, notwithstanding the expiry of the term of his office, the Pro-Vice-Chancellor shall continue in office until his successor is appointed and enters upon his office.

(3) On the expiry of the term of his office the Pro-Vice-Chancellor shall be eligible for re-appointment

(4) A person appointed as Pro-Vice-Chancellor under Clause (2) or (3) of this Statute shall retire from office, if, during the term of his office or any extension thereof, he completes the age of 65 years.

(5) Subject to the control and supervision of the Vice- Chancellor, the Pro- Vice-Chancellor shall perform such duties and exercise such functions and powers as the Vice-Chancellor may specify generally or in individual cases and shall assist the Vice-Chancellor on all matters academic and administrative.

When the Vice-Chancellor is on leave or is away from town for any other reason the Pro- Vice-Chancellor shall perform the functions of the Vice-Chancellor.

Treasurer

11-J. (1) The Treasurer shall be elected by the Court from among a panel of three persons nominated by the Executive Council. The Council shall obtain the consent of the person concerned before inclusion of his name in the panel so nominated. The election of the Treasurer by the Court shall be subject to the approval of the Visitor. He shall hold office for a term of five years.

The election to the office of the Treasurer shall be held either at the annual meeting of the Court or at any other meeting of the Court convened by the Vice-Chancellor. The election shall be by secret ballot. The candidate who obtains the highest number. of votes shall be declared to have been elected. In case of tie, the Chairman shall determine by drawing lots in such a manner as he may determine which of the persons shall be deemed to have been elected. The three persons nominated by the Executive Council for election should signify their consent in writing before their names are nominated.

(2) He shall be an *ex-officio* member of the Court and the Executive Council.

(3) A casual vacancy in the office of the Treasurer shall be filled by the Executive Council. The person appointed to fill such vacancy shall hold office until the election of his successor either at the next annual meeting or at any other meeting of the Court convened by the Vice-Chancellor.

(4) The Treasurer shall exercise general supervision over the funds of the University and shall advise it as regards its financial policy.

(5) The Treasurer shall-

(a) subject to the control of the Executive Council, manage the property and investments of the University and be responsible for the preparation of the annual accounts and the financial estimates and for their presentation to the Executive Council and the Court;

(b) subject to the powers of the Executive Council, be responsible for seeing that all monies are expended on the purpose for which they are granted or allotted;

(c) convene meetings of the Finance Committee; and

(d) exercise such other powers as may be prescribed by the Ordinances.

(6) The receipt of the Treasurer or of the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for the same.

Registrar

11-K. (1) The Registrar shall be appointed by the Executive Council and shall be a whole-time officer of the University. The terms

and conditions of service of the Registrar shall be such as may be prescribed by the Ordinances.

(2) The Registrar shall be *ex-officio* Secretary of the Court, the Executive Council, the Academic Council, the Finance Committee and the Faculties, but shall not be deemed to be a member of any of these Authorities.

(3) It shall be the duty of the Registrar–

(a) to be custodian of the records, Common Seal and such other property of the University as the Executive Council shall commit to his charge;

(b) to issue all notices convening meetings of the Court, the Executive Council, the Academic Council, the Finance Committee, the Faculties, the Boards of Studies, and of any Committee appointed by the Authorities of the University;

(c) to keep the minutes of all meetings of the Court, the Executive Council, the Academic Council, the Finance Committee, the Faculties and any Committee appointed by the Authorities of the University;

(d) to conduct the official correspondence of the Court, the Executive Council and the Academic Council;

(e) to supply to the Visitor copies of the Agendas of the meetings of the Authorities of the University as soon as they are issued and the Minutes of meetings of Authorities ordinarily within a month of the holding of the meeting;

(f) in an emergency, when neither the Vice-Chancellor nor the Pro-Vice-Chancellor nor the Director, South Delhi Campus nor the Dean of Colleges is able to act, to call a meeting of the Executive Council forthwith and to take its directions for the carrying on of the work of the University; and

(g) to perform such other duties as may, from time to time, be assigned to him by the Executive Council.

Other Officers

11-L. The following other persons in the service of the University are hereby declared to be officers of the University:

(1) Dean of Colleges;
(2) Director, South Campus;

(3) Director, Campus of Open Learning;

(4) Librarian; and

(5) Proctor

Dean of Colleges

11-M. (1) The Dean of Colleges, if the Executive Council decides that there should be one, shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and on such terms as may be laid down in the Ordinances:

Provided that where the recommendation of the Vice-Chancellor is not accepted by the Executive Council, the matter shall be referred to the Visitor who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another person to the Executive Council.

(2) The term of office of the Dean of Colleges shall ordinarily be coterminous with the office of the Vice-Chancellor:

Provided that, notwithstanding the expiry of the term of his office, the Dean of Colleges shall continue in office until his successor is appointed and enters upon his office.

(3) On the expiry of the term of his office, the Dean of Colleges shall be eligible for re-appointment.

(4) A person appointed as Dean of Colleges under Clause (2) or (3) of the Statute shall retire from office if, during the term of his office or any extension thereof, he completes the age of 65 years.

(5) Subject to the control and supervision of the Vice- Chancellor, the Dean of Colleges shall perform such duties and exercise such functions and powers as the Vice-Chancellor may specify generally or in individual cases and shall 'assist the Vice-Chancellor on all matters academic and administrative.

Director, South Campus

11-N. (1) The Director, South Campus, if the Executive Council decides that there should be one, shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor.

Provided that if such recommendation is not accepted by the Executive Council, the matter shall be referred to the Visitor, who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another person to the Executive Council.

(2) The term of office of the Director, South Campus, shall be coterminous with the office of the Vice-Chancellor:

Provided that the Director, South Campus, shall continue in office until his successor enters upon his office.

(3) The Director, South Campus, shall be eligible for re- appointment on the expiry of the term of his office.

(4) Notwithstanding anything contained in Clauses (2) and (3) the Director, South Campus, shall retire from office if, during the term of his office or any extension thereof, he completes the age of 65 years.

(5) In all administrative and academic matters concerning those Departments and Colleges that are specified by the Vice-Chancellor, the Director, South Campus, shall exercise all such powers and functions of the Vice-Chancellor as the Vice-Chancellor may specify.

(6) The emoluments: and other terms and conditions of service of Director, South Campus, shall be prescribed by the Ordinances.

Director, Campus of Open Learning

11-O[1]. (1) The Director, Campus of Open Learning, if the Executive Council decides that there should be one, shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor.

Provided that if such recommendation is not accepted by the Executive Council, the matter shall be referred to the Visitor, who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another person to the Executive Council.

(2) The term of office of the Director, Campus of Open Learning, shall be coterminous with the office of the Vice-Chancellor.

Provided that the Director, Campus of Open Learning shall continue in office until his successor enters upon his office.

(3) The Director, Campus of Open Learning, shall be eligible for re-appointment on the expiry of the term of his office.

(4) Notwithstanding anything contained in Clauses (2) and (3), the Director, Campus of Open Learning, shall retire from office if, during the term of his office or any extension thereof, he completes the age of 65 years.

(5) In all administrative and academic matters concerning the Campus of Open Learning, the Director, Campus of Open Learning, shall exercise all such powers and functions of the Vice-Chancellor as the Vice-Chancellor may specify.

(6) The emoluments and other terms and conditions of service of Director, Campus of Open Learning, shall be prescribed by the Ordinances."

11-P. When the Vice-Chancellor and the Pro-Vice-Chancellor are on leave or away from town for any reason, the Dean of Colleges/Director, South Delhi Campus shall perform the functions of the Vice-Chancellor according to their seniority from the date of appointment. In the event of the date of appointment of the two officers in their Offices being the same, the seniority will be determined according to their date of birth.

Dean

12. (1) The Deanship of a Faculty will rotate amongst the Departments of that faculty. For that purpose a list of such Departments, in the order reckoned from the date of their establishment, the oldest Department being put first and so on, shall be prepared. Where two or more departments have been established on the same date, their relative place in the list will be determined by draw of lots.

Any person who is the Head of that Department whose turn comes according to the list, shall be the Dean for a period of three years provided that if that person ceases to be the Head before completing the said term, his successor in the Department shall be the Dean for the remainder of the term and provided further that in a case where the turn of such a department comes where the Dean is to act as the Head, that Department will be bypassed by the one immediately next to it in the list.

(1-A) Notwithstanding anything contained in Clause (1), where there is a Professor in a Faculty, a Reader shall not be appointed as its Dean. In such a situation, if there is a Professor in that Department whose turn comes according to the list, he shall be the Dean; if there is no such Professor, that Department will be bypassed to be followed by next in the list and so on till such time it is ensured that a Professor alone becomes the Dean.

(1-B) When there is no Professor or Reader in a Faculty who can be appointed as its Dean, then the Vice-Chancellor, or the Pro- Vice- Chancellor if so designated by the Vice-Chancellor, shall act as the Dean of that Faculty.

(2) The Dean of each Faculty shall be the executive officer of the Faculty, and shall preside at its meetings.

(3) The Dean shall issue the lecture lists of the University in the Departments comprised in the Faculty, and shall be responsible for the conduct of teaching therein.

(4) The Dean shall have the right to be present and to speak at any meeting of any Committee of the Faculty, but not to vote thereat unless he is a member of the Committee.

Librarian

12 -A. The Librarian shall be appointed by the Executive Council and shall be a whole-time officer of the University. He shall exercise such powers and perform such duties as may be prescribed by these Statutes or as may, subject to these Statutes, be assigned to him by the Executive Council.

Proctor

12 -B. The Proctor shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and shall exercise such powers and perform such duties in respect of the maintenance of discipline among students, as may be assigned to him by the Vice-Chancellor. The Proctor shall hold office for a term of two years.

Warden

13. The appointment of a Warden shall, in the case of a Hall maintained by the University, be made by the Executive Council, and in other cases be subject to the approval of the Executive Council. The Warden shall hold office for a period of two years.

Attachment to Colleges and Halls

14. (1) Every Under-graduate student not residing in a College or Hall shall be attached to a College or Hall for tutorial help and disciplinary supervision and for such other purposes as. may be prescribed by the Ordinaces :

Provided that special exemption from the provisions of the Statute may be made available to women students under conditions to be prescribed by the Ordinances.

(2) Provision for tutorial help to, and disciplinary supervision of Post-graduate students shall be made by the Ordinances.

Withdrawal of Degrees and Diplomas

15. The Court may, on the recommendation of the Executive Council, by a resolution passed with the concurrence of not less than two-thirds of the members voting, withdraw any degree or diploma conferred by the University.

Honorary Degrees

16. (1) All proposals for the conferment of Honorary Degrees shall be made by the Academic Council to the Executive Council, and shall require the assent of the Court before submission to the Chancellor for confirmation:

Provided that, in cases of urgency, the Chancellor may act on the recommendation of the Executive Council only.

(2) Any Honorary Degree conferred by the University may, with the previous approval of two-thirds of the members of the Court and the sanction of the Chancellor, be withdrawn by the Executive Council.

University Teachers

17. (1) Teachers of the University shall be of two classes, namely:

(i) Appointed teachers of the University; and

(ii) Recognised teachers of the University.

(2) 'Appointed teachers of the University' shall be either-

(a) Servants of the University paid by the University and appointed by the Executive Council as Professors, Readers or Lecturers or otherwise as teachers of the University, or

(b) persons appointed by, the Executive Council as Honorary Professors, Readers or Lecturers or otherwise as teachers of the University.

(3) 'Recognised teachers of the University' shall be–

(a) members of the staff of a recognised College of the University, or

(b) members of the staff of a recognised Institution which provides graduate and post-graduate courses of study approved by the University :

Provided that no such member of the staff of a recognised College or Institution shall be deemed to be a recognised teacher unless–

(a) he is recognised by the Executive Council as a Professor, Reader or in any other capacity as a teacher of the University; and

(b) his teaching in his own College or Institution relating to graduate and post-graduate courses is approved by the University.

Recognition of Teachers

18. (1) The qualifications of recognised teachers of the University shall be such as may be determined by the Ordinances.

(2) All applications for the recognition of teachers of the University shall be made in such manner as may be laid down by the Regulations made by the Executive Council in that behalf.

(3) A person in the service of a College/Institution once recognised as Professor/Reader/Lecturer by the University shall continue to be recognised even though he/she is transferred from one teaching institution to another teaching institution affiliated to this University. In case a teacher recognised in any of the capacities mentioned above by this University is transferred to an institution outside Delhi and later returns to Delhi in any of the teaching institutions/colleges affiliated to this University, his/her recognition as previously done by the University shall be restored.

(4) The Executive Council may, on a reference from the Vice-Chancellor; withdraw recognition from a teacher.

Provided that the teacher or the College concerned may, within a period of thirty days from the date of the order of withdrawal, appeal against the order to the Chancellor whose decision shall be final.

18-A. Subject to the provisions of Statute 6(2)(i), no person shall be appointed or recognised as teacher of the University except on the recommendation of a Selection Committee constituted for the purpose.

Selection Committee

19. (1) The Selection Committee for any appointment specified : in column (1) of the Table hereto annexed shall consist of the Vice- Chancellor, the Pro-Vice-Chancellor (if any), a nominee of the Visitor, and the persons specified in the corresponding entry in column (2) of the said Table:

THE TABLE

Professor:	(i) The Head of the Department concerned, if he is a Professor. If the Head is a Reader, then the Professor, if any, in that Department.
	(ii) In case of an appointment in the University Medical College or in a Law Centre, the Principal of that College or the Professor-in-Charge of that Centre, as the case may be.
	(iii) The Head of the Research Institute maintained or recognised by the University in the subject concerned.
	(iv) Three persons not connected with the University, nominated by the Academic Council for their special knowledge of, or interest in, the subject with which the Professor will be concerned.
Reader or Lecturer:	(i) The Head of the Department concerned.
	(ii) In case of an appointment in the University Medical College or in a Law Centre, the Principal of that College or the Professor-in-Charge of that Centre, as the case may be.
	(iii) Two persons not connected with the University, nominated by the Academic Council for their special knowledge of, or interest in, the subject with which the Reader or Lecturer will be concerned.
	(iv) The Head of the Research Institute maintained or recognised by the University in the subject concerned
Registrar:	(i) Treasurer.

(ii) Two members of the Executive Council nominated by it.

Librarian: Two persons not connected with the University, one nominated by the Executive Council and the other nominated by the Academic Council.

(2) The Selection Committee for the recognition of teachers of the Colleges shall consist of the following members:

(a) for the purpose of recognising a College teacher as a Professor :

(i) Vice-Chancellor,

(ii) Pro- Vice-Chancellor (if any),

(iii) nominee of the Visitor appointed under.Statute 19(1),

(iv) Dean of the Faculty concerned, if he is a Professor. If the Dean is a Reader, then the Professor, if any, in the Departments.

(v) Head of the Department concerned if he is a Professor. If the Head is a Reader, then the Professor, if any, in that Department.

(vi) Three persons not connected with the University, nominated by the Academic Council for their special knowledge of, or interest in, the subject with which the Professor will be concerned.

(2) for the purpose of recognising a College teacher as a Reader:

(i) Vice-Chancellor,

(ii) Pro- Vice-Chancellor (if any),

(iii) nominee of the Visitor appointed under Statute 19(1),

(iv) Dean of the Faculty concerned.

(v) Head of the Department concerned,

(vi) Two persons not connected with the University, nominated by the Academic Council for their special knowledge of, or interest in, the subject with which the Reader will be concerned.

(b) for the purpose of recognising a College teacher as a Lecturer or otherwise as a teacher of the University :

(i) Vice-Chancellor,

(ii) Pro- Vice-Chancellor (if any),

(iii) Nominee of the Visitor appointed under Statute 19(1),

(iv) Dean of the Faculty concerned,

(v) Head of the Department concerned.

(3) The Vice-Chancellor, or in his absence, the Pro- Vice- Chancellor, if any, shall preside at the meetings of a Selection Committee.

(4) The meetings of a Selection Committee shall be convened by the Vice-Chancellor, or in his absence, by the Pro-Vice-Chancellor, if any. The meetings shall be fixed at a time convenient to the nominee of the Visitor and other persons nominated by the Academic Council/Executive Council.

(5) Notwithstanding anything contained in Clause (1) to (4), the Director, South Campus, shall also be a member of a Selection Committee in respect of appointment of teachers or, for their recognition; as the case may be, in respect of such Departments and Colleges in the South Campus as the Vice-Chancellor may specify.

(6) The quorum for a meeting of the Selection Committee shall not be complete unless, in addition to the Chairman, in a case where the number of Visitor's. nominee and the persons nominated by the Academic Council/ Executive Council on the Selection Committee is four, at least three of them and where such number is three, at least two of them are present in the meeting. If the quorum is not complete, the meeting shall be adjourned.

(7) The Selection Committee shall consider and submit to the Executive Council recommendations as to the appointment referred to it. If the Executive Council is unable to accept the recommendations made by the Committee, it shall record its reasons and submit the case to the Visitor for final orders.

20 . *Omitted.*

21 . *Omitted.*

22 . *Omitted.*

23 . *Omitted.*

24. *Omitted.*

25 . *Omitted.*

26. The Fellowships and Scholarships instituted by the University are those set out in Appendix 'G' to these Statutes. The conditions for their award shall be prescribed by the Ordinances.

27 . *Omitted.*

Provident Fund

28. (1) There shall be Provident Fund for the benefit of the Officers, Teachers, Clerical staff and other Servants of the University :

Provided that only persons in permanent whole-time service or persons appointed as whole-time servants for a period of not less than four years or persons appointed as whole-time servants in a temporary capacity and who have completed four years of service shall be entitled to subscribe to the Provident Fund from the date of appointment and that Part-time servants and other temporary incumbents of posts shall not be so entitled.

Provided further that probationers shall be entitled to subscribe to the Provident Fund retrospectively from the date of their appointment after they have been confirmed and in that case the University shall also make its contribution from the said date.

Notwithstanding the foregoing provisions and the provisions of Clause (13) (a), (b), (c) persons who are in receipt of any pension from Government if re-employed in the University may be permitted to subscribe to the Provident Fund, provided that where the term of re- employment is initially for a year or less but is later extended so as to exceed one year the contribution with interest will be credited only after the completion of one year's re-employed service. The contribution with interest shall be payable for the entire period for which the re-employed pensioner is allowed to contribute to the Provident Fund if such period exceeds one year.

(2) The management of the Provident Fund shall vest in the Executive Council which may, from time to time, make Regulations or issue such general or special directions as may be consistent with the Statutes as to the conduct of the business of the Fund, or its management or the privileges of the depositors, not herein expressly provided for, or vary or cancel any Regulations made or directions given:

Provided that there shall be a Provident Fund Committee consisting of the V ice-Chancellor, the Pro-V ice-Chancellor, the Treasurer, the Registrar, the Finance Officer, two members appointed by the Executive Council from amongst its own members and two members elected by the subscribers to the Provident Fund under Statute 28 and Statute 28-A, for purposes of advising the Executive Council in the matters relating to investments, payments and other matters in respect of the Provident Fund.

All members of the Provident Fund Committee, other than *ex- officio* members, shall hold office for a term of two years.

(3) (i) Every servant of the University entitled to subscribe to the Provident Fund and receiving a salary of thirty rupees per mensem or more shall be required to subscribe to the Provident Fund.

(ii) No employee of the University shall be entitled to the benefits of the Provident Fund whose services in the University entitle

him to a pension or on whose account the University contributes towards his pension or who has been appointed by the University on a consolidated salary or on special terms.

(iii) The Executive Council, may in the case of a person appointed to a substantive post, permit the transfer to the Provident Fund of any moneys standing to his credit in any recognised Provident Fund to which he was a subscriber immediately before his appointment in the University, and may, with his consent, make such arrangements with the authorities of that other Provident Fund for the purpose of the transfer, whether in the form of cash or of securities, or of both, as may be convenient.

(4) Every servant of the University entitled to the benefits of the Provident Fund shall be required to sign a written declaration in the prescribed form that he has read this Statute and agrees to abide by it, and shall hand in for registration in the University Office the names of the person or persons to whom he wishes the balance at his credit to be paid in the event of his death.

A subscriber may, from time to time, add or change his nominee by written application to the Executive Council.

A register of such of nominees shall be kept in the University Office.

(5) The rate of subscription shall be 8-1/3% cf the monthly salary, rounded off to the nearest rupee, and the amount calculated on this basis shall be deducted from the monthly salary of the employee :

Provided that a subscriber may be permitted to subscribe a higher percentage of his salary in whole rupees subject to a maximum to be fixed by the Executive Council.

Provided further that no subscription or contribution shall be made to the Provident Fund by an employee who is on leave without pay.

(6) The University shall, in the case of each employee, contribute to the Fund a sum equal to such percentage of his salary, rounded off to the nearest rupee as may be approved by the Central Government :

Provided that in the case of a person holding a permanent post in the University immediately before the commencement of the Delhi University (Amendment) Act, 1952, the rate of contribution by the University shall not be less than that which was payable by it immediately before such commencement.

(7) (i) All amounts accruing to the Fund shall be placed in a Nationalised Bank to be operated in such manner as the Executive Council may direct, The balance of the Fund, after reserving suitable amounts for current needs, shall be invested in long term deposits in a Nationalised Bank or in the Post Office or in investments authorised by the Indian Trust Act of 1882 at the discretion of the Executive Council.

Interest at the rate fixed for the purpose by the Executive Council, from time to time, shall be credited to each subscriber account.

(ii) The subscription paid by the subscriber and the contribution by the University shall be entered monthly in a separate account for each subscriber.

(iii) The accounts of the fund shall be audited once a year and a statement of the total amount to the credit of each subscriber shall be furnished to him.

(8) A subscriber at the termination of his service shall be entitled to receive the amount which accumulates to his credit.

(9) On the subscriber's death, the amount at the credit of the subscriber shall be paid to the person or persons duly nominated by him or when no such nomination is made, to his legal heir or heirs.

(10) The amount at the credit of a subscriber shall not be subject to any deduction even to cover loss or damage sustained by the University through the subscriber's misconduct or negligence.

(11) (i) No final withdrawal shall be allowed until the termination of the subscriber's service or his death. But in case of necessity of which the Executive Council shall be the sole judge, the Executive Council may allow a subscriber an advance of a sum not exceeding the total amount subscribed by him.

(ii) Recoveries towards the amount shall be made in equal - monthly instalments not exceeding thirty as may be decided by the Executive Council commencing from the first payment of a full month's salary after the advance is granted but no recovery shall be made from a subscriber when he is on leave otherwise than on full pay.

(iii) When an advance is sanctioned under sub-rule (2) before repayment of last instalment of any previous advance is completed the balance of any previous advance not recovered shall be added to the advance so sanctioned and the instalments for recovery shall be fixed with reference to the consolidated amount.

(iv) An employee who does not withdraw any amount from his Provident Fund account either as a loan or as final withdrawal shall be entitled to a Bonus on the subscription made by him during a financial year. Such Bonus shall be calculated at the rate of 3% of the subscription for such of the employees whose total emoluments do not exceed Rs. 500/- and at the rate of 1 % in case of those whose emoluments exceed Rs. 500/- per month. For purposes of calculation of Bonus the emoluments will be taken as on 31st March of the preceding year. However, in the case of subscribers whose Life Insurance Policies are financed through the Provident Fund subscription, the Bonus shall be calculated on the net subscription during the year after deducting the amount of Life Insurance premium paid during the year. The amount of Bonus so calculated shall be credited to the account of the subscriber at the end of each financial year.

Note : The above provisions shall come into force from the financial year, 1975- 76.

(12) Notwithstanding the provisions of the preceding Clauses of this Statute, all matters relating to, or arising out of the constitution and management of the Provident Fund specified in Clause (1) of this Statute shall in respect of the period prior to the 19th day of June, 1928, be governed and regulated by the original Statute made in that behalf on the 28th day of Septemeber 1922, by the Central Government in exercise of the power conferred on it by Section 47 of the Act.

(13) When a subscriber leaves the University or dies in the service of the University, the Executive Council shall, on the recommendation of the Provident Fund Committee, make payment to him or his estate or person or persons nominated by him under Clause (4) out of the Provident Fund under the following conditions:

(a) If a subscriber leaves or dies before completing four years service, he shall be entitled to the amount which he himself has subscribed together with the interest thereon and the remaining amount shall be paid back to the University.

(b) If a subscriber leaves or dies after completing four years' but less than eight years' service he shall be entitled to the full amount contributed by him with interest together with half of the amount contributed by the University with interest.

(c) If a subscriber leaves or dies after completing eight years' service, he shall be entitled to the total amount standing to his credit in the Provident Fund on the date of his ceasing to be in service.

(d) When a sum becomes payable to a subscriber under items (b) and (c) above, the Treasurer of the University will be entitled to deduct therefrom any amount due under any

liability incurred by the subscriber to the University but not exceeding in any case the total amount of any contributions credited to the account of the subscriber by the University and of any interest which has accrued on such contributions:

Provided that the above provisions shall not apply to persons who were subscribers to the Provident Fund before these provisions came into force".

(14) Notwithstanding anything contained in the preceding Clause of this Statute, a subscriber who ceases to be in service of the University by reason of his taking up an appointment with another University or an educational'institution or a national laboratory, may be declared to be entitled to the contribution of the University in accordance with the rules framed by the Executive Council.

(15) On a written application from a subscriber to the Provident Fund and with the approval of the Executive Council, the University may allow premia on the Life Insurance Policy of the subscriber to be paid out of the subscriber's share in his Provident Fund. In all such cases the Life Insurance Policy for which the premia are so paid shall be assigned in favour of the University. On the retirement of the subscriber from the service of the University the policy shall be re-assigned to him by the University.

In case of maturity of the policy during the service of the subscriber in the University, the full amount of the policy shall be credited to the Provident Fund of the subscriber. In case of the death of the subscriber, during the service of the University, the full amount of the policy shall be paid to the legal representative of the deceased entitled to the Provident Fund.

(16) The word 'Subscription', wherever it occurs in this Statute, means the amount paid by the subscriber and similarly the word 'Contribution' means the amount contributed by the University.

STATUTE 28-A

1. In this Statute unless there is anything repugnant in the subject or context:

(a) 'Emoluments' means emoluments which a member of the staff was receiving immediately before the date of his retirement or relinquishment of service and includes-

(1) Substantive pay in respect of a permanent post other than a tenure post held in a substantive capacity;

(2) Dearness pay admissible in respect of (1) above;

(3) Personal allowance which is granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post;

(4) Fees or Commission if they are authorised emoluments of an appointment and are in addition to pay (in this case emoluments means the average earning for the last six months of service);

(5) Special pay attached to the permanent post other than a tenure post when the special pay has been sanctioned permanently and the post is held in a substantive capacity;

(6) Save as otherwise provided in Sub-clause (aa) one half of-

(i) the difference between the emoluments referred to in (1), (3) and (5) above and the pay actually drawn in higher officiating or temporary appointments;

(ii) Special pay other than referred to in (5) above;

(iii) Pay drawn in temporary or officiating appointments;

(iv) Personal allowance other than that referred to in (3) above;

(v) the difference between the substantive pay and the pay actually drawn in higher tenure appointments whether held in substantive or officiating capacity, provided that service in the tenure appointments does not qualify for the grant of a special additional pension.

(aa) If an employee holding a permanent post in a substantive capacity:

(i) Officiating in a higher post (other than a tenure post) continuously for not less than 3 years and retires or dies while holding the higher post; or is confirmed in such higher post at any time during the last three years of his service after having officiated in that post continuously for three years or more; his emoluments for pension in respect of the higher post for any period beyond three years continuous service in that post shall be determined under Clause (1) (a). as if he held that post in a substantive capacity;

(ii) for computing the length of continuous service in respect of a higher post under Clause (i) above, all kinds of leave all periods during which an empolyee officiated in a higher post, and the time spent on deputation and foreign service shall be included, provided that it is certified that but for his proceeding on leave or serving in other post or going on deputation or foreign service, as the case may be, the employee concerned would have officiated in or held the higher post;

Note : For extending the benefit of (i) above in respect of a temporary post, the temporary post should be borne on

a cadre which includes permanent post on the same scale as the temporary post.

(aaa) In respect of an employee retiring from service on or after 1-7-1968, the term 'Emoluments' means the pay as defined in Clause 1 (f) :

Provided further that for purpose of calculation of the amount of gratuity admissible to a person in receipt of an emoluments in excess of Rs. 1,800/- p.m., his emoluments shall be reckoned at Rs. 1,800/- p.m. (In respect of emloyees who retire on or after the 1st January, 1973 the maximum ceiling of emoluments to be taken into account for calculation of gratuity has been raised to Rs. 2,500/- per mensem) :

Provided further that in respect of emolyees who become eligible to payment of Death-cum- Retirement Gratuity on or after 31st March, 1985, the ceiling of emoluments be raised to Rs. 4,000/- p.m. :

Provided further that in respect of employees retiring on or after 1.1.86, there will be no ceiling on reckonable emoluments for calculating the gratuity.

Note : (1) In respect of employees who retire on or after 1st January, 1973 emoluments for the purpose of determining pension and death-cum-retirement gratuity, in respect of the period prior to 1st January, 1973, shall include besides Pay and Dearness Pay (where admissible) :

(i) the dearness allowance where dearness pay is not admissible;

(ii) the balance of dearness allowance where dearness pay is admissible;

(iii) the interim relief.

Note : (2) In respect of employees who continue to draw dearness allowance and interim relief on or after Ist January, 1973 by virtue of opting for the revised scales of pay on the basis of the decision of the Government of India on the recommendations of the Third Pay Commission in case of non-teaching staff, and the revised scales of pay accepted by the Government of India effective from 1st January, 1973 in case of teaching staff (Professors, Readers and Lecturers) from the date subsequent to 1st January, 1973, besides pay and dearness pay (where admissible), dearness allowance and the interim relief as admissible on such pay under the orders in force on 31-12-1972 and drawn by the employee for the periods beyond 31-12-1972 till the date the revised scales of pay as mentioned above become applicable to him shall be treated as emoluments for the

purpose of determining pension and death-cum-retirement gratuity; the dearness allowance granted from 1st May, 1973 and thereafter shall not be treated as emoluments. These rules will also apply to the employee who opts for the existing rules of pay and retires from service without coming over to the revised scales of pay.

(aaaa) Provided further that if immediately before retirement or relinquishment of service, an employee has been absent from duty on leave with allowances, his emoluments for the above purpose shall be taken at what they would have been had he not been absent from duty.

(b) 'Average emoluments' means the average of the emoluments as defined above, calculated in respect of the last three years of service.

In the case of employees who retired on or after 29th February, 1976, the average emoluments shall be determined with reference to the emoluments calculated in respect of the last ten completed months of service.

(c) 'Family' for the purpose of General Provident Fund and Contributory Provident Fund means-

(i) in the case of a male subscriber, the wife or wives, parents, children and minor brothers, unmarried sisters, deceased son's widow and children and where no parents of the subscriber is alive, a paternal grand-parents; provided that if a subscriber proves his wife had been judicially separated from him or has ceased under customary law of the community to which she belongs to be entitled to maintenance, she shall henceforth be deemed to be no longer a member of the subscriber's family, in matters to which these rules relate, unless the subscriber subsequently intimates in writing to the Registrar that she shall continue to be so regarded;

(ii) in the case of a female subscriber, the husband, parents, children, minor brothers, unmarried sisters, deceased son's widow and children and where no parents of the subscriber is alive, a paternal grand-parents; provided that if a subscriber by notice in writing to the Registrar expresses her desire to exclude her husband from her family, the husband shall henceforth be deemed to be no longer a member of the subscriber's family in matters to which these rules relate, unless the subscriber subsequently cancels such notice in writing.

Note : 'Child' means a Legitimate child and includes an adopted child where adoption is recognised by the personal law Governing the subscriber.

Note : This amendment will also be applicable in the case of Delhi University College Retirement Benefit Rules-1970.

(d) 'Fund' means the General Provident' Fund or the Contributory Provident Fund of the University as per context.

(e) 'Leave' means any variety of leave recognised by the University.

(f) 'Pay' means the amount drawn monthly by a person as pay which has been sanctioned for the post held by him substantively or in an officiating capacity and includes special pay and personal pay, if any.

(g) 'Personal Pay' means additional pay granted to a person :

(i) to save him from a loss of substantive pay in respect of a permanent post owing to a revision of pay or to any reduction of such substantive pay—otherwise than as a disciplinary measure; or

(ii) in exceptional circumstances on other personal consideration.

(h) 'Qualifying Service' means service rendered by a person in a substantive capacity including periods spent on probation. All service rendered to the University on a full time basis in a temporary or officiating capacity followed without interruption by confirmation in the same or another post shall count as qualifying service except in respect of periods of service paid from 'Contingencies'.

Note : (1) An employee, who has not derived any form of retirement benefits from some other organisation before joining the service of the University of Delhi, shall be eligible to add to his service qualifying for superannuation pension but not for any other class of pension the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty five years or a period of five years; whichever is least, if the post to which he is appointed is one:

(a) for which post-graduate research, or specialised qualification, or experience in scientific, technological or professional field is essential; and

(b) to which candidates of more than twenty five years of age are normally recruited :

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the University service is not less than ten years :

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said post contain a specific provision that the post is one which carries the benefit of this Clause.

(2) The powers of condonation of break in service shall ordinarily rest with the Executive Council of the University. The condonation of break in service can be done under the following circumstances:

(1) The interruptions should have been caused by reasons beyond the control of the employee concerned.

(2) Service preceding the interruption should not be less than of five years duration and in cases where there are two or more interruptions, the total service, pensionary benefits in respect of which will be lost if the interruptions are not condoned should not be less than five years.

(3) The interruption should not be more than one year's duration. In cases where there are *two* or more interruptions the total of the period of all the interruptions that are condoned should not exceed one year :

Provided that, in exceptional cases the Executive Council shall recommend to the Visitor for condonation of the break in service for a period exceeding one year; in case of an employee who has put in ten years qualifying service preceding the interruption or the first of the interruptions of the service, when there are more than one; if such condonation is considered necessary in the interest of the University. The period of break even though condoned by the Executive Council, shall not count as qualifying service.

Explanation I–Counting of period of leave as qualifying service.

(i) All periods of leave with pay and allowances shall count as qualifying service.

(ii) The period spent on deputation for training or deputation for any special purpose including periods of travel to and from the country of deputation shall count as qualifying service; provided that if the employee has availed himself of any extra-ordinary leave without allowances during the period of deputation, the period of such extra-ordinary leave shall be excluded.

Explanation II–Period not counting as qualifying service.

The following periods in the service of a person shall not count as qualifying service:

(i) Time passed under suspension by a person pending enquiry into his conduct, if the suspension is not immediately followed by reinstatement.

(ii) Extra-ordinary leave without allowances.

(iii) Unauthorised absence in continuation of authorised leave of absence.

(iv) Service below the age of 18 years.

(v) The period of break in service even though condoned by the Executive Council.

Note : Provided that the extra-ordinary leave may be allowed to count as qualifying service at the discretion of the Executive Council in the following circumstances:

(i) If it is taken for academic pursuits directly connected with the teaching/research job of the employees in the University.

(ii) If it is taken on medical certificate.

(iii) If it is taken due to the inability of the employee concerned to join or rejoin duty due to civil commotion or a natural calamity provided that he has not any other type of leave at his credit.

(iv) If it is taken to take full time assignments in another University/ lnstitution or any other Authority and that the University/ Institution/Authority or the person concerned makes necessary contribution towards retirement benefits.

Explanation III–Retirement benefits to temporary employees.

(i) Temporary employees, who are/were in service on 1.1.1986 and retire on superannuation or on being declared permanently incapacitated for further University service by the appropriate medical authority after having rendered temporary service of not less than 10 years, shall be eligible for grant of superannuation/invalid pension retirement gratuity and family pension at the same scale as admissible to permanent employees of the University.

(ii) Temporary employees, who are/were in service on 1.1.1986 and seek voluntary retirement after completion of 20 years of service, shall be eligible for retirement

pension and other pensionary benefits like death-cum-retirement gratuity and family pension.

Note : Amendments Nos. (i) and (ii) above are in terms of O.M. No. 2/1/87/PIC-1I dated 14.4-.1987 issued by the Govt. of India Min. of Personnel Public Grievances & Pension, Department of Pension & Pensioners' Welfare and the same will also be applicable in the case of Delhi University College Retirement Benefit Rules 1970.

(i) 'Special Pay' means an addition of the nature of pay to emoluments of a post or of a person granted in consideration of the specially arduous nature of his duties or of a specific addition to his work or responsibility.

(j) 'Year' means the financial year of the University.

(k) 'Injury' means bodily injury resulting from violence, accident or disease, assessed by the Consulting Medical Officer of the University as being not less than severe involving loss of earning power.

Note : Examples of injuries of certain categories are given in Schedule 'F'.

(l) 'Accident' means–

(i) A sudden and unavoidable mishap; or

(ii) A mishap due to an act of devotion to duty in an emergency arising otherwise than by violence out of and in the course of service.

(m) 'Disease' means-

(i) disease solely and directly attributable to an accident; or

(ii) an epidemic disease contracted by a person in consequence of his being ordered on duty to an area in which such disease is prevalent, or in consequence of his attending voluntarily, out of humanitarian motives, upon any patient suffering from any such disease in an area where he happens to be in the performance of his duties; or

(iii) venereal disease or septicaemia where such disease or septicaemia is contracted by a Medical Officer as a result of attendance in the course of his official duty or an infected patient or of conducting a post-mortem examination in the course of that duty.

(n) 'Risk of Office' means any risk not being a special risk of accident or disease to which a person is exposed in the course of and as

a consequence of his duties but nothing shall be deemed to be a risk of office which is a risk common to human existence in modern conditions in India, unless such risk is definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of service.

Note : The term 'risk of office', shall include risk of death or injury to which a person is exposed where he attends on a working day, or is required to attend on a holiday, the place of his employment for the performance of his duties during any riot or civil commotion in the locality and while proceeding from his residence to the place of his employment or *vice-versa,* becomes a victim of the said riot or civil commotion,

(o) 'Special risk' means–

(i) a risk of suffering injury by violence;

(ii) a risk of injury by accident to which a person is exposed in the course of and as a consequence of the performance of any particular duty which has the effect of materially increasing his liability to such injury beyond the normal risks of his office;

(iii) a risk of contracting disease to which a Medical Officer is 'exposed as a result of attending in the course of his official duty to a venereal or septicaemia patient or conducting a post-mortem examination in pursuance of that duty'.

(p) 'Violence' means the act of a person who inflicts an injury on an employee:

(i) by assaulting or resisting him in the discharge of his duties, or in order to deter or prevent him from performing his duties; or

(ii) because of anything done or attempted to be done by such member of the staff or by any other member of the staff in the lawful discharge of his duty as such; or

(iii) because of his official position.

(q) 'Employee' means members of the staff (both academic and non-academic) of the University.

(r) 'University' shall mean the University of Delhi as defined in the Act.

(s) 'Registrar' shall mean the Registrar of the University of Delhi,

(t) 'Vice-Chancellor' shall mean the Vice-Chancellor of the University of Delhi.

(u) 'College' shall mean an affiliated or constituent College of the University of Delhi in receipt of maintenance grant from the University Grants Commission.

2. Notwithstanding any provisions of Statute 28.

(a) A person who joins the University service on or after the 1st day of April, 1964, who was a subscriber to the Provident Fund under Statute 28, shall be entitled to subscribe to one of the two alternative schemes, *i.e.,* to the General Provident Fund-cum-Pension-cum-Gratuity Scheme set out in Appendix 'A' or to the Contributory Provident Fund-cum-Gratuity Scheme set out in Appendix 'B'. He shall have the option to continue to subscribe in terms of Statute 28 :

Provided a person who joins the University service after the 1st Day of January, 1986 shall not be entitled to subscribe to the Contributory Provident Fund-cum-Gratuity Scheme set out in Appendix 'B'. He shall be governed by the General Provident Fund-cum-Gratuity Scheme set out in Appendix' A'.

(b) A person who joined the University service before the 1st day of April, 1964 and who, for that reason, had been permitted to contribute to the Provident Fund under Statute 28, may continue to be governed by the provisions of that Statute, or, may, at his option, elect to be governed instead, either by the General Provident Fund-cum-Pension-cum-Gratuity Scheme set out in Appendix 'A' or by the Contributory Provident Fund-cum-Gratuity Scheme set out in Appendix 'B' to this Statute. The option provided for in this sub-clause shall be exercised and communicated to the Registrar, in writing, on or before the date to be specified by the Executive Council and when once exercised, shall be final. The service of such person who opts for General Provident Fund-cum-Pension-cum-Gratuity Scheme shall be deemed to have been in the pensionable post from the commencement of his service in the University, irrespective of the period of service for which the person might have subscribed to the Provident Fund:

Provided that a person who was in the University service before the 1st day of April, 1964, and who, retired on or after the 1st day of April, 1964 before having the opportunity of exercising the option under the sub-clause shall be entitled to exercise an option to opt for either the Scheme set out in Appendix 'A' or the Scheme set out in Appendix 'B' :

Provided further that in the case of a person who was in the University service before the 1st day of April, 1964 and who retired on or after 1st April, 1964, died before having the opportunity of exercising the option under the sub-clause, the person or the persons validly nominated under Statute 28 can make a specific request to opt for either the Scheme set out in Appendix' A' or the Scheme set out in Appendix

'B' and the Executive Council shall have the discretion to accede to the request of the said nominee or nominees of the deceased.

(c) A person who holds a temporary appointment in the service of the University on the 1st day of April, 1964 shall, after continuous service of one year, be entitled to the benefits of General Provident Fund-cum-Pension-cum-Gratuity Scheme set out in Appendix-A to this Statute, from the date of commencement of service or from 1st April, 1964 whichever is earlier.

3. Notwithstanding anything contained in the preceding Clause, a person appointed on contract, a part-time employee and the retired pensioner, deputationist, purely temporary, and daily wage staff shall not be entitled to the benefits of the General Provident Fund-cum-Pension-cum-Gratuity Scheme as contained in Appendix 'A' and the Contributory Provident Fund-cum-Gratuity Scheme as contained in Appendix 'B' except to the extent provided for therein :

Provided that a person who is initially appointed on contract and is subsequently continued permanently shall have, on cancellation of his, contract terms, the option to choose either the Scheme set out in Appendix 'A' or the Scheme set out in Appendix 'B' and he shall have for the purpose of these schemes, the benefit of the service rendered under contract, if the retirement benefits under the contract terms are paid back by him to the University.

4. (i) *Transfer of employees of one Central University to the other.*

A person joining the University after leaving the service of another Central University shall, in the event of his permanent absorption in the University, be allowed retirement benefits in respect of his previous service rendered under the Central University, provided that there is no break in the service excepting the admissible transit time to join the new post and the service rendered is qualifying. This would also cover cases of employees of Colleges affiliated to the Delhi University, receiving maintenance grant from the University Grants Commission (i.e. an employee from a College of the Delhi University coming over to the Delhi University and vice-versa).

Note : (1) For the purpose of these rules, resignation on an . appointment in a Central University/Colleges affiliated to the Delhi University to take up with proper permission another appointment in another Central University/ Colleges affiliated to the Delhi University is not a resignation of service.

(2) (a) In case of transfer of an employee from an affiliated college of Delhi University to Delhi University and *vice-versa* the entire liability on account of retirement

benefits will be met by Delhi University or the affiliated college of Delhi University from which the employee would finally retire.

(b) The terms and conditions of counting of past service for pension, in case of transfer of an employee from one Central University to another will be regulated by the instructions issued by the Government of India vide its OM No. 281084–Pension Unit, dated 29.8.1984 vide Appendix 'D' to Statute *28-A*. Accordingly necessary prorata retirement benefits will be transferred from one Central University to the other.

(3) In case of Contributory Provident Fund, however, the lending University's or College's contribution together with the employees Contributions should on permanent absorption be transferred to the borrowing Central University/Colleges affiliated to the Delhi University.

(ii) When an employee of an autonomous organisation under the Central Government is permanently absorbed in the University.

On his permanent absorption in the Central University, such of the past services of an employee of an autonomous organisation set up by the Central Government, as would have counted for retirement benefits in that autonomous body, should count for retirement benefits payable by the University provided that the transfer is certified to be in the public interest of which the Executive Council of the University shall be the sole judge subject to the following:

(a) The transfer is with the consent of the autonomous organisation.

(b) The autonomous organisation concerned pays to the University, at the time of his permanent absorption in the University, the capitalised value of the retirement benefits in respect of the past service of the employee in that organisation.

(c) In case the employee in question is on Contributory Provident Fund Scheme, the accumulation in his Contributory Provident Fund account shall be transferred by the autonomous organisation to the University, at the time of permanent absorption.

(iii) When an employee of the University is transferred to an autonomous organisation.

The past service of an employee of the University will count for retirement benefits in the case of his permanent absorption in an autonomous organisation provided that the transfer is certified to be in the public interest and the service rendered is qualifying, subject to the following conditions:

(a) The transfer should be with the agreement of the University though the autonomous organisation will be the sole judge to decide whether a transfer is in public interest.

(b) The University pays the capitalised value of the pension and gratuity in respect of the past service of the employee in the University to the autonomous organisation at the time of his permanent absorption therein.

(c) In case the employee in question is on Contributory Provident Fund Scheme, the accumulations in his Contributory Provident Fund Account will be transferred by the University to the autonomous organisation concerned.

(iv) When an employee of a State Government/University is permanently absorbed in the University and vice-versa.

The past service will count for retirement benefits provided that the transfer is certified to be in the public interest and also subject to the following conditions: .

(a) The transfer is made with the consent of parent institution;

(b) The institution to which the employee is transferred shall be the sole judge to decide as to whether the absorption is in the public interest or not;

(c) The parent institution pay the capitalised value of pension and gratuity in respect of past service of the employee in that institution to the latter employer at the time of his permanent absorption; and

(d) In case the employee in question is on Contributory Provident Fund Scheme, the accumulations in the Contributory Provident Fund Account shall be transferred by the parent organisation to the new employer.

When an employee of a State Government/State Autonomous Body/ State Statutory Body including a State University who have agreed to reciprocal arrangements is permanently absorbed in the University or *vice-versa* and is in service on 7th February, 1986, the terms and conditions of counting of combined service for pension/ Gratuity will be regulated by the instructions issued by the Ministry of Home Affairs (Department of Personnel and Administrative Reforms vide O.M.No. 28 (10)/84-P&PW/ Vol. II dated 7.2.1986, 17.6.1986, 30.10.1986 and 20.3.1987 vide Appendix 'E' to Statute 28-A.

The terms and conditions of counting of combined service for Pension/gratuity in respect of a University employee permanently absorbed in Mizoram Govt. and *vice-versa* and is in service on 7.3.1988 will be regulated by the instructions issued by the Government of India, Ministry of

Personnel, P.G. & Pension vide O.M. No. 28/10/84-P & PW/Volume-II dated 7.3.1988 vide Appendix 'F' to Statute 28-A; in respect of a University employee permanently absorbed in Tamil Nadu and *vice-versa* and is in service on 18.4.1988 will be regulated by the instructions issued by the Government of India, Ministry of Personnel, P.G. & Pension vide O.M. No. 28/10/84-P & PW /Volume-III dated 18.4.1988 vide Appendix 'G' to Statute 28-A; in respect of a University employee permanently absorbed in Goa and *vice-versa* and is in service on 27.5.1988 will be regulated by the instructions issued by the Government of India, Ministry of Personnel, P.G. & Pension vide O.M. No. 28/10/84-P & PW/Volume-II dated 27.5.1988 vide Appendix 'H' to Statute 28-A and in respect of University employees permanently absorbed in Manipur and is in service on 20.9.1988 will be regulated by the instructions issued vide O.M. No. 28/10/84-P & PW/ Volume-II dated 20.9.1988 vide Appendix-I to Statute 28-A."

The terms and conditions of counting of combined service for pension/gratuity in respect of a University employee permanently absorbed in Haryana Govt. and *vice-versa* and is in service on 20.7.1989 will be regulated by the instructions issued vide O.M. No. 28/10/84-P & PW/ Volume-II (D) dated 20.7.1989 vide Appendix 'K' to Statute 28-A.

The terms and conditions of counting of combined service for pension/gratuity in respect of University employees permanently absorbed in Orissa Government and *vice-versa* and is in service on 14.2.90 will be regulated by the instructions issued vide O.M. No. 28/10/84-P & PW (B) Vol. II dated 14.2.90 vide Appendix 'L' to Statute 28-A.

(v) When an employee of a reputed Institution/Authority not covered above is permanently absorbed in the University and vice-versa.

The past service in this case will also count as in other categories in Sub-Clauses (ii), (iii) and (iv) under this Clause and with same conditions provided that the transfer is from an institution/authority approved by the Government of India.

The provision under Clause 4 (ii) to (v) will take effect from 3rd September, 1973.

Note: A resignation shall not entail forfeiture of past service if it has been submitted to take up with prior and proper permission of the previous organisation another appointment under the University or any other organisation mentioned in Sub-Clauses (ii), (iii), (iv) and (v) under this Clause.

This takes effect from 31st March, 1977 and cases prior to this date will not be re-opened.

(vi) Permanent absorption of Central Government Employees to the University and vice-versa.

(a) The terms and conditions of permanent absorption of Central Government employees in the University will be regulated by the instructions issued by the Ministry of Finance (Department of Expenditure) from time to time. A copy of these consolidated instructions incorporated in the Ministry of Finance Office Memorandum No. 26(18)-EV (B)/75 dated the 8th April, 1976 as given vide Appendix 'C' to Statute 28-A.

(b) In respect of employees who retire from the Central Government/ Central Autonomous Bodies/the University service on or after 29.8.1984, the terms and conditions of counting services for pension will be regulated by the instructions issued by the Govt. of India vide its O.M. No. 28/10/84-Pension Unit dated 29.8.1984 vide Appendix 'D' to Statute 28-A.

Note : (1) The Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms vide O.M. No. 28/10/84-Pension Unit dated 29.8.1984 regarding mobility of personnel between Central Government Departments and Central autonomous bodies counting of service for pension and gratuity, has extended the benefit of pension based on combined service in respect of those employees who retire from the Central Government/Central autonomous bodies/Central Universities service on or after the issue of these order. It has been stated therein that Central autonomous body means body which is financed wholly or substantially from cess or Central Government grants and Central autonomous body includes a Central statutory body or a Central University but does not include a public undertaking.

(2) These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned.

(3) In respect of those who retired from Central Government/ Central autonomous/Central University service prior to 29.8.1984 and who are otherwise eligible for the benefit of service thereunder, the arrears of pension, if any, which become due to the combined pension would be disbursed to them w.e.f. 29.8.1984. They would not be entitled to get any relief in respect of the past service prior to 29.8.1984.

5. As and when the Central Government amends its Rules giving more benefits to its employees relating to General Provident Fund, Contributory Provident Fund, Pension, Gratuity, etc. which are advantageous to the employees of the University, the employees of the University will be entitled to the same benefits with effect from the date such amendment is brought into force by the Central Government with respect to its employees.

6. The sanction and payment of retirement benefits admissible under this Statute shall be regulated by such procedural instructions as would be issued by the Executive Council.

7. If any question arises relating to the interpretation of this Statute, it shall be referred to the Visitor whose decision thereon shall be final.

APPENDIX 'A' TO STATUTE 28-A

General Provident Fund-cum-Pension-cum-Gratuity Scheme

General Provident Fund

1. *Nominations:*

A subscriber shall, at the time of joining the Fund, send to the Registrar a nomination in such form and in such manner as may be laid down in the Ordinance, conferring on one or more persons, the right to receive the amount that may stand to his credit in the Fund, in the event of his death, before the amount has become payable or, having become payable, before it has been paid:

Provided that if, at the time of making the nomination, the subscriber has a family, the nomination shall not be in favour of any person or persons other than a member of his family:

Provided further that the nomination made by the subscriber in respect of any other Provident Fund to which he was subscribing before joining the Fund shall, if the amount to his credit in such other Fund has been transfened to his credit in the Fund, be deemed to be a nomination under this Statute until he makes a nomination in accordance with this Statute.

2. The University will not be bound by, nor will recognise any assignment or encumbrance executed or attempted to be created which affects the disposal of the amount standing to the credit of a subscriber who dies before the amount becomes payable.

3. (1) An account shall be opened in the name of each subscriber to which shall be credited the subscriber's subscription and interest as provided by these Statutes on subscription.

(2) If an employee admitted to the benefit of the fund was previously a subscriber to any Contributory/Non-contributory Provident Fund of the Central Government/State Government or of a body corporate, owned or controlled by Government or Universities/Colleges or institutions of University status or an autonomous organisation registered under the Societies Registration Act of 1860 immediately before his appointment in the University/College, the amount of his accumulations in such Contributory or Non-contributory Provident Fund shall be transferred to his credit in the Fund.

(3) The management of the Provident Fund shall vest in the Executive Council which may, from time to time, make regulations or issue such general or specific directions as may be consistent with the Statutes as to the conduct of the business of the fund or its management or the privileges of the depositors, not herein expressly provided for, or vary, or cancel any regulations made or directions given.

Provided that there shall be a Provident Fund Committee, consisting of the Vice-Chancellor, the Pro-Vice-Chancellor, the Treasurer, the Registrar, the Finance Officer, two members appointed by the Executive Council from amongst its own members and two members elected by the subscribers to the General Provident Fund-cum-Pension-cum-Gratuity Scheme for purposes of advising the Executive Council in the matters relating to investments, payment and other matters in respect of Provident Fund. All members of the Provident Fund Committee, other than *ex-officio* members, shall hold office, for a term of two years.

4. *Conditions and Rates of Subscription:*

"Every subscriber shall subscribe monthly to the fund when on duty in the service of the University or on foreign service:

Provided that a subscriber shall not subscribe during the period when he is under suspension and may at his option, not subscribe during any period of leave other than leave on full pay or earned leave of less than thirty days' duration, as the case may be. Such option shall be exercised in the manner prescribed in the Ordinance:

Provided further that a subscriber on reinstatement after a period passed under suspension shall be allowed the option of paying in one sum or in instalments, any sum not exceeding the maximum amount of arrear of subscription payable for that period.

5. *Rates of Subscription:*

The rate of subscription shall be fixed by the subscriber himself subject to the following conditions:

The rate of subscription may not be less than 6-$\frac{1}{4}$ % of his emoluments and not more than his total emoluments, amount so calculated being rounded off to the nearest rupee, provided that in the case of subscriptions at the minimum or maximum rates, the rounding off will be to the next higher or the next lower rupee respectively. The amount of subscription may be enhanced or reduced as prescribed in the Ordinance.

'Emoluments' for the purpose of this Clause shall be as prescribed in the Ordinance.

Provided that the rate of subscription shall not be less than 6% of his emoluments and not more than his total emoluments with effect from 1.6.1971.

6. *Interest*

The University shall pay to the credit of the account of each subscriber, interest at such rate as may be determined by the Executive Council for each year at the beginning of the year. Such interest shall be credited to the account of each subscriber as prescribed in the Ordinance.

7. *Advances from the Fund :*

The payment of an advance from the Fund may be sanctioned to the subscriber from the amount of his subscription and interest thereon, standing to his credit, subject to such conditions as may be laid down in the Ordinance.

Recoveries of the amount advanced shall be made from the emoluments of the subscriber in such manner as laid down in the Ordinance and shall commence after payment of the advance is made on the first occasion, on which the subscriber draws emoluments for a full month.

8. *Withdrawal from the Fund :*

Subject to the conditions specified hereunder the withdrawal from the fund may be sanctioned by the Vice-Chancellor at any time:

(1) (A) After the completion of twenty years of service (including broken periods of service, if any) of a subscriber or within ten years before the date of his retirement on superannuation, whichever is earlier, from the amount standing to his credit in the Fund, for one or more of the following purposes namely:

(a) meeting the cost of higher education, including where necessary, the travelling expenses of the subscriber or any child of the subscriber in the following cases, namely:

  (i) for education outside India for academic, technical, professional or vocational course beyond the High School stage; and

  (ii) for any medical, engineering or other technical or specialised course in India beyond the High School stage;

(b) meeting the expenditure in connection with the betrothal/ marriage of the subscriber or his sons or daughters, and any other female relations actually dependent on him;

(c) meeting the expenses in connection with the illness, including, where necessary, the travelling expenses, of the

subscriber and members of his family or any person actually dependent on him.

(B) During the service of a subscriber from the amount of subscription and interest thereon standing to the credit of the subscriber in the Fund, for one or more of the following purposes:

(a) building or acquiring a suitable house or ready built flat for his residence including the cost of the site or any payment towards the allotment of a plot or flat by the Delhi Development Authority, State Housing Board or a House Building Society.

(b) repaying an outstanding amount on account of loan expressly taken for building or acquiring a suitable house or ready-built flat for his residence;

(c) purchasing a house-site for building a house thereon for his residence or repaying any outstanding amount on account of loan expressly taken for this purpose:

(d) reconstructing or making additions or alterations to a house or a flat already owned or acquired by a subscriber;

(e) renovating, additions or alterations or upkeep of an ancestral house at a place other than the place of duty or to a house built with the assistance of loan from Government at a place other than the place of duty;

(f) constructing a house on a site purchased under Clause (c);

(C) Within six months before the date of the subscriber's retirement, from the amount standing in his credit in the Fund, for the purpose of acquiring a farm land or business premises or both.

Note : A subscriber who has availed himself of an advance under the scheme for the grant of advance for house-building purpose, or has been allowed any assistance in this regard from any Government source, shall be eligible for the grant of withdrawal under Sub-Clauses (a), (c), (d) and (f) of Clause (B) for the purposes specified therein and also for the purpose of re-payment of any loan taken' under the aforesaid Scheme subject to the limit specified in Clause 8(2).

If a subscriber has an ancestral house or built a house at a place other than the place of his duty with the assistance of loan taken from the Government he shall be eligible for the grant of a final withdrawal under Sub-Clauses (a), (c) and (f) of Clause (B) for purchase of a house site or

for construction of another house or for acquiring a ready built flat at the place of his duty :

Provided that in no case the maximum amount of withdrawal shall exceed Rs. 1,25,000 or 75 times the monthly pay, whichever is less :

Provided further that in the case of a subscriber who has availed himself of an advance under the scheme of the University for grant of advances for house-building purposes, or has been allowed any assistance in this regard from any Government source, the sum withdrawn under this sub-rule, together with the amount of advance taken under the aforesaid scheme or the assistance taken from any Government source shall not exceed Rs. 1,25,000 or 75 times the monthly pay, whichever is less.

(D) Without assigning any reason, a subscriber within twelve months before retirement on superannuation can apply to the Pro- Vice- Chancellor for sanction of part/final withdrawal up to 90% of the balance at his credit. This facility will be available only once to the subscriber.

Subscribers availing this facility shall not, however, be eligible to invest the amount of such withdrawals in the new saving scheme introduced by the Ministry of Finance, Department of Economic Affairs vide their notification No.F. 2-14/89-NS-l1 dated 7.6.1989.

(2) Any sum withdrawn by a subscriber at anyone time for one or more of the purposes specified in Clause 8(1) from the amount standing to his credit in the Fund shall not ordinarily exceed one-half of such amount or six months' pay of the subscriber, whichever is less. The Vice-Chancellor may, however, sanction the withdrawal of an amount in excess of these limits up to three fourths of the balance at his credit in the fund, having due regard to (i) the object for which the withdrawal is being made, (ii) the status of the subscriber; and (iii) amount to his credit in the Fund.

Provided that for construction of house/flat, the Vice-Chancellor may sanction final withdrawal up to 90% from the G.P.F. amount including interest of the employee.

(3) A subscriber who has been permitted to withdraw money from the fund under Clause 8 (1) shall satisfy the Vice-Chancellor within a reasonable period as may be specified by him that the money has been utilised for the purpose for which it was withdrawn if he fails to do so, the whole of the sum so withdrawn or so much thereof as has not been applied for the purpose for which it was withdrawn shall be ordered by the Vice-Chancellor to be recovered from his emoluments either in a lump sum or in such number of monthly instalments as may be determined by the Executive Council.

(4) A subscriber who has already drawn or may draw in future an advance under Rule 7 for any of the purposes specified in Rule 8 (1) (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) may convert at his discretion by written request to the sanctioning authority the balance outstanding into a final withdrawal on his satisfying the conditions laid down in Rule 8.

8-A. An employee who does not withdraw any amount from his Provident Fund account either as a loan or as final withdrawal shall be entitled to a Bonus on the subscription made by him during a financial year. Such Bonus shall be calculated at the rate of 3% of the subscription for such of the employees whose total emoluments do not exceed Rs. 500/- and at the rate of 1 % in case of those whose emoluments exceed Rs. 500/- per month. For purposes of calculation of Bonus the emoluments will be taken as on 31st March of the preceding year. However, in the case of subscribers whose Life Insurance Policies are financed through the Provident Fund subscription, the Bonus shall be calculated on the net subscription during the year after deducting the amount of Life Insurance premium paid during the year. The amount of bonus so calculated shall be credited to the account of the subscriber at the end of each financial year.

Note : The above provision shall come into force from the financial year 1975-76.

9. *Final withdrawal from the Fund :*

When a subscriber quits the service of the University, the amount standing in his credit in the fund shall be payable to him upon an application made by him in the prescribed Form XIII in that behalf to the Registrar.

Provided that a subscriber who has been dismissed from the service of the University and is subsequently reinstated in service, shall, if required to do so, repay any amount paid to him from the fund in pursuance of this Clause with interest thereon at the rate provided in this Appendix in the manner provided. The amount so repaid shall be credited to his account in the Fund.

Explanation : A subscriber who is granted refused leave shall be deemed to have quit the service from the date of compulsory retirement or the expiry of an extension of service.

10. *Retirement of a Subscriber :*

When a subscriber has proceeded on leave preparatory to retirement or if he is entitled to vacation, on leave preparatory to retirement combined with vacation, or (b) while on leave, has been permitted to retire or has been declared by the Consulting Medical

Officer of the University or by a competent medical authority that may be prescribed by the Executive Council in this behalf to be unfit for further service the amount standing to his credit in the Fund shall, upon an application made by him in that behalf to the Registrar, become payable to the subscriber :

Provided that the subscriber if he returns to duty shall, if required to do so, repay to the Fund for credit to his account the whole or part of any amount paid to him from the Fund in pursuance of this Clause with interest thereon at the rate provided, by instalments or otherwise by recovery from his emoluments or otherwise as the Vice-Chancellor may direct.

11. (1) In the event of the death of a subscriber before the amount standing to his credit has become payable or where the amount has become payable before payment has been made, the payment shall be made as provided in the Ordinance.

(2) *Deposit-linked Insurance Scheme:*

(i) On the death of a subscriber in service, the person(s) eligible to receive Provident Fund balance in terms of the relevant rules will be sanctioned an additional amount equal to the average balance in the account of the deceased in the Fund during the three years immediately preceding the death of the employee subject to the provisions of sub-para (iii) below:

(ii) In the case of Contributory Provident Fund, only the subscription of the employee with interest thereon will be taken as the balance for the purpose of this scheme.

(iii) The above benefit will be available with effect from 8.1.1975 subject to the fulfilment of the following conditions:

(a) The balance representing subscription with interest thereon in the account of the employee should not have fallen below the following limits at any time during the three years preceding the date of death :

(i)	Teachers, Asstt. Registrars and Officers in equivalent scale and above	Rs. 3000/- upto 31.1.1978 Rs. 4000/- with effect from 1.2.1978
(ii)	Section Officer and other Officers in equivalent scale	Rs. 2500/-
(iii)	Employees other than those mentioned in (i), (ii) & (iv)	Rs. 1500/-

(iv) Employees in scale the maximum of which is Rs. 291/- and below. Rs. 1000/-

Provided that nothing in this Clause shall apply if the death of such a. subscriber occurs before the first of February, 1978.

(b) The upper limit up to which the benefit of insurance cover will be available will be Rs. 10,000/-. Thus any amount in excess of Rs. 10,000/- in the Fund will be disregarded for the purpose of this extra benefit.

(c) The benefit would be admissible only if an employee has put in at least five years' service at the time of death.

(iv) On or after 1.1.1989 on the death of a subscriber in service, the person(s) eligible to receive Provident Fund balance in terms of the relevant rules will be sanctioned an additional amount equal to the average balance in the account of the deceased in the Fund during the three years immediately preceding the death of the employee subject to the provisions of sub-para (v) below :

(v) This benefit will be available subject to the fulfilment of the following conditions:

(a) The balance at the credit of such subscriber shall not at any time during the 3 years preceding the month of death have fallen below the limits of :

(i) Rs. 12,000/- in the case of a subscriber who has held, for the greater part of the aforesaid period of three years, a post the maximum of the pay scale of which is Rs. 4000/- or more.

(ii) Rs. 7500/- in the case of subscriber who has held, for the greater part of the aforesaid period of three years, a post the maximum of the pay scale of which is Rs. 2900/- or more but less than Rs. 4,000.

(iii) Rs. 4500/- in the case of a subscriber who has held, for the greater part of the aforesaid period of three years, a post the maximum of the pay scale of which is Rs. 1151/- or more but less than Rs. 2900.

(iv) Rs. 3000/- in the case of a subscriber who has held, for the greater part of the aforesaid period of three

years, a post the maximum of the pay scale of which is less than Rs. 1151/-.

(b) The upper limit up to which the benefit of insurance cover available will be Rs. 30,000/-. Thus any amount in excess of Rs. 30,000/- in Fund will be disregarded for the purpose of this extra benefit.

(c) The benefit would be admissible only if an employee has put in at least five years service at the time of death.

12. A statement of account shall be furnished to each subscriber once a year in the manner prescribed in the Ordinance.

13. *Investment of Fund :*

All amounts accruing to the Fund shall be placed in a nationalised Bank to be operated in such manner as the Executive Council may direct. The balance of the Fund after reserving suitable amounts for current needs, shall be invested in long term deposits in a nationalised Bank or in the Post Office or other investments authorised by the Indian Trust Act of 1882, at the discretion of the Executive Council.

14. *Pension :*

In addition to the General Provident Fund as provided in the foregoing provision of this Statute, every person governed by the provisions of this Section of Appendix 'A' shall be entitled to a pension according to the rules provided hereinafter.

Subject to such rules as may be applicable to the categories of pension set out below, no person shall be eligible for pension unless he has put in a minimum of ten years of qualifying service in the University; provided that minimum age after which service counts for pension shall be eighteen (18) years. In case the qualifying service falls below ten years, a gratuity as in Schedule 'C' shall be admissible.

(1) The Vice-Chancellor reserves to himself the right of withholding for specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the University, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in the proviso under Clause 16.

(2) (a) The departmental proceedings referred to in Sub-Clause (1), if instituted while the University employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the University employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the University employee had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the Vice-Chancellor, that authority shall submit a report recording its findings to the Vice-Chancellor.

(b) The departmental proceedings, if not instituted while the University employee was in service, whether before his retirement or during his re-employment :

(i) shall not be instituted save with the sanction of the Vice-Chancellor;

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the Vice-Chancellor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the University employee during his service.

(3) No judicial proceedings, if not instituted while the University employee was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose, or of an event which took place, more than four years before such institution.

(4) In the case of a University employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-Clause (2) above, a provisional pension not exceeding the pension which would have been admissible on the basis of the qualifying service up to the date of retirement of the University employee, or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension, shall be sanctioned.

(5) Where the Vice-Chancellor decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a University employee.

(6) For the purpose of this Clause:

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the University employee or pensioner, or if the University employee has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to be instituted;

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made; and

(ii) in the case of civil proceedings, on the date of the complaint is presented in the court.

With effect from 01.01.1986, the service gratuity for qualifying service of less than ten years shall be calculated at uniform rates of half month's emoluments for every completed 6 monthly period of service instead of at the rates specified in Schedule 'C'.

15. Subject to the minimum qualifying service, an employee shall be eligible for one or other of the following classes of pensions, depending upon circumstances of the case:

(a) *Compensation Pension :* If an employee is discharged owing to the abolition of the permanent post, he shall be granted a compensation pension on the scale prescribed in Clause 16.

(b) *Invalid Pension :* An invalid pension shall be granted to an employee on retirement from the service of the University, for permanent physical or mental disability incapacitating him for further service, if certified by the Consulting Medical Officer of the University, on the scale prescribed in Clause 16.

In respect of an employee who retired on invalid pension on or after 1st January, 1973 or who may retire as such here-after, the amount of invalid pension shall not be less than the amount of the family pension mentioned at Clause (C) of Rule (24) of Appendix 'A'.

(c) *Superannuation or Retiring Pension :* A superannuation or retiring pension, as the case may be, shall be granted to an employee who may retire from service on completion of the age of retirement or on completion of thirty years of qualifying service whichever is earlier.

Provided that in the event of retirement after thirty years of qualifying service but before the completion of age of sixty years, the employee concerned shall give in this behalf a notice in writing to the Registrar at least three months before the date on which he wishes to retire. In respect of those retiring voluntarily after 30 years of qualifying service on or after 10.9.1983, the total qualifying service shall be increased by the period not exceeding three years, subject to the condition that the total qualifying service rendered by the University employee does not in any case exceed thirty three years and it does not take him beyond the date of superannuation.

Provided further an employee who has put in not less than 20 years of qualifying service may, by giving notice of three months in writing to the Registrar, retire from service voluntarily and the benefit of retiring pension will be admissible to University employee under this scheme subject to the following conditions:

(i) A notice of less than three months may also be accepted in deserving cases by the appointing authority.

(ii) An employee who retires voluntarily while he is on leave not due, without returning to duty, that retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave not due shall be recovered.

(iii) Before an employee gives notice of voluntary retirement under this proviso he should satisfy himself by means of a reference to the Registrar that he has, in fact, completed 20 years service qualifying for pension.

(iv) A notice of voluntary retirement may be withdrawn subsequently only with the approval of the appointing authority provided the request for such withdrawal is made before the expiry of the notice.

(v) A notice of voluntary retirement given after completion of 20 years qualifying service will require acceptance by the appointing authority if the date of retirement on the expiry of the notice would be earlier than the date of which the employee concerned could have voluntarily retired under the existing rules applicable to him (i.e. on completion of 30 years qualifying service). Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the employee concerned for the imposition of a major penalty and the disciplinary

authority having regard to the circumstances of the case is of the view that the imposition of the penalty of the removal or dismissal, from service would be warranted in the cases or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the employee concerned. The employee giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the appointing authority passes an order to the contrary before the expiry of the period of notice excepting those referred to in (a) & (b) above. If it is proposed to accept the notice of voluntary retirement, even in such cases, specific approval of the Executive Council should be obtained and such employee can not presume acceptance of the notice.

(vi) While granting proportionate pension to an employee retiring voluntarily, under this proviso, weightage of up to five years would be given as an addition to the qualifying service actually rendered by him the grant of weightage of upto five years will, however, be subject to the following conditions:

(a) The total qualifying service after allowing the weightage should not, in any event exceed 30 years qualifying service (33 years in respect of those retiring voluntarily on or after 10.9.1983) and it does not take him beyond the date of superannuation.

(b) The weightage of service will not apply to those employees on deputation to autonomous bodies/public sector undertakings/ Universities etc. who propose to get absorbed in such institutions.

(vii) The weightage given under this proviso will be only an addition to the qualifying service for purposes of pension and gratuity. It will not entitle the employees retiring voluntarily to any notional fixation of pay for purpose of calculating the pension and gratuity which will be based on the actual emoluments calculated with reference to the date of retirement.

(viii) An employee giving notice of voluntary retirement may also apply, before the expiry of the notice, for the leave standing to his credit which may be granted to him to run concurrently with the period of notice. The period of leave, if any, extending beyond the date of retirement on expiry of notice but not extending beyond the date on which the University employee should have retired on attaining the age of superannuation may be allowed as

terminal leave in accordance with the leave Rules of the University applicable to the employee.

(ix) The amount of pension to be granted after giving the weightage will be subject to the provisions contained in Clause 14 of Statute 28-A, Appendix 'A'.

Note : The amendment would also be applicable in the case of Delhi University Colleges retirement benefit rules, 1970-*mutatis mutandis.*

16 (i) An employee eligible for pension under any of the categories mentioned above shall be granted on retirement, half of one eightieth (1/2/80th) of the average emoluments for each completed six monthly period of qualifying service subject to a maximum pension as stipulated in the table appended (Schedule 'A') and subject also to the total pension not exceeding thirty times one eightieth of the average emoluments :

Provided that an employee who has retired or will retire on superannuation retiring, invalid or compensation pension on or after 1st March, 1970, and the amount of pension including ad-hoc increase in accordance with the rules/orders in force at the time of his retirement, is less than Rs. 40/- per month the same shall be raised to Rs. 40/- per month (inclusive of ad hoc increase where applicable) with effect from 1.3.1970.

Provided further that in case of a pensioner under this scheme, if the amount of pension including ad hoc increase or both which the pensioner may be in receipt of on 1.3.1970, is less than Rs. 40/- per month (inclusive of ad hoc or temporary increase as the case may be, where applicable), the same shall be raised to Rs. 40/- per month with effect from 1.3.1970.

In respect of employees who had retired on or after 1st January, 1973 or who may retire thereafter the amount of pension in terms of this rule shall be in appropriate amount set out in Schedule 'AA'.

Provided further in the case of superannuation/retiring/invalid/compensation pension falling due on 1st April, 1982 or thereafter the amount of pension plus relief in pension payable be stepped up to Rs. 150/- per month till normal entitlement (pension plus relief) itself adds up to Rs. 150/- per month or more.

Provided further in the case of superannuation/retiring/invalid/compensation pension falling due on 1st April, 1983, or thereafter the amount of pension plus relief in pension payable be stepped up to Rs. 160/- per month till normal entitlement (pension plus relief) itself adds up to Rs. 160/- per month or more.

In respect of employees who had retired on or after 31st March, 1979 or who may retire thereafter, the amount of pension shall be determined in accordance with the following slabs :

(i)	Up to first Rs. 1000/- of average emoluments reckonable for pension.	Amount of monthly pension 50% of average emoluments.
(ii)	Next Rs. 500/- of average emoluments reckonable for pension.	45% of average emoluments.
(iii)	Balance of average emoluments reckonable for pension.	40% of average emoluments subject to an overall ceiling as per Note 2 below.

Note: (1) The amount of pension arrived at on the basis of the above slabs will be related to the maximum qualifying service of 33 years. For University employees who, at the time of retirement, have rendered qualifying service of ten years or more but less than 33 years, the amount of their pension will be such proportion of the maximum admissible pension as the qualifying service rendered by them bears the maximum qualifying service of 33 years. A few illustrations are given in Schedule 'AAA'.

(2) The pension as determined in accordance with the above slabs plus the maximum relief on pension at the rate of Rs. 100/- per month admissible to a pensioner as on 1.12.1978 in accordance with the orders issued by the Government of India and made applicable to the pensioners to whom these Statutes apply, will be subject to an overall ceiling of Rs. 1500/- per month. If the pension itself exceeds Rs. 1,500/- per month, then the maximum pension for full service of 33 years will be restricted to Rs. 1,500/- per month and no relief will be payable up to index level 328.

(3) The existing provisions of the Statutes regarding admissibility of service gratuity, Death-cum-Retirement Gratuity, Family pension and determination of the average emoluments, service qualifying for pension including the provision of treating completed six monthly period of service as qualifying and fraction of a rupee being rounded off to next higher rupee, will remain unaltered.

With effect from 10th September, 1983 in calculating the length of qualifying service, fraction of a year equal to 3 months and above shall be treated as a completed one-half year and reckoned as qualifying service.

Provided further that in the case of superannuation/invalid/ retiring/compensation pension falling due on 1.1.1986 or thereafter, the amount of pension plus relief in pension payable be stepped up to Rs. 375/- per month.

In respect of employees retiring on or after 1.1.1986, pension shall be calculated at 50% of average emoluments instead of under the slab formula and shall be subject to a minimum of Rs. 375/- p.m. and maximum of Rs. 4500/- p.m.

(ii) *Nominations:*

Any pensioner to whom any pension is payable by the University may nominate any other person (hereinafter referred to as the nominee) in accordance with the provisions given below, who shall receive after the death of the pensioner all moneys payable to the pensioner on account of such pension, before or after the death of such nomination and which remain unpaid immediately before the death of the pensioner.

(1) Every pensioner who has retired on or before the date of coming into effect of this amendment shall within six months nominate any person for the purpose of above mentioned paragraph in the form given in the Schedule 'G' and submit it, in triplicate by personal service after taking receipt or by sending through registered post acknowledgement due to the respective Pension Disbursing Authority through whom pension is drawn.

(2) Within thirty days of the receipt of nomination in the form as referred to above the Pension Disbursing Authority shall get the particulars of the pensioner as mentioned in the above form, verified with reference to the available record and return to the pensioner, after obtaining a receipt thereof, the duplicate copy of the nomination form duly attested by him or an officer authorised by him in this behalf. The triplicate copy shall be sent to the Registrar of the University while the original copy of the nomination shall be recorded.

(3) Every employee who is due to retire after the date of coming into force of the amendment shall, submit the nomination, in triplicate, in the form referred to above to the Registrar of the University within three months before or after the date of retirement.

(4) Within thirty days of the receipt of the nomination in the form referred to above the Registrar shall get the particulars of the pensioners, as mentioned in the form verified with reference to the records of the establishment and return to the pensioner after obtaining the receipt thereof, the duplicate copy of the nomination form duly attested by him or by an officer authorised by him in this behalf. The triplicate copy duly accepted shall be sent to the Finance Officer, who shall pass it on to the Pension Disbursing Authority.

(5) A Notice of modification of nomination including cases where a nominee pre-deceases the pensioner shall be submitted in triplicate in the form given in Schedule 'H' to the Pension Disbursing Authority in the manner specified in Sub-Clause 1 and thereafter the provisions of the Sub-Clause (2) shall apply *mutatis-mutandis* with modifications as if it was made under Sub-Clause (1).

(6) A Nomination or a fresh nomination or notice of modification of nomination shall be signed by the pensioner or, if he is illiterate, shall bear his thumb impression given in the presence of two witnesses who shall also sign a declaration to the effect in the nomination, fresh nomination or notice of modification of nomination, as the case may be. .

(7) Nomination, fresh nomination or notice of modification of nomination shall take effect from the date of receipt thereof by the Pension Disbursing Authority or the Registrar, as the case may be.

(8) A nomination made under this Clause and accepted by the Registrar, shall be a conclusive proof with regard to the persons nominated to receive arrears of pension of the pensioner.

17. *Commutation of Pension :*

(a) A University employee who may be entitled to or has been authorised any class of pension referred to in Clause 15 above shall, subject to the conditions specified below, be entitled to commute for lump sum payment a fraction not exceeding one third of his pension. In an application for commutation in Form 1 or Form 2, as the case may be, an applicant shall indicate the fraction of pension which he desires to commute and may either indicate the maximum limit of one third of pension or such lower limit as he may desire to commute. If fraction of pension to be commuted results in fraction of rupee, such fraction of a rupee shall be ignored for the purpose of commutation.

(b) No employee against whom departmental or judicial proceedings have been instituted, as referred to in Clause 14 above shall be eligible to commute a fraction of his pension, during the pendency of such proceedings.

(c) The commutation of pension shall become absolute on the date on which the application in Form 1 is received, from the employee by the Finance Officer of the University or on the date following the date of his retirement, whichever is later and in the case of Form 2 on the date on which the medical authority signs the medical report. Provided the reduction in the amount of pension on account of commutation shall be operative from the date of receipt of the commutation value of pension or at the end of three months after issue of authority by the Finance Officer of the University for the payment of commuted value of pension, whichever is earlier.

(d) If the applicant dies without receiving the commuted value on or after the date on which commutation became absolute, the commuted value shall be paid to his heirs.

(e) The lumpsum payable shall be calculated in accordance with the table of values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes absolute.

(f) An applicant who is authorised a compensation pension, superannuation or retiring pension on completion of 30 years of qualifying service or proportionate pension on completion of 20 years of qualifying service vide sub-Clause (a) & (c) of Clause 15 above shall, subject to the limit in sub-clause (a) above, be eligible to commute a fraction without medical examination provided that he applies for commutation in Form 1 within one year of date of his retirement.

(g) In case not covered by sub-Clause (f), an applicant in Form 2 shall be eligible to commute a fraction of his pension subject to the limit prescribed in sub-Clause (a) above after he has been declared fit by the medical board constituted by' the Vice-Chancellor in the case of invalid pension and the Chief Medical Officer, W.U.S. Health Centre in the other cases. The applicant shall be required to pay for medical examination such fee as may be specified by the Executive Council.

If the medical authority refuses commutation, the University employee can make an appeal within one month of receipt of report if he feels that the medical authority in refusing

commutation on medical grounds or making addition of years to his actual age has committed an error of judgement. The medical authority shall arrange for the second medical examination, if the applicant so desires. The examination shall be at the expense of the employee and shall take place after the expiry of a period of not less than one year from the date of the first medical examination.

(h) A University employee who is due to retire on superannuation and desires payment of the commuted value of pension being authorised at the time of issue of the pension payment order, shall be eligible to apply for commutation of a fraction of pension alongwith pension papers prior to the date of retirement provided that he retires from superannuation only and apply to the Registrar not later than 3 months before the date of superannuation. No such application shall be entertained if the period is less than three months from the date of superannuation of the University employee. The University shall have no liability for the payment of the commuted value of pension if the University employee dies before the date of superannuation or forfeits claim to pension before such retirement.

(i) An applicant who has commuted a fraction of his pension and after commutation his pension has been revised and enhanced retrospectively as a result of University's decision, the employee shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted value already authorised. For the payment of difference, the employee shall not be required to apply afresh.

Provided that in the case of an employee who has commuted a fraction of his original pension not exceeding rupees one hundred per month after being declared fit by a medical authority and as a result of retrospective enhancement of pension he becomes eligible to commute an amount exceeding one hundred rupees per mensem he shall be allowed the difference between the commuted value of one hundred rupees per mensem and the commuted value of the fraction of the original pension without further medical examination. The commutation of any further amount beyond rupees one hundred per mensem shall be treated as fresh commutation and allowed subject to examination by a Medical Board.

I. Such University pensioners who have commuted a portion of their pension, and on 1.4.1985, or thereafter, have

completed or will complete 15 years from their respective dates of retirement will have their commuted portion of pension restored.

II. University employees who got themselves absorbed under Central Public Sector Undertakings/autonomous bodies and have received/or opted to receive commuted value of 1/3rd of pension as well as terminal benefits equal to the commuted value of balance amount of terminal benefits equal to the commuted value of balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these orders as they have ceased to be University pensioners.

III. Each pensioner who is eligible as in paragraph (I) above is required to apply in the prescribed Form, duly completed, to the Registrar of the University who will restore the commuted portion of pension if the commuted amount has been mentioned in the Pension Payment Order and will also pay the arrears, if any.

IV. In cases where the pensioner had completed 15 years from the date of retirement on 1.4.1985 or thereafter and had died subsequently his/her legal heir(s) is/are also entitled to receive arrears with effect from 1.4.1985 (or from the date of completion of 15 yeas from the date of retirement whichever is later), till the date of the pensioner's death. For this purpose, legal heir(s) may also apply to the Registrar.

GRATUITY

18. (i) In addition to the pension/gratuity as provided in the foregoing provisions of Appendix 'A' to Statute *28-A* an employee who has completed five years of qualifying service at the University may be granted an additional (Death-cum-Retirement) Gratuity in accordance with the scale indicated in Clause 19. This gratuity shall be payable on his retirement from the service of the University. In the event of his demise, the gratuity shall be payable to the nominee of the deceased in the manner prescribed (vide Forms V to VIll).

(ii) If there is no such nomination or if the nomination made does not subsist the gratuity shall be paid in the manner indicated below:

(a) If there are one or more surviving members of the family .as in the following sub-clauses (aa), (bb), (cc) and (dd), to all such members in equal shares:

(aa) wife or wives, in the case of male employee;

(bb) husband in the case of a female employee;

(cc) sons including step sons and adopted sons; .

(dd) unmarried daughters including step daughters and adopted daughters.

(b) If there are no such surviving members of the family as in Clause (a) above, but there are one or more members as in the following sub-clauses (aa), (bb), (cc), (dd), (ee), (ff) and (gg), to all such members in equal shares:

(aa) widowed daughters including step daughters and adopted daughters.

(bb) father
(cc) mother

} including adoptive parents in the case of individuals whose personal law permits adoption.

(dd) brothers below the age of eighteen years including step brothers;

(ee) unmarried sisters and widowed sisters including step sisters;

(ff) married daughters; and

(gg) children of pre-deceased son.

Note : 1. The right of female member of the family, or that of a brother, of an employee who dies while in service or after retirement, to receive the share of gratuity shall not be affected if the female member marries or re-marries, or the brother attains the age of eighteen years, after the death of the employee and before receiving her or his share of the gratuity.

Note : 2. Where gratuity is granted under this rule to a minor member of the family of the deceased employee, it shall be payable to the guardian on behalf of the minor.

Note : 3. Where an employee dies while in service, or after retirement without receiving the amount of gratuity, and-

(a) leaves behind no family; or if

(b) has made no nomination; or

(c) the nomination made by him does not subsist; the amount of death-cum-retirement gratuity payable to him under this rule shall lapse to the University.

(iii) No gratuity shall be payable on resignation from the service of the University or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age.

19. (i) The amount of Death-cum-Retirement Gratuity will be one-fourth of the emoluments of an employee for each completed six monthly period of qualifying service subject to a maximum of fifteen times the emoluments. In the event of death of an employee while in service the Gratuity shall be subject to a minimum of twelve times the emoluments of the employee at the time of his death :

Provided that in no case it shall exceed Rs. 24,000/- and that the amount of gratuity payable is further subject to the provision of Clause 24(A) (vi) of Appendix 'A' to Statute 28-A and the Note thereunder.

With effect from 1.1.1986, in the event of death in harrness, the Death-Gratuity shall be admissible at the following rates:

Length of Service	*Rate of Gratuity*
(i) 5 years or more but less than 20 years.	12 times of emoluments
(ii) 20 years or more	Half of emoluments for every completed six monthly period of qualifying service subject to a maximum of 33 times of emoluments provided that the amount of Death Gratuity shall in no case, exceed one lakh rupees.

(ii) In respect of employees who retired from service on or after 1st January, 1973 or who may retire from service thereafter or died while in service on or after the aforesaid date or in the event of their death in service thereafter, for Death-cum-Retirement Gratuity, the existing maximum limit of 'fifteen times the emoluments' as prescribed in Clause (i) above shall be raised to 16-1/2 times the emoluments:

Provided that the maximum monetary limit of Rs. 24,000/- applicable to Death-cum-Retirement Gratuity under the proviso to Clause (i) above shall in respect of cases falling under Clause (ii) above be raised to Rs. 30,000/-.

Provided further in respect of persons who become eligible to payment of Death-cum-Retirement Gratuity on or after 31st January, 1982, the maximum amount may be raised to Rs. 36,000/-.

Provided further in respect of employees who become eligible to payment of Death-cum-Retirement Gratuity on or after 31st March, 1985, the maximum amount be raised to Rs. 50,000/-.

Provided further in respect of employees who become eligible for payment of Retirement-Gratuity on or after 1.1.1986, the maximum monetary limit be raised to Rs. 1,00,000/-.

(iii) With effect from 14.9.1983 the qualifying service shall be calculated in six monthly periods. A fraction of less than three months shall not be taken into account and any period between three months and six months shall be treated as a six monthly period in calculating the total qualifying service.

20. If an employee who has become eligible for a pension or gratuity dies within a period of five years after he retires from the service of the University, and the sums actually received by him at the time on account of such pension together with the gratuity granted under the above provisions and the commutated value of any portion of the pension commuted by him are less than the amount equal to twelve times the emoluments, a gratuity equal to the deficiency shall be granted to the person or persons nominated by him.

21. If a permanent employee dies before completing five years of qualifying service, his family will be eligible for a gratuity equal to six times his emoluments at the time of his death, except in cases in which death occurs in the first year of service, when gratuity admissible will be equal to two months' emoluments.

22. *Temporary Employees:* .

(a) *Terminal Gratuity:* A temporary employee who retires on super-annuation or is discharged on account of retrenchment or is declared invalid, for further service, will be eligible for a gratuity at the rate of one third of a month's pay for each completed year of service provided that, he has completed not less than five years of continuous service at the time of retirement, discharge or invalidment.

(b) *Death Gratuity :* The family of a temporary employee who dies while in service will be eligible for a death gratuity on the scale and subject to the conditions specified below:

(i)	On death after completion of one year of service but before completion of three years of service.	A gratuity equal to one month's pay.
(ii)	On death after completion of three years of service but before completion of five years of service.	A gratuity equal to two month's pay.

(iii)	On death after completion of five years of service or more	A gratuity equal to three month's pay or the amount of the terminal gratuity mentioned in sub-clause (a) above whichever is more.

Provided the families of temporary employees who died in harness on or after 1.1.1986 shall be eligible to death gratuity on the same scale as admissible to families of permanent employees under the clause 19(i) above.

Note : For the purpose of determining the amount of terminal or death gratuity under this Clause pay will mean only basic pay and also dearness pay (if any) at the time of relinquishing service or of death, as the case may be. It will not include special pay, personal pay and other emoluments as pay. In case the employee concerned was on leave with or without allowances immediately before retirement, discharge, invalidment or death, pay for this purpose will be pay which he would have drawn had he not proceeded on such leave.

FAMILY PENSION

23. The Family Pension Scheme as detailed below will be applicable to regular employees in pensionable service, temporary or permanent, subject to the provision of Clause 38.

24. It will be administered as below:

(A) For those who were in service on 1st April, 1964, but retired before 1st January 1966, and are still alive and who opt for General Provident Fund-cum-Pension-cum-Gratuity Scheme, the following provisions will apply:

(i) The family pension will be admissible in case of death while in service or after retirement, if at the time of death, a retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. In case of death while in service, the employee should have completed a minimum period of one year in service.

Provided in case of death while in service before completion of one year of continuous service, the family pension will be admissible if the employee concerned was examined by the appropriate medical authority and declared fit by that authority for University service immediately prior to the appointment to the service or post.

Note: The amendment will also be applicable in the case of Delhi University Colleges Retirement Benefit Rules, 1970.

(ii) 'Family' for purposes of this scheme will include the following relatives of the employee:

(a) Wife in the case of male officer;
(b) Husband in the case of female officer;
(c) Minor sons;
(d) Unmarried minor daughters.

Note : (i) (c) and (d) will include children adopted legally before retirement.

(ii) Marriage after retirement will not be recognised for the purpose of the Scheme.

(iii) The family pension will be admissible:

(a) In the case of widow/widower up to the date of death or re-marriage whichever is earlier;

(b) In the case of minor sons until the age of 25 years;

(c) In the case of unmarried daughter until.she attains the age of 25 years or marriage, whichever is earlier;

(d) Family pension payable to a son or daughter shall be stopped if he or she starts earning his or her livelihood or attains the age of 25 years whichever is earlier;

Provided that if the son or daughter of an employee is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:

(i) If such son or daughter is one among two or more children of the employee, the family pension shall be initially payable to the minor children in the order set out in item (c) of sub-para (iv) of this rule until the last minor child attains the age of 25, as the case may be, and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and the same shall be payable to him/her for life;

(ii) If there are more than one such son or daughter suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the following order namely :

(i) firstly, to the son, and if there are more than one son, the younger of them will get the family pension only after the life time of the elder.

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the life time of the elder.

(iii) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;

(iv) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child;

(v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

Note : Where an officer is survived by more than one widow, the pension will be paid to them in equal share. On death of the widow, her share of the pension will become payable to her eligible minor child; if at the time of the death, a widow leaves no minor child, the payment of her share of the pension will cease.

Where an officer is survived by a widow but has left behind an eligible minor child from another wife, the eligible minor child will be paid the share of the pension which the mother would have received if she had been alive at the time of the death of the officer.

(iv) (a) Except as provided in note below sub-para (iii), the family pension shall not be payable to more than one member of the family at the same time.

(b) If a deceased employee or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.'

(c) If sons and unmarried daughters are alive, unmarried daughters shall not be eligible for family pension unless the sons attain the age of eighteen years and thereby become ineligible for the grant of family pension.

(v) In the event of re-marriage or death of the widow/widower, the pension will be granted to the minor children through their

natural guardian. In disputed cases, however, payments will be made through a legal guardian.

(vi) Every employee eligible to the benefit of the above scheme, will be required to surrender a portion of gratuity where admissible, equal to ,two months, 'emoluments' or 'pay' as the case may be subject to a maximum of Rs.3600/-. However, in respect of employees who retired from service on or after 1st January, 1973 or who may retire from service thereafter or die while in service on or after the aforesaid date or in the event of their death in service thereafter the maximum limit of gratuity required to be surrendered shall be Rs. 5,000/- (instead ofRs. 3,600/-). Where an employee governed by this Scheme retires, as a bachelor who has not adopted any child, no deduction from his gratuity will be made. In case where the gratuity admissible is less than two months pay, the same will be resumed by University against the family pension benefit admissible under the scheme:

Provided that no deduction shall be made from the *Death-cum-Retirement Gratuity* as contribution towards family pension with effect from 22nd September, 1977.

Note : In the case of employees retiring without wife/ husband or minor children including adopted children, the deduction of two month's pay/ emoluments from the gratuity will not be made as in the case of bachelors.

(vii) Under the scheme, the following benefits will be awarded:

	Pay of the Employee	*Monthly Pension of Widow/ Widower/Children*
1.	Rs. 800/- and above	12% of pay subject to a maximum,of Rs. 150/-.
2.	Rs. 200/- and above	15% of pay subject to a maximum of Rs. 96/- and a minimum of Rs. 60/-.
3.	Below Rs. 200/-	30% of pay subject to a minimum of Rs. 25/-.

Provided that in case an employee dies on or after the 28th February, 1970 and his family is eligible for pension under this scheme and the amount of family pension including ad hoc increase in accordance with the rules/ orders in force at the time of his death, is less than Rs. 40/- per month the same shall be raised to Rs. 40/- per month (inclusive of ad hoc increase where applicable) with effect from 1.3.1970.

Provided further that in case of recipients of family pension under this scheme, if the amount of pension including ad hoc increase or temporary increase or both which the beneficiary may be in receipt on 1-3-1970 is less than Rs. 40/- per month, the same shall be raised to Rs. 40/- per month (inclusive of ad hoc or temporary increase as the case may be where applicable) with effect from 1-3-1970.

(B) For those who are in service on or after 1st January, 1966, the following additional provision will apply:

(i) If the employee has put in 7 years of service or *more* prior to his death, for a period of 7 years from the date of death or till the date on which the officer would have reached the normal age of superannuation had he remained alive, whichever period is shorter, the pension payable under the aforesaid orders will be at 50% of the pay last drawn subject to a maximum of twice the pension admissible under (ii) below:

(ii) If the employee has not put in 7 years of service prior to deadl or after 7 years of payment as in (i) above, the rate of the family pension will be as under:

	Pay of the Employee	*Monthly Pension of Widow/Widower/ Children*
1.	Rs. 800/- and above	12% of pay subject to a maximum of Rs. 150/-.
2.	Rs. 200/- and above but below Rs. 800/-	15% of pay subject to a maximum of Rs. 96/- and minimum of Rs. 60/-.
3.	Below Rs. 200/-	30% of pay subject to a minimum of Rs. 25/-.

Provided that in case an employee dies on or after the 28th February, 1970 and his family is eligible for pension under this Scheme and the amount of family pension, including ad hoc increase in accordance with the rules/orders in force at the time of his death, is less than Rs. 40/- per month, the same shall be raised to Rs. 40/- per month (inclusive of ad hoc increase where applicable) with effect from 1-3-1970.

Provided further that in case of recipients of family pension under this scheme, if the amount of pension including ad hoc increase or temporary increase or both which the beneficiary may be in receipt on 1.3.1970 is less than Rs. 40/- per month, the same shall be raised to Rs. 40/- per month (inclusive of ad hoc or temporary increase as the case may be, where applicable) with effect from 1.3.1970.

Note : 'Pay' for this purpose shall mean the pay which the employee was drawing on the date of his death while in service or immediately before his retirement. If on the date of his death, while in service, or immediately before his retirement, an employee has been absent from his duty on leave (including extra-ordinary leave) or suspension, 'pay' means the pay which he drew immediately before proceeding on such leave or suspension.

(C) For the employees who died while in service on or after the 1st January, 1973 or in the event of their death after retirement on or after 1st January, 1973 and were in receipt of compensation, invalid, retiring or superannuation pension on the date of death the rates of the Family Pension shall be revised as follows :

	Pay of the Employee	*Amount of Monthly Family Pension.*
1.	Below Rs. 400/-	30% of pay subject to a minimum of Rs. 60/- and a maximum of Rs. 100/-.
2.	Rs. 400/- and above but below Rs. 1200/-.	15% of pay subject to a minimum of Rs. 100/- and a maximum of Rs. 160/-.
3.	Rs. 1200/- and above.	12% of pay subject to a minimum of Rs. 160/- and a maximum of Rs. 250/-.

The amount of the family pension at enhanced rates as determined under Clause (B) (i) above shall be payable:

(a) In the event of the death of an employee while in service for a period of seven years or up to the date on which he would attain the age of 65 years had he survived, whichever period is less.

(b) In the event of the death after retirement the family pension at enhanced rates shall be payable up to the date on which the employee would have attained the age of 65 years had he survived or for seven years whichever period is less, but in no case the amount of family pension shall exceed the pension sanctioned to the employee at the time of retirement. However, in cases where the amount of family pension admissible as per this Clause (C) exceeds the pension sanctioned at the time of the retirement, the amount of family pension sanctioned under this sub-clause shall not be less than that amount. The pension sanctioned at the time of retirement shall be the pension inclusive of any portion which may have been commuted before death.

Provided further that in the case of family pensions falling due on 1.1.1986 or thereafter, the amount of family pension plus relief in pension payable be stepped up to Rs. 375/- p.m.

(D) For the employees who died while in service on or after 1.1.1986 or in the event of their death after retirement on or after 1.1.1986 and were in receipt of compensation, invalid, retiring or superannuation pension on the date of death, the rates of the family pension shall be as follows:

Basic Pay Per Month	*Rate of Family Pension per month inclusive of Dearness Relief up to average Consumer Price Index 608*
(i) Not exceeding Rs. 1500/-	30% of basic pay subject to minimum of Rs. 375/-.
(ii) Exceeding Rs. 1500/- but not exceeding Rs. 3,000/-	20% of basic pay subject to minimum of Rs. 450/-.
(iii) Exceeding Rs. 3,000/-	15% of basic pay subject to a minimum of Rs. 600/- and a maximum of Rs. 1,250/-.

The amount of the family pension at enhanced rates as determined under Clause (B) (i) above shall be payable:

(a) In the event of death of an employee while in service a period of seven years or up to the date on which he attain the age of 65 years had he survived, whichever period is less.

(b) In the event of the death after retirement the family pension at enhanced rates shall be payable upto the date on which the employee would have attained the age of 65 years had he survived, or for seven years whichever period is less, but in no case the amount of family pension shall exceed the pension sanctioned to the employee at the time of retirement.

However, in cases where the amount of family pension admissible as per this Clause (D) exceeds the pension sanctioned at the time of retirement, the amount of family pension sanctioned under this Sub-clause shall not be less than that amount. The pension sanctioned at the time of retirement shall be the pension inclusive of any portion which may have been commuted before death.

25. All employees entitled to the benefit of Family pension shall be required to furnish details of their 'family' as defined in Clause (ii) of Clause 24 (A) above, *i.e.,* the date of birth of each member with his/her relationship with the employee. This statement shall be

countersigned by the Registrar and posted in the service record of the employee. The employee will thereafter be required to keep the statement up-to-date. Additions and alterations in this statement will be made by the Registrar from time to time on receipt of information from the employee concerned.

26. In cases where death occurs while in service, the Registrar on receiving information of death of an employee while in service shall send a letter as prescribed in Form IX to the family of the deceased and ask for necessary documents mentioned therein. On receiving documents the Registrar shall take necessary action to sanction the pension to the eligible member of the family.

EXTRA-ORDINARY PENSION AND GRATUITY

27. Extra-ordinary pension and gratuity may be sanctioned by the Executive Council of the University on the advice of an *ad hoc* committee when an employee sustains an injury or dies as a result of an injury or is killed. In making the award, the Executive Council may take into consideration the degree of fault or contributory negligence on the part of the employee who sustains an injury or dies as a result of an injury or is killed.

The said *ad hoc* committee shall consist of five members, four appointed by the Executive Council from amongst themselves and the fifth member will be the representative from the Ministry of Finance, Government of India.

28. For the purpose of the provisions for Extra-ordinary Pension and Gratuity, injury shall be classified as follows:

CLASS 'A'

Injuries caused "as a result of special risk of office which have resulted in the permanent loss of an eye or a limb or are of a more serious nature.

CLASS 'B'

Injuries caused as a result of special risk of office and equivalent, in respect of the degree of disablement which they cause, to the loss of a limb or are very severe; or injuries caused as a result of risk of office which have resulted in the permanent loss of an eye or a limb, or are of a more serious nature.

CLASS 'C'

Injuries caused as a result of special risk of office which are severe, but not very severe and likely to be permanent; or injuries caused as a result of risk of office which are equivalent, in respect of the

degree of disablement which they cause, to the loss of a limb or which are very severe or severe and likely to be permanent.

29. If an employee sustains an injury which falls within class 'A' he may be awarded -

(a) a gratuity of the applicable amount specific in Schedule 'D', and

(b) with effect from the'date following the expiry of one year from the date of the injury;

(i) if the injury has resulted in the permanent loss of more than one limb or one eye, a permanent pension of the applicable amount specific in Schedule 'D' for a higher scale pension, and

(ii) in other cases, a permanent pension, the amount of which shall not exceed the applicable amount specified in Schedule 'D' for a higher scale pension and shall not be less than half that amount.

30. If an employee sustains an injury which falls within class, 'B' he may be awarded :

(a) if the injury has resulted in the permanent loss of an eye or a limb or is of more serious nature, a permanent pension with effect from the date of the injury, of an amount which shall not exceed the applicable amount specified in Schedule 'D' for a lower scale pension and shall not be less than half of that amount:

(b) in other cases:

(i) for a period of one year with effect from the date of the injury, a temporary pension, the amount of which shall not exceed the applicable amount specified in Schedule 'D' for a lower scale pension and shall not be less than half of that amount, and thereafter;

(ii) a pension within the limit specified in sub-clause (i) if the Consulting Medical Officer of the University from year to year certifies that the injury continues to be very severe.

31. If an employee sustains an injury which falls within Class 'C' he shall be awarded a gratuity of the applicable amount specified in Schedule "D' if the Consulting Medical Officer of the University certifies that the employee is likely to be unfit for service for a year, or a proportionate amount subject to a minimum of one-fourth the amount so specified if he is certified to be likely to be unfit for less than a year :

Provided that in cases where the injury is equivalent, in respect of the degree of disablement which it causes, to the loss of a limb, the Executive Council may award, if it thinks fit, in lieu of the gratuity, a pension not exceeding the amount admissible under sub-clause (b) of Clause 30.

32. A temporary pension awarded under this Statute may be converted into a permanent injury pension :

(a) when the employee is rendered invalid out of service on account of the injury in respect of which the temporary pension was awarded, or

(b) when the temporary pension has been drawn for not less than five years, or

(c) at any time if the Consulting Medical Officer certifies that he sees no reason to believe that there will ever be a perceptible decrease in the degree of disablement.

33. The awards shall be made to the widow and children of an employee as follows :

(a) if the employee is killed or dies of injury received as a result of special risk of office :

(i) a gratuity of the applicable amount specified in Schedule 'E', and

(ii) a pension the amount of which shall not exceed the applicable amount specified in Schedule 'E'

(b) if the employee is killed or dies of injuries received as a result of risk of office, a pension the amount of which shall not exceed the applicable amount specified in Schedule 'E',

Note: The rates in Schedule 'E' are subject to the condition that the pension payable to a child/children will in no case be less than the amount of pension which would have been admissible to him/ them had the provisions of the family pension been applied.

Provided that if the pay of deceased employee was less than Rs. 2001-, the monthly pension or the sum of pensions that may be granted under this Statute shall not, irrespective of the rates (including the minimum limits) specified in Schedule 'E' exceed the limit of one-half of his pay; and if in any case the sum of such pensions calculated under Schedule 'E' exceeds the limit of one-half of his pay, such a prorata reduction shall be made in the amount of such individual pension as will reduce the sum to such limit :

Provided further that for a period of 7 years from the date of death or till the date on which the employee would have reached the normal

age of superannuation had he remained alive, whichever period is shorter, the pension payable will be at 50% of the basic pay last drawn subject to a maximum of twice the pension admissible under Clause 26, if the employee has rendered continuous service for not less than 7 years.

This provision is not applicable to those employees, who retired before 1-1-1966.

34. If the deceased employee has left neither a widow nor a child, an award may be made to his father and his mother individually or jointly and in the absence of the father and the mother, to minor brothers and sisters, individually or collectively, if they were largely dependent on the employee for support and are in pecuniary need:

Provided that the total amount of the awards shall not exceed one-half of the pension that would have been admissible to the widow under the preceding Clause:

Provided further that each minor brother's or sister's share shall not exceed the amount of pension specified in Schedule 'E' for a child who is not motherless.

35. Any award made under Clause 37 will, in the event of an improvement in the pecuniary circumstances of the pensioner, be subject to review in such manner as the Executive Council may, by order prescribe.

36. An Extra-ordinary Family Pension under this Statute will take effect from the day following the death of the member of the staff or from such other date as the Executive Council may decide.

37. An Extra-ordinary Family Pension will ordinarily be tenable—

(a) in the case of widow or mother until death or re-marriage, whichever occurs earlier;

(b) in the case of a son or brother, until the age of 21;

(c) in the case of an unmarried daughter or sister, until marriage or until she attains the age of 24, whichever is earlier; and

(d) in the case of a father, for life.

Note : The above provision takes effect retrospectively from the 29th March, 1978 and will apply only to those cases where the employee retired/retires or died/dies in service on or after 29th March, 1978.

38. The family of the employee dying as a result of 'risk of office' or 'special risk of office' who are paid pension etc., under Clause 36, will not be entitled to the family pension under Clause 23.

39. When a claim for any injury pension or gratuity or family pension arises under any of the rules in this Section, the Officer-in- charge of the office or the department or section in which the injured or the deceased was employed will forward the claim to the Executive Council through the Registrar with the following documents :

(a) a full statement of circumstances in which the injury was received, the disease was contracted or the death occurred;

(b) the application for injury pension or gratuity in Form X or as the case may be, the application for family pension in Form XI, in the Annexure;

(c) in the case of an injured member of the staff or one who has contracted a disease, a Medical Report in Form XII in the Annexure. In the case of a deceased member of the staff, a medical report as to the death or reliable evidence as to the actual occurrence of the death if the member of the staff lost his life in such circumstances that the Medical Report cannot be secured.

Schedule 'A'

SCALE OF PENSION

(Clause 16 of Appendix 'A' of Statute 28-A)

Completed six monthly period of qualifying Service.	*Scale of Pension*	*Maximum Pension (in Rs.) Per annum*
20	10/80 of average emoluments	2,700
21	10½/80 " "	2,835
22	11/80 " "	2,970
23	11½/80 " "	3,105
24	12/80 " "	3,240
25	12½/80 " "	3,375
26	13/80 " "	3,510
27	13½/80 " "	3,645
28	14/80 " "	3,780
29	14½/80 " "	3,915
30	15/80 " "	4,050
31	15½/80 " "	4,185
32	16/80 " "	4,320
33	16½ " "	4,455
34	17/80 " "	4,590
35	17½/80 " "	4,725
36	18/80 " "	4,860
37	18½/80 " "	4,995
38	19/80 " "	5,130
39	19½/80 " "	5,265
40	20/80 " "	5,400
41	20½/80 " "	5,535
42	21/80 " "	5,670
43	21½/80 " "	5,805
44	22/80 " "	5,940

45	22½/80	"	"	6,075
46	23/80	"	"	6,210
47	23½/80	"	"	6,345
48	24/80	"	"	6,480
49	24½/80	"	"	6,615
50	25/80	"	"	6,750
51	25½/80	"	"	6,885
52	26/80	"	"	7,020
53	26½/80	"	"	7,115
54	27/80	"	"	7,290
55	27½/80	"	"	7,425
56	28/80	"	"	7,560
57	28½/80	"	"	7,695
58	29/80	"	"	7,830
59	29½/80	"	"	7,965

Schedule 'AA'

SCALE OF PENSION IN RESPECT OF THE EMPLOYEES WHO RETIRE FROM SERVICE ON OR AFTER 1.1.1973.

(Clause 16 of Appendix 'A' of Statute 28-A)

Completed six monthly period of qualifying service.	*Scale of Pension*		*Maximum Pension (in Rs.) Per annum*
20	10/80 of average emoluments		3,750.00
21	10½/80ths	" "	3,937.50
22	11/80ths	" "	4,125.00
23	11½/80ths	" "	4,312.50
24	12/80ths	" "	4,500.00
25	12½/80ths	" "	4,687.50
26	13/80ths	" "	4,875.00
27	13½/80ths	" "	5,062.50
28	14/80ths	" "	5,250.00
29	14½/80ths	" "	5,437.50
30	15/80ths	" "	5,625.00
31	15½/80ths	" "	5,812.50
32	16/80ths	" "	6,000.00
33	16½/80ths	" "	6,187.50
34	17/80ths	" "	6,375.00
35	17½80ths	" "	6,562.50
36	18/80ths	" "	6,750.00
37	18½/80ths	" "	6,937.50
38	19/80ths	" "	7,125.00
39	19½/80ths	" "	7,312.50
40	20/80ths	" "	7,500.00
41	20½/80ths	" "	7,687.50
42	21/80ths	" "	7,875.00
43	21½/80ths	" "	8,062.50

44	22/80ths	"	"	8,250.00
45	22½/80ths	"	"	8,437.50
46	23/80ths	"	"	8,625.00
47	23½/80ths	"	"	8,812.50
48	24/80ths	"	"	9,000.00
49	24½/80ths	"	"	9,187.50
50	25/80ths	"	"	9,375.00
51	25½/80ths	"	"	9,562.50
52	26/80ths	"	"	9,750.00
53	26½/80ths	"	"	9,937.00
54	27/80ths	"	"	10,125.00
55	27½/80ths	"	"	10,312.50
56	28/80ths	"	"	10,500.00
57	28½80ths	"	"	10,687.50
58	29/80ths	"	"	10,875.00
59	29½/80ths	"	"	11,062.00
60	30/80ths	"	"	11,250.00
61	30½/80ths	"	"	11,437.50
62	31/80ths	"	"	11,625.00
63	31½/80ths	"	"	11,812.50
64	32/80ths	"	"	12,000.00
65	32½/80ths	"	"	12,000.00
66	33/80ths and above	"	"	12,000.00

Schedule 'B'

COMMUTATION TABLE FOR PENSIONS

(Clause 17 of Appendix 'A' of Statute 28-A)

Commutation for a Pension of Rupee One per annum.

Age next birth day	*Commutation value expressed as number of years' purchase*	*Age next birth day*	*Commutation value expressed as number of years' purchase*	*Age next birth day*	*Commutation value expressed as number of years' purchase*
17	19.28	40	15.87	63	9.15
18	19.20	41	15.64	64	8.82
19	19.11	42	15.40	65	8.50
20	19.01	43	15.15	66	8.17
21	18.91	44	14.90	67	7.85
22	18.81	45	14.64	68	7.53
23	18.70	46	14.37	69	7.22
24	18.59	47	14.10	70	6.91
25	18.47	48	13.82	71	6.60
26	18.34	49	13.54	72	6.30
27	18.21	50	13.25	73	6.01
28	18.07	51	12.95	74	5.72
29	17.93	52	12.66	75	5.44
30	17.78	53	12.35	76	5.17
31	17.62	54	12.05	77	4.90
32	17.46	55	11.73	78	4.65
33	17.29	56	11.42	79	4.40
34	17.11	57	11.10	80	4.17
35	16.92	58	10.78	81	3.94
36	16.72	59	10.46	82	3.72
37	16.52	60	10.13	83	3.52
38	16.31	61	9.81	84	3.32
39	16.09	62	9.48	85	3.13

Schedule 'C'

SCALE OF GRATUITY

(Clause 14 of Appendix 'A' of Statute 28-A)

Complete six monthly period of qualifying service		*Scale of Gratuity*
1	...	1/2 month's emoluments
2	...	1 " "
3	...	1½ " "
4	...	2 " "
5	...	2½ " "
6	...	3 " "
7	...	3½ " "
8	...	4 " "
9	...	5.3/8 " "
10	...	4 3/4 " "
11	...	5.1/8 " "
12	...	5½ " "
13	...	5.7/8 " "
14	...	6¼ " "
15	...	6.5/8 " "
16	...	7 " "
17	...	7.3/8 " "
18	...	7 3/4 " "
19	...	8.1/8 " "

Schedule 'D'

SCALE OF INJURY GRATUITY AND PENSION

(Clause 29, 30 and 31 of Appendix 'A' of Statute 28-A)

Pay of employee on the date of injury	*Gratuity Higher Scale*	*Monthly Pension Lower Scale*	*Monthly Pension*
		Rs.	Rs.
1. Rs. 2000/- and over		300	225
2. Rs. 1,500/- and over but		275	200
3. Rs. 1,000/- and over but under Rs. 1,500/-.		200	150
4. Rs. 900/- and over but under Rs. 1000/-.	3 months' pay subject to a minimum of Rs. 800/-	150	125
5. Rs. 400/- and over but under Rs. 900/-		100	84
6. Rs. 350/- and over but under Rs. 400/-		85	70
7. Rs. 200/- and over but under Rs. 350/-		67	50
8. Under Rs. 200/-.	4 month's pay	1/3rd of pay subject to a minimum Rs. 8/- per mensem.	1/5th of pay subject to a minimum of Rs. 4/- per mensem.

Schedule 'E'

FAMILY GRATUITY AND PENSION

(Clause 33 and 34 of Appendix 'A' of Statute 28-A)

A. WIDOW

Pay of Employee on the date of injury	*Gratuity*	*Monthly Pension*
		Rs.
1. Rs. 800/- and over	3. months' pay subject to a minimum of Rs. 200/-	20% of pay subject to a maximum of Rs. 275/-.
2. Rs. 200/- and over but under Rs. 800/-		25% of pay subject to a maximum of Rs. 150/- and minimum of Rs. 75/-
3. Under Rs. 200/-	4 months' pay	45% of pay subject to a maximum of Rs. 75/- and minimum of Rs. 40/-

B. CHILDREN

Pay of the employee on the date of the death	*Monthly pension of each child*	
	If the child is montherless.	If the child is not motherless.
1. Rs. 800/- and over	Rs. 60/-	Rs. 25/-
2. Rs. 250/- and over but under Rs. 800/-	Rs. 37/50	Rs. 13/-
3. Under Rs. 250/-	15% of pay subject to a minimum of Rs. 4/-.	1/20 of pay subject to a minimum of Rs. 3/-

Schedule 'F'

CLASSIFICATION OF INJURIES

Equal to loss of limb :

Bemiplegia without aphasia.
Permanent use of tracheotomy tube.
Total deafness of both ears.

Very Severe :

Complete unilateral facial paralysis, likely to be permanent.
Leison of Kidney, urator or bladder,
Compound fractures (except phalanges).
Such gross destruction of soft parts as to lead to permanent disability or loss of function.

Severe and likely to be permanent :

Ankylosis of, or considerable restriction in, the movement of one of the following joints :

Knee, elbow, shoulder, hip, ankle, temporomaxillary or rigidly or the dorsilumbar or cervical sections of the spine.

Partial loss of vision of one eye.
Destruction or loss of one testcle.
Retention of foreign bodies not causing permanent or serious symptoms.

Schedule 'G'

FORM-A

(See Rule-1)

To,

Pension Disbursing Authority/Head of Office
(Name of Bank/Treasury/Post Office/Accounts Officer, etc.)

I.....hereby nominate the person
(Name of the pensioner in capital letters)

named below under rule 5 of the payment of Arrears of Pension (Nomination) Rules, 1983.

Name & Address of nominee	Relationship with Pensioner	Date of Birth	If nominee is minor Name and address of the person who may receive the said pension during the nominee's minority.
1	2	3	4

Name and address of the other nominee in case the nominee under column (1) pre-deceases the pensioner.	Relationship with pensioner	Date of Birth if the other nominee is minor.	Name and address of person who may receive the pension during the other nominee's minority.	Contingency on the heppening of which nomination shall become invalid.
5	6	7	8	9

Place .....

Date .....

Witness : Signature

Signature (or thumb impression if illiterate) and Name of Pensioner

Address .....

Name & Address.....

Signature of Pension Disbursing Authority/Head of Office

Acknowledgement to be sent by the Pension Disbursing Authority/ Head of Office).

Certificate that application/nomination has been received from

Name of Pensioner.....
Whose address is .....

Place..... Signature of Pension Disbursing Authority
Bank/Treasury/Post Office/Accounts
Date..... Officer/Head of Office.

Full Address.....

.....

.....

FORM - B

{See Rule-5 (5)}

To,

The Pension Distribution Authority
Name of Bank/Treasury/Post Office/Account Officer, etc.
Please.....

I..... hereby make the following
(Name of the Pensioner in Capital Letters)
alternative nomination in cancellation of the previous nomination made on .....under rule 5 of the payment of Arrears of Pension (Nomination) Rules, 1983.

Name & Address of Nominee	Relationship with Pensioner	Date of Birth	If nominee is minor Name and Address of the person who may receive the said pension during the nominee's minority.
1	2	3	4

Name and address of the other nominee in case the nominee under column (1) pre-deceases the pensioner.	Relationship with Pensioner	Date of Birth if the other nominee is minor.	Name and address of person who may receive the pension during the other nominee's minority	Contingency on the happening of which nomination shall become invalid.
5	6	7	8	9

Place .....
Date .....
Witness :
Signature
Name and Address .....

Signature (or thumb impression if illeterate) and Name of Pensioner

Address.....

Signature of Pension Disbursing Authority
Date/Stamp _____

Certified that application/nomination (Form B) has been received from

_____

(Name of the Pensioner) whose address is _____

Signature of Pension Disbursing Authority

Place_____Date_____P/O/Treasury with full Address.....

.....

APPENDIX 'B' TO STATUTE 28-A

(Contributory Provident Fund-cum-Gratuity Scheme)

Provident Fund

1. Every whole-time employee shall be entitled to subscribe monthly to the University Contributory Provident Fund after continuous service of one year with effect from the date of appointment. The rate of subscription may not be less than 10% of his emoluments and not more than his total emoluments, the amount so calculated being rounded off to the nearest rupee provided that in the case of subscription at the minimum or maximum rates, the rounding off will be to the next higher or the next lower rupee respectively.

The University shall contribute to this fund 10% of the pay from the date of subscription, rounded off to the nearest rupee. No subscription or contribution shall be made to the Provident Fund by an employee who is on leave without pay.

With effect from 1.3.1992 the rate of employees subscription as well as the rate of University contribution towards Contributory Provident Fund shall be @ 10% of pay.

Subject to the condition that no deduction be made which reduces the credit by more than the amount of any contribution by University with interest thereon credited under Clause 6(ii) before the amount standing to the credit of the subscriber in the Fund is paid out of the Fund.

The Vice-Chancellor may direct the deduction therefrom and payment to University of :

(i) all amounts representing such contribution and interest, if the subscriber within five years of commencement of his service as such, resigns from the service or ceases to be an employee of the University otherwise than by reason of death, superannuation, or a declaration by a competent medical authority that he is unfit for further service, or the abolition of the post or the reduction of establishment.

(ii) all amounts representing such contribution and interest, if the subscriber resigns from the service or ceases to be an employee of the University before confirmation.

(iii) any amount due under a liability incurred by a subscriber to University.

(iv) all amounts representing such contribution and interest, if the subscriber is dismissed from service due to misconduct, insolvency or inefficiency.

Provided that where the Vice-Chancellor is satisfied, that such deduction, except in the case falling under (ii) above, would cause exceptional hardship to the subscriber. he may by order, exempt from such deduction an amount not exceeding two-third of the amount of such contribution and interest which would have been payable to the subscriber, if he had retired on medical grounds.

Provided further that if any such order of dismissal is subsequently cancelled, the amount so deducted shall, on his reinstatement in the service be replaced to his credit in the fund.

Note : For the purpose of the Sub-Clause (i) of this rule the period of five years shall be reckoned from the commencement of the subscriber's continuous service under University.

Provided that in the case of person who joined the University service before 1.4.1964, the University's contribution shall be restricted to 8% of his pay from the date of his appointment, provided further that during a particular period prior to 1.4.1964, if the rate of contribution was less than 8% the lower rate of contribution will be operative for such period.

Notwithstanding the foregoing provisions and the provisions of Clause (3), persons who have retired from Government or University of Delhi or any of its Colleges or a Central University or its Colleges or the Institute of Science, Bangalore, or a National Laboratory if re-employed in the University may be permitted to subscribe to the Provident Fund, provided that where the term of re-employment is initially for a year or less but is later extended so as to exceed of one year's the contribution with interest will be credited only after the completion of one year's re-employed service. The contribution with interest shall be payable for the entire period for which the re-employed person is allowed to contribute to the Provident Fund if such period exceeds one year.

2. (i) No employee of the University shall be entitled to the benefits of the Provident Fund whose service in the University entitles him to a pension or on whose account the University contributes towards his pension or who has been appointed by the University on a consolidated salary on special terms or on a part-time or daily wage basis.

(ii) If an employee admitted to the benefit of the fund was previously a subscriber to any Contributory/Non-Contributory Provident Fund of the Central Government/State Government or of a

body corporate, owned or controlled by Government or Universities/ Colleges or Institutions of University status or an autonomous organisation registered under the Societies Registration Act of 1860 immediately before his appointment in the University, the amount of his accumulations in such Contributory or Non-Contributory Provident Fund shall be transferred to his credit in the Fund.

3. (a) When the amount of Provident Fund becomes payable to a subscriber, the Treasurer of the University will be entitled to deduct therefrom any amount due under any liability incurred by the subscriber to the University but not exceeding in any case the total amount of the contributions credited to the account of the subscriber by the University and of any interest which has accrued on such contributions.

(b) Notwithstanding anything contained in the preceding Clause of this Statute, a subscriber who ceases to be in the service of the University by reason of his taking up an appointment with another University or a College or a National Laboratory without any break and with prior permission may be declared to be entitled to the contribution of the University in accordance with the rules framed by the Executive Council.

4. The management of the Provident Fund shall vest in the Executive Council which may, from time to time, make regulations or issue such general or special directions as may be consistent with the Statutes as to the conduct of the business of the fund, or its management or the privileges of the depositors, not herein expressly provided for, or vary, or cancel any regulations made or directions given.

Provided that there shall be a Provident Fund Committee consisting of the Vice-Chancellor, the Pro- Vice-Chancellor, the Treasurer, the Registrar, the Finance Officer, two members appointed by the Executive Council from amongst its own members and two members elected by the subscribers to the Provident Fund under Statute 28 and Statute 28-A, for purpose of advising the Executive Council in matters relating to investments, payments and other matters in respect of the Provident Fund.

All members of the Provident Fund Committee, other than *ex- officio* members, shall hold office for a term of two years.

5. Every employee of the University entitled to the benefits of the Provident Fund shall be required to sign a written declaration in the prescribed form that he has read the Statute and agrees to abide by it, and shall hand in for registration in the University Office the names of the person or persons to whom he wishes the balance at his credit to be paid in the event of his death :

Provided that if at the time of making the nomination the subscriber has a family, the nomination shall not be in favour of any person or persons other than a member of his family:

Provided further that the nomination made by the subscriber in respect of any other Provident Fund to which he was subscribing before joining the Fund shall, if the amount to his credit in such other Fund has been transferred to his credit in the Fund: be deemed to be a nomination under this Statute until he makes a nomination in accordance with this Statute.

The subscriber may, from time to time, add or change his nominee by written application to the Executive Council.

A register of such nominees shall be kept in the University office.

6 (i) All amounts accruing to the Fund shall be placed in a nationalised bank to be operated in such manner as the Executive Council may direct. The balance of the Fund after reserving suitable amount for current needs, shall be invested in long term deposits in a nationalised bank, or in the Post Office or other investments authorised by the Indian Trust Act of 1882, at the discretion of the Executive Council.

Interest at the rate fixed for the purpose by the Executive Council, from time to time, shall be credited to each subscriber's account. The total amount of interest shall be rounded off to the nearest rupee (50 paise and above counting as the next higher rupee).

(ii) The subscription paid by the subscriber and the contribution by the University shall be entered monthly in a separate account for each subscriber.

(iii) The accounts of the Fund shall be audited once a year and a statement of the total amount to the credit of each subscriber shall be furnished to him.

7. Subject to the provisions of Clause (3), a subscriber at the termination of his service shall be entitled to receive the amount which accumulates to his credit, viz., his subscription with interest and contribution by the University with interest thereon upon an application made by him in the prescribed Form XIII in that behalf to the Registrar.

8. (1) On the subscriber's death the amount at the credit of the subscriber shall be paid to the person or persons duly nominated by him or when no such nomination is made, to his legal heir or heirs.

(2) *Deposit-linked Insurance Scheme:*

(i) On the death of a subscriber in service, the person(s) eligible to receive Provident Fund balances in terms of the relevant rules will be sanctioned an additional amount equal to the average balance in the account of the deceased in the Fund during the three years immediately preceding the death of employee subject to the provisions of sub-para (iii) below:

(ii) In the case of Contributory Provident Fund, only the subscription of the employee with interest thereon will be taken as the balance for the purpose of this scheme.

(iii) The above benefit will be available with effect from 8.1.1975 subject to the fulfilment of the following conditions:

(a) The balance representing subscription with interest thereon in the account of the employee should not have fallen below the following limits at any time during the three years preceding the date of death:

(i) Teachers, Asstt. Registrars and Officers in equivalent scale and above.	Rs. 3000/- up to 31.1.1978 Rs. 4000/- with effect from 1.2.1978
(ii) Section Officers and other Officers in equivalent scale	Rs. 2500/-
(iii) Employees other than those mentioned in (i), (ii) and (iv)	Rs. 1500/-
(iv) Employees in scale the maximum of which is and below.	Rs. 1000/- Rs. 291/-

Provided that nothing in this Clause shall apply if the death of such a subscriber occurs before the 1st of February, 1978.

(b) The upper limit up to which the benefit of insurance cover will be available will be Rs. 10,000/-. Thus any amount in excess of Rs. 10,000/- in the Fund will be disregarded for the purpose of this extra benefit.

(c) The benefit would be admissible only if an employee has put in at least five years' service at the time of death.

(iv) On or after 1.1.1989 on the death of a subscriber in service, the person(s) eligible to receive Provident Fund balance in terms of the relevant rules will be sanctioned an additional amount equal to the average balance in the account of the deceased in the Fund during the three years immediately preceding the death of the employee subject to the provisions of sub-para (vi) below:

(v) Only the subscription of the employee with interest thereon will be taken as the balance for the purposes of this scheme.

(vi) This benefit will be available subject to the fulfilment of the following conditions:

(a) The balance at the credit of such subscriber shall not at any time during the 3 years preceding the month of death have fallen below the limits of -

(i) Rs. 12,000/- in the case of a subscriber who has held, for the greater part of the aforesaid period of three years, a post the maximum of the pay scale of which is Rs. 4000/- or more.

(ii) Rs. 7500/- in the case of subscriber who has held for the greater part of the aforesaid period of three years, a post the maximum. of the pay scale of which is Rs. 2900/- or more but less than Rs. 4000/-.

(iii) Rs. 4500/- in the case a subscriber who has held for the greater part of the aforesaid period of three years a post the maximum of the pay scale of which is Rs. 1151/- or more but less than Rs. 2900/-.

(iv) Rs. 3000/- in the case of ,subscriber who has held for the greater part of the aforesaid period of three years, a post the maximum of the pay scale of which is less than Rs. 1151/-.

(b) The upper limit up to which the benefit of insurance cover will be available will be Rs. 30,000/-. Thus any amount in excess of Rs. 30,000/- in the Fund will be disregarded for the purpose of this extra benefit.

(c) The benefit would be admissible only if an employee has put in at least five years' service at the time of death.

9. (i) No final withdrawal shall be allowed until the termination of the subscriber's service or his death. But in case of necessity of which the Executive Council shall be sole judge, the Executive

Council may allow a subscriber an advance of a sum not exceeding the total amount subscribed by him.

(ii) Recoveries towards the amount shall be made in equal monthly instalments not exceeding thirty as may be decided by the Executive Council commencing from the first payment of a full month's salary after the advance is granted, but no recovery shall be made from a subscriber when he is on leave otherwise than on full pay.

(iii) When an advance is sanctioned under sub-rule (2) before repayment of last instalment of any previous advance is completed the balance of any previous advance not recovered shall be added to the advance so sanctioned and the instalments for recovery shall be fixed with reference to the consolidated amount.

(iv) *Withdrawal from the Fund :*

Subject to the conditions specified hereunder the withdrawals from the Fund may be sanctioned by the Vice-Chancellor at any time.

A. (1) After completion of twenty years of service (including broken periods of service, if any) of a subscriber or within ten years before the date of his retirement on superannuation, whichever is earlier, from the amount of subscription and interest thereon standing to his credit in the Fund, for one or more of the following purposes:

(a) meeting the cost of higher education, including where necessary, the travelling expenses of the subscriber or any child of the subscriber in the following cases, namely:

(i) for education outside India for academic, technical, professional or vocational course beyond the High School stage;

(ii) for any medical, engineering or other technical or specialised course in India beyond the High School stage;

(b) meeting the expenditure in connection with the betrothal/ marriage of the subscriber or his sons or daughters, and any other female relations actually dependent on him.

(c) meeting the expenses in connection with the illness, including, where necessary, the travelling expenses, of the subscriber and members of his family or any person actually dependent on him.

B. After completion of ten years of service (including broken periods of service, if any) of a subscriber or within ten years before the date of his retirement on superannuation whichever is earlier from the amount of subscription and interest thereon standing to the credit of the subscriber in the Fund for one or more of the following purposes:

(a) building or acquiring a suitable house or ready-built flat for his residence including the cost of the site;

(b) repaying an outstanding amount on account of loan expressly taken for building or acquiring a suitable house or ready-built flat for his residence;

(c) purchasing a house-site for building a house thereon for his residence or repaying any outstanding amount on account of loan expressly taken for this purpose;

(d) reconstructing or making additions or alterations to a house or a flat already owned or acquired by a subscriber;

(e) renovating, additions or alterations or upkeep of an ancestral house at a place other than the place of duty or to a house built with the assistance of loan from the University at a place other than the place of duty;

(f) constructing a house on a site purchased under Clause (c)

Within six months before the date of the subscriber's retirement, from the amount of subscription and interest thereon standing to his credit in the Fund, for the purpose of acquiring a farm land or business premises or both.

Note : 1. A subscriber who has availed himself of a house building advance from the University or has been allowed any assistance in this regard from any Government source shall be eligible for the grant of final withdrawal under sub-Clauses (a) (c) (d) and (f) of Clause (B) for the purposes specified therein and also for the purpose of re-payment of any loan taken from sources indicated above subject to the limit specified in Clause 9 (iv) (2)

If a subscriber has an ancestral house or built a house at a place other than the place of his duty with the assistance of loan taken from the University he shall be eligible for the grant of withdrawal under sub-Clauses (a) (c) and (t) of Clause (B) for purchase of a house site or for construction of another house or for acquiring a ready-built flat at the place of his duty :

Provided that in no case the maximum amount of withdrawal shall exceed Rs. 1,25,000 or 75 times the monthly pay, whichever is less: provided further that in the case of a subscriber who has availed himself of an advance under the scheme of the University for grant of advances for house building purposes, or has been allowed

any assistance in this regard from any Govt. source, the sum withdrawn under this sub-rule, together with the amount of advance taken under the aforesaid scheme or the assistance taken from any Government sources shall not exceed Rs. 1,25,000 or 75 times the monthly pay, whichever is less.

2. Withdrawal under sub-Clauses (a), (d), (e) or (f) of Clause .(B) shall be sanctioned only after a subscriber has submitted a plan of the house to be constructed or of the additions or alterations to be made duly approved by the local municipal body of the area where the site or house is situated and only in cases where the plan is actually got to be approved.

3. The amount of withdrawal sanctioned under sub-Clause (b) of Clause (B) shall not exceed 3/4th of the balance on date of application together with the amount of previous withdrawal under sub-Clause (a) reduced by the amount of previous withdrawal. The formula to be followed is : 3/4th of balance (as on the date) plus amount of previous withdrawal(s) for the house in question minus the amount of the previous withdrawal(s).

Provided that for construction of house/flat, the Vice- Chancellor may sanction final withdrawal up to 90% from the C.P.F. amount including interest of the employee.

4. Withdrawal under sub-Clause (a) or (d) of Clause (B) shall also be allowed where the house site or house is in the name of wife/ husband provided she/he is the first nominee to receive Provident Fund money in the nomination made by the subscriber.

5. Only one withdrawal shall be allowed for the same purpose under Clause 9(iv). But marriage/education of different children or illness on different occasions or a further addition or alteration to a house or flat covered by a fresh plan duly approved by the local municipal body of the area where the house or flat is situated shall not be treated as the same purpose. Second or subequent withdrawal under sub-Clause (a) or (f) of Clause (B) for completion of the same house shall be allowed up to the limit laid down under Note 3.

6. A withdrawal under Clause 9(iv) shall not be sanctioned if an advance under Clause 9(i) is being sanctioned for the same purpose and at the same time.

(2) Any sum withdrawn by a subscriber at anyone time for one or more of the purposes specified in Clause 9(iv) (I) from the amount standing to his credit in the fund shall not ordinarily exceed one-half of such amount or six months' pay of the

subscriber, whichever is less. The Vice-Chancellor may, however, sanction the withdrawal of an amount in excess of these limits up to three-fourths of the balance at his credit in the Fund, having due regard to (i) the object for which the withdrawal is being made, (ii) the status of the subscriber, and (iii) the amount to his credit in the Fund.

(3) A subscriber, who has been permitted to withdraw money from the Fund under Clause 9(iv) (1) shall satisfy the Vice-Chancellor within a reasonable period as may be specified by him that the money has been utilised for the purpose for which it was withdrawn and if he fails to do so, the whole of the sum so withdrawn or so much thereof as has not been applied for the purpose for which it was withdrawn shall forthwith be repaid in one lump sum and in default of such payment it shall be ordered by the Vice-Chancellor to be recovered from his emoluments either in a lump sum or in such number of monthly instalments as may be determined by the Executive Council.

(4) A subscriber who has already drawn or may draw in future an advance under Rule 9(i) for any of the purposes specified in Rule 9(iv) (1) (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) may convert at his discretion by written request to the sanctioning authority the balance outstanding into a final withdrawal on his satisfying the conditions laid down in Rule 9(iv).

Without assigning any reason, a subscriber within 12 months before retirement on superannuation can apply to the Pro-Vice-Chancellor for sanction of part/final withdrawal up to 90% of the balance at his credit. This facility will be available only once to the subscriber.

Subscriber availing this facility shall not, however, be eligible to invest the amount of such withdrawal in the new saving scheme introduced by the Ministry of Finance. Deptt. of Economic Affairs vide their notification No. F. 2-14/89-NS-11. dated 7.6.1989.

9-A. An employee who does not withdraw any amount from his Provident Fund account either as a loan or as final withdrawal shall be entitled to a Bonus on the subscription made by him during a financial year. Such Bonus shall be calculated at the rate of 3% of the subscription for such of the employees whose total emoluments do not exceed Rs. 500/- and at the rate of 1 % in case of those whose emoluments exceed Rs. 500/- per month. For purposes of calculation of Bonus the emoluments will be taken as on 31st March of the preceding year. However, in the case of subscribers whose Life Insurance Policies are financed through the Provident Fund subscription, the Bonus shall be calculated on the net subscription during the year after deducting the amount of Life Insurance premium paid during the year. The amount of Bonus so calculated shall be credited to the account of the subscriber at the end of each financial year.

Note: The above provisions shall come into force from the financial year 1975-76.

10. On a written application from a subscriber to the Provident Fund and with the approval of the Vice-Chancellor, the University may allow premia on the Life Insurance Policies of the subscriber to be paid out of the subscriber's share in his Provident Fund. In all such cases the Life Insurance Policy for which the premia are so paid shall be assigned in favour of the University. On the retirement of the subscriber from the service of the University the policy shall be reassigned to him by the University.

In case of the maturity of the policy during the service of the subscriber in the University, the full amount of the policy shall be credited to the Provident Fund of the subscriber. In case of the death of the subscriber, during the service of the University, the full amount of the Policy shall be paid to the nominee or, in the absence of nomination, to the legal representative of the deceased entitled to the Provident Fund.

11. The word 'subscription', wherever it occurs in this Statute, means the amount paid by the subscriber and similarly the world contribution' means the amount contributed by the University.

GRATUITY

12. (i) An employee who has completed five years of qualifying service at the University shall be granted Death-cum-Retirement Gratuity in accordance with the scale indicated in Clause 13. This gratuity shall be payable on his retirement from the service of the University. In the event of his demise this gratuity shall be payable to the nominee or nominees of the deceased in the manner prescribed (vide Annexure Forms V to VIII).

(ii) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below:

(a) If there are one or more surviving members of the family as in the following sub-Clauses (aa), (bb), (cc) and (dd) to all such members in equal shares:

  (aa) wife or wives, in the case of a male employee;

  (bb) husband, in the case of a female employee;

  (cc) sons including step-sons and adopted sons; and

  (dd) unmarried daughters including step-daughters and adopted daughters.

(b) If there are no such surviving members of the family as in Clause (a) above, but there are one or more members as in the following sub-Clauses (aa), (bb), (cc), (dd), (ee), (ff) and (gg) to all such members in equal shares:

  (aa) widowed daughters including step-daughters and adopted daughters;

  (bb) father, (cc) mother } including adoptive parents in the case of individuals whose personal law permits adoption;

DELHI UNIVERSITY STUDENTS' UNION CONSTITUTION

DELHI UNIVERSITY STUDENTS' UNION

CONSTITUTION

CHAPTER – I

1. Name

The Union will be called "The Delhi University Students' Union", hereinafter referred to as the Union.

2. Office

The office of the Union will be located in the Union building in the main University Campus. It shall also be its official address.

3. Aims and Objects

The following will be the aims and objects of the Union :-

(i) To promote mutual contact, a democratic outlook and a spirit of oneness among the students of the University of Delhi.

(ii) To promote the social, cultural and intellectual development of the students of the University of Delhi.

(iii) To promote consciousness among the students of the University of Delhi of the events taking place around them with a view to better equipping them as responsible and educated citizens and to build up a healthy students movement.

(iv) To promote among the students of the University of Delhi a sense of service to the people and duty towards the State.

(v) To promote harmonious relations among all sections of the University Community.

(vi) To meet, discuss and make representations to the University authorities on matters concerning common interests of the students.

4. Activities

The Union may organize the following activities namely :-

(i) Debates, lectures, discussions, study circles, essay competitions etc.
(ii) Cultural performance and contests.
(iii) Indoor games.
(iv) Publication of magazine, bulletin and wall newspapers.
(v) Trips and tours to places of historical and educational importance.
(vi) Social Service and Social Relief Activities.
(vii) Organizing and running co-operatives.
(viii) Organize poor Boys Fund and Book Bank to help needy Students.
(ix) Such other activities as will further the realization of the above aims and objects.

CHAPTER – II

5. Patron

The Vice-Chancellor of the University of Delhi shall be the Patron of the Union. The Patron shall take all necessary steps to ensure that the Union functions in accordance with this Constitution.

6. Membership of the Union

(i) Students of Various Colleges/Institutions recognized by or admitted to the privileges of the University which are members of the Union at the commencement of this Constitution shall be the members of the Union.

(ii) Students of a College/Institution may become members of the Union by a resolution passed by absolute majority of the total number of students on rolls of the College/Institution concerned on the last working day of July of that year.

(iii) Those studying only Foreign Language Courses or Diploma/Certificate Courses of the University shall not be the members of the Union.

(iv) Students who become members of the Union under sub clauses (i) or (ii) of this clause may withdraw from its membership by a resolution passed by absolute majority of the total number of students on rolls of the College/Institution concerned on the last working day of that year.

(v) Resolutions passed by the students of a College/Institution under sub-clauses (ii) or (iv) will become effective from a date to be notified by the Patron. If a College withdraws from the membership of the Union after the 15th of October, it would not be entitled to the refund of its subscription of the Union funds.

7. Funds

Every member of Union shall pay Rupee 20/- (Ref. E.C. Resolution No. 178 Dated 21.03.2012) as annual subscription to Union funds which will be collected alongwith the fees collected at the time of admission by the respective College/Institutions.

CHAPTER – III

8. The Central Council

1) There shall be a Central Council of the Union which shall consist of the following : -

(i) The Presidents of the Unions of Colleges/Institutions affiliated to the Union, provided that such a President does not suffer from any of the disqualifications laid down under Clause 9.

(ii) Two members directly elected by simple majority vote from each College/Institution, provided that a College/Institution with a total strength of 500 or less will send only one member to the Central Council.

(iii) All the office-bearers of the Union elected under this Constitution.

(iv) The Staff Advisor of the Union.

(v) The Treasurer of the Union and

(vi) The out-going President of the Union, provided he/she continues to be on the rolls of a College or Institution of the University.

2) The members of the Central Council mentioned in sub clause (iv), (v) and (vi) above will have no right to vote in the Meetings of the Central Council.

3) The Central Council will be the supreme authority of the Union and shall carry on the activities of the Union in accordance with this Constitution.

4) Subject to the previsions of the Constitution, the Central Council shall have the power to give such directions to the Executive Committee of the Union, or Sub-Committees appointed by it, and the Office-bearers of the Union as it may consider necessary.

9. Disqualifications for students Members of the Central Council

No students shall be entitled to be a member of the Central Council if,

(i) He/she is not a member of the Union ; or

(ii) He/she has completed the age of 26 years, if he/she is a student in day classes or 30 years, if he/she is a student in the evening classes, at the beginning of the first term of the year in which he/she is likely to become a member of the Central Council ; or

(iii) He/she has completed 7 years in a University ; or

(iv) He/she has been convicted of a criminal offence including moral turpitude ; or

(v) He/she has been punished by the University/College for an act which is coercive in nature and constitutes a threat to life and property ; or

(vi) He/she has been found guilty of and punished for the use of unfair means in any of the examination of a college, University or Board.

Explanation :

A mere warning issued against a student will not be deemed to be a punishment for the purpose of this clause.

10. The Executive Committee of the Union.

1) There shall be an Executive Committee of the Union which shall consist of the following : -

(i) All the office-bearers of the Union elected under this Constitution ;

(ii) Eleven members of the Central Council elected by its members in accordance with the system or proportional representation by means of a single transferrable vote from among themselves provided that not less than two out of these eleven members will be girls.

(iii) The staff Advisor of the Union.

(iv) The Treasurer of the Union ; and

(v) The out-going President of the Union, provided he/she continues to be on the rolls of a College or Institution of the University of Delhi.

2) The members of the Executive Committee mentioned in sub clause (iii), (iv) and (v) above will have no right to vote in the Meetings of the Executive Committee.

3) The Executive Committee will function within the framework of the policies laid down by the Central Council and in accordance with this Constitution.

4) The Executive Committee may appoint such sub-committees as may be necessary for the conduct of its business. A sub-committee, if appointed, will be subordinate and responsible to the Executive Committee.

5) Subject to the provisions of this Constitution the Executive Committee may give such directions to the Office-bearers of the Union as it may deem necessary in the discharge of their duties.

6) The Executive Committee will be responsible to the Central Council.

11. The office bearers of the Union

1) There shall be the following office-bearers of the union:-

(i)	President	(ii)	Vice-President
(iii)	Secretary, and	(iv)	Joint-Secretary

2) All the office-bearers of the Union will be directly elected by and from amongst the members of the Union by a simple majority vote in accordance with this Constitution and the rules framed thereunder; provided that the Vice-President and the Joint-

Secretary will be elected by the members of the Union from among such of the members of the Union as will not be taking a final year examination of the University during the year in which they seek election to the office of the Vice-President or Joint Secretary.

3) The Executive Committee may elect a Cultural Secretary from among its own members.

4) All the office-bearers of the Union will function within the frame work of the policies laid down by the Central Council and under the general supervision and direction of the Executive Committee in the performance of their day-to-day work. Delegation of powers, if any, to the office bearers will have to be specifically provided for by a resolution of the appropriate council or committee for a specific duration of time but not exceeding one month.

5) All the office-bearers of the Union shall be responsible to the Executive Committee and to the Central Council and will function strictly in accordance with the provisions of this Constitution.

6) The office-bearers of the Union shall be responsible for the smooth and orderly functioning of the Union.

12. Disqualifications for Office-Bearers

1. No member of the Union shall be entitled to hold any post of office-bearer, if,

   (i) He/she has exceeded the age of 25 year on the 16th August of the year in which he/she wishes to seek election; or

   (ii) He/she completed more than 7 year from the 1st July of the calendar year of passing +2 examination to the 30th June immediately preceding the election.

   (iii) He/she has been convicted of a criminal offence including moral turpitude, or he/she has been punished by the University/College

for an act which is coercive in nature and constitutes a threat to life and property; or

(iv) He/she has been found guilty of and punished for the use of unfair means in any examination of a University or Board.

Explanation :

A mere warning issued against a student will not be deemed to be a punishment for the purpose of this clause.

2) No elected office-bearers shall be entitled to hold the same office twice.

13. Staff Advisor of the Union :

There shall be a Staff Advisor of the Union who shall be appointed by the Patron.

14. Treasurer of the Union :

There shall be a Treasurer of the Union who shall be appointed by the Patron.

CHAPTER – IV

15. Official Year and Tenure

(i) The official year of the Union will be from 16th of August of every year to the 15th of August, of the following year.

(ii) The election of the office-bearer should be completed at the latest by the 16th of August each year.

(iii) The election of the eleven members of the Executive Committee from among the members of the Central Council should be completed latest by the 31st August each year;

(iv) The Central Council, the Executive Committee, the sub-committees, if any, and the office-bearers of the Union will not remain in office beyond one year as defined in sub-clause (i) of this clause.

(v) An office-bearer of the Union or a member of the Executive Committee or the Central Council may in writing, addressed and delivered to the Patron resign his office before the expiry of the term.

(vi) A student shall cease to be a member of the Union when he/she ceases to be a student; he/she shall also cease to be a member of the Central Council, the Executive Committee or a sub-committee thereof, and shall cease to be the office-bearer of the Union if he/she was such a member or an office-bearer.

16. Election

(i) The Patron will appoint every year a Chief Election Officer and other Election Officers who shall arrange to conduct the elections of the office-bearers and the members of the Central Council of the Union for that year in various Colleges and Institutions of the University.

(ii) The Staff-Advisor of the Union conduct the elections of the members of the Executive Committee of the union.

CHAPTER – V

17. Functions of the Officer Bearers of the Union

1) (i) The President of the Union will be the Chief Executive Head of the Union and will function in all matters relating to the Union in accordance with this Constitution.

(ii) The Secretary of the Union will act in consultation with the President and will function in all matters relating to the Union in accordance with this Constitution;

(iii) In the absence of the President, the Vice-President of the Union will perform all the function of the President in accordance with this Constitution;

(iv) In the absence of the President and the Vice-President, the Secretary will discharge the functions of the President in addition to his duties as the Secretary of the Union.

(v) In the absence of the Secretary, the Join-Secretary of the Union will perform all the functions of the Secretary in accordance with this Constitution.

2) (i) The President of the Union shall preside at the meetings of the Central Council and the Executive Committee and it shall be his duty to conduct these meetings in an orderly and peaceful manner in accordance with this Constitution.

(ii) It shall be the duty of the Secretary of the Union to prepare the minutes of all the meetings of the Central Council and Executive Committee and to keep the records of these meetings properly and in safe custody.

(iii) The Secretary of the Union will also carry on correspondence on behalf of the Union and will keep and maintain all records.

18. Meetings

(i) The Central Council will meet at least thrice a year;

(ii) The Executive Committee will meet as often as may be necessary, but at least in a month.

(iii) The meetings of the Central Council or the Executive Committee will be convened by the Secretary of the Union by giving at least 7 days' notice. An emergency meeting of the Executive Committee may, however, be convened in consultation with the Staff Advisor by giving at least 24 hours notice.

(iv) All the meetings of the Central Council and the Executive Committee shall be held at the Union office.

(v) An agenda of the meeting will be issued alongwith the notice of the meeting except for an emergency meeting.

(vi) The notice of a meeting and a copy of the agenda (except for an emergency meeting) for the meeting will be duly served on all the members; the notice of the meeting would be served as under:

1) For Central Council under certificate of Posting.
2) For Executive Committee by registered Post.
3) For an emergency meeting by telegram.

(vii) The attendance and the minutes of the meetings of the Central Council and the Executive Committee shall be confirmed in the subsequent meeting. A copy of the confirmed minutes shall be furnished to the Staff Advisor immediately thereafter.

(viii) A register of attendance of the members at the meeting of the Central Council and the Executive Committee shall be maintained by the Secretary and signed by the Staff Advisor or in his absence by the Treasurer at each meeting.

(ix) A meeting of the Central Council or the Executive Committee may be requisitioned, by not less than 25% of the members thereof, excluding those who have right to vote, submit such a requisition in writing to the Secretary, who shall thereupon call such a meeting within a period of one week from the date of receipt of the requisition. The Staff Advisor may call the meeting on the failure of the Secretary to do so.

19. Quorum

In all ordinary as well as emergency meetings of the Central Council or the Executive Committee one-third of the total membership of the body will constitute the quorum.

20. Vote of No-Confidence

(i) Not less than one-third members of the Central Council of the Union may move a resolution of no-confidence against any of the elected office bearers ;

(ii) Such a resolution cannot be moved before the First of December of the year.

(iii) A notice of a minimum of 15 days will be required for such a resolution to be moved.

(iv) Such a resolution in order to be effective will be required to have been passed by a majority of not less than two-thirds of the total membership of the Central Council.

(v) In case no-confidence motion is directed against the President, the Staff Advisor shall preside at the meeting.

CHAPTER – VI

21. Budget and Accounts

A meeting of the Central Council shall be convened within two weeks of the formation of the Executive Committee and the budget estimates proposed

by the Executive Committee shall be placed before the Central Council for Consideration.

A copy of the budget as approved by the Central Council shall be filed with the Patron within 2 days after its approval.

22. Funds

(i) Funds of the Union will be utilized for the welfare of the students in accordance with the approved budget.

(ii) No expense out of the Union funds will be incurred unless provision with regard to them is made under a specific head of the duly approved budget.

(iii) Each item of expenses of more than Rs. 500/- will be made by the Union only after it is duly authorized by a specific resolution of the Executive Committee of the Union. A sum of Rs. 500/- however will be advanced to the Union as imprest money. Ordinarily no other cash advance will be permitted. Should it be necessary to advance cash to the Union the total amount thus advanced at a time shall not exceed Rs. 2000/-.

(iv) All expenses out of the Union fund will be incurred in accordance with the rules made in this regard.

(v) The Treasurer will regulate the disbursement of Union funds in accordance with the rules framed in this regard from time to time.

(vi) The Accounts of the Union shall be subject to audit by the Internal Auditor of the University as well as the Chartered Accountant approved by the University. The Accounts of Union will be audited twice in a year at half yearly intervals.

(vii) Unspent balance of the Union funds of a year, if any, will be credited to a special fund of the Union. The money under this fund may be

spent for student welfare purposes in accordance with the rules framed by the University in this behalf

CHAPTER – VII

23. Amendment of the Constitution

A provision of this Constitution may also be amended if such amendment is agreed to and passed by a majority of the total membership of the Central Council at the beginning of the year and by a majority of not less than two-thirds of the members of the Central Council present and voting in meeting specially called for this purpose by giving at least one month notice in advance, provided that no such amendment shall come into force unless it has been approved by the Executive Council of the University.

CHAPTER – VIII

24. Rule Making

The Patron may appoint a Committee for framing such rules as may be necessary for the working of the Constitution. The rules so framed will come into effect from a date to be notified by the Patron.

25. Interpretation of the Constitution, Removal of Doubts and Difficulties.

If any question arises relating to the interpretation of this Constitution or any rules framed thereunder, it shall be referred to the Patron whose decision thereon shall be final.

26. Appointment of a Tribunal

The Patron may, if he considers it necessary, refer any matter concerning the Union to a Tribunal consisting of one or more persons to be appointed

by the Executive Council of the University. The decision of the Tribunal shall be final.

27. Emergency Power

Notwithstanding anything contained in the Constitution, the Patron in any emergency may take any action as he deems fit and report the same to the Executive Council of the University.

28. Commencement of the Constitution

This Constitution, or any amendment thereof, shall come into force with effect from a date to be notified by the Patron.

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2024:DHC:7469-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7824/2017

PRASHANT MANCHANDA .....Petitioner

Through: Mr. Prashant Manchanda (Petitioner in person) with Mr.Angad Singh and Ms. Nancy Shah, Advocates

versus

UNION OF INDIA & ORS .....Respondents

Through: Ms. Bharathi Raju, SPC with Mr.Venkat Mani Tripathi, Advocates for UOI
Mr. Mohinder JS Rupal and Mr. Hardik Rupal, Advocates for University of Delhi.
Mr. Sanjeev Sabharwal, Standing Counsel with Ms. Shweta Singh, Advocates for MCD.
Mr. Pushkar Sood, Ms. Shikha Sood, Ms. Monika Saini and Mr. Satya Prakash Singh, Advocates for R-4/DMRC.

% Date of Decision: 26th September, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 56144/2024 in W.P.(C) 7824/2017

1. Present application has been filed seeking issuance of directions to Respondent nos.1 to 5 to take appropriate action against the prospective candidates of Delhi University Students' Union ("DUSU") elections and

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student political outfits who are involved in damaging, defacing, soiling or destroying the public walls and disrupting the classrooms. The Applicant-Petitioner further seeks issuance of directions to National Students' Union of India ('NSUI') and Akhil Bhartiya Vidyarthi Parishad ('ABVP') as well as the erring candidates affiliated to the said parties to remove the defacement and refurbish the areas.

2. The Applicant-Petitioner states that due to the upcoming elections of DUSU for 2024-2025 to be held on 27th September, 2024, public properties across all quarters of Delhi have been defaced, in blatant violation of not only the applicable civil and penal provisions, Mr.J.M. Lyngdoh Committee Guidelines and undertakings given by the aspiring candidates, but also in direct contravention of the orders of this Court in the subject petition.

3. He states that the aspiring candidates under the patronage of political parties have left no place unscathed, be it the buses, bus stops, metro stations, public properties, private properties, etc. He emphasises that even police stations have been defaced by posters, banners, spray paints/inks, massive hoardings etc.

4. He states that areas in and around the college campuses are littered with paper pamphlets which are strewn on the ground creating an unclean, unhygienic environment along with wastage of paper. He states that in addition to the placement of hoardings, the candidates are using luxurious private vehicles to display the names of the candidates, which are stationed permanently outside college campuses leading to congestion of traffic causing unwarranted agony and discomfort to the daily commuters and common public.

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5. He states that in pursuance of the directions of this Court and Lyngdoh Committee Guidelines for prevention of the defacement of property during DUSU elections, responsibility was bestowed upon the concerned University, Colleges, SDMC and NDMC (now MCD) and Election Officers of the University, amongst other authorities, to keep a strict vigil to ensure that the aforesaid Guidelines are followed in all the future elections.

6. He states that in the said Lyngdoh Guidelines, it was envisaged that permanent committees for each college and also of the University of Delhi will be constituted, which shall be responsible for sensitizing the students about the provisions of the Delhi Prevention of Defacement of Property Act, 2007 and the Delhi Metro Railway (Operation and Maintenance) Act, 2002, as much as the defacement of public property is a criminal offence as well as for keeping strict vigil to identify and maintain a record of any kind of defacement of property committed during the course of the elections.

7. Today, the Applicant-Petitioner has handed over additional photographs which show campaigning / flinging of pamphlets, posters by the candidates and their respective teams through vehicles which do not even have registration/number plates.

8. Learned counsel for the Petitioner in the fresh writ petition being ***W.P.(C) 13538/2024*** has drawn this Court's attention to various videos annexed to the petition.

9. Yesterday, learned counsel for the MCD and DMRC had handed over charts along with photographs to show instances of defacement of public property.

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10. Learned counsel for the MCD states that between 13th September, 2024 and 25th September, 2024, it had removed 16,000 Boards, 7,000 Hoardings, two lakh posters/pamphlets and 28,500 Banners. He had also stated that four truck loads of material have been removed till date. Today, he has handed over a status report indicating the expenses incurred on removal of illegal hoardings/posters/banners between 13th September, 2024 and 26th September, 2024 in Delhi University area alone. The relevant portion of the said status report reads as under:-

"Sr. No.			*Total nos. of days*	*Charges for per day*	*Total charges (W.e.f. 13.09.2024 to 26.09.2024 except holidays) 11 days*
1	*Nos. of trucks*	*04*	*11*	*Rs. 3480 X 4 =Rs. 13920/-*	*11 X 13920= Rs. 1,53,120/-*
2	*Nos. of Labour*	*37*	*11*	*Rs. 742 X 37 = Rs. 27,454/-*	*11 X 27454 = Rs. 3,01,994/-"*

11. Learned counsel for the DMRC has handed over a copy of the email dated 24th September, 2024 written by DMRC to the Registrar, Delhi University with regard to graffiti/posters/spray painted on Delhi Metro Properties during DUSU elections by the candidates.

12. Learned counsel for the University of Delhi on instructions of Chief Election Officer, who is personally present in Court, admits that there has been flagrant violation of the Lyngdoh Committee Guidelines, as accepted by the Supreme Court and by this Court, relating to students' union elections. The relevant guidelines of the Lyngdoh Committee Guidelines are reproduced herein below:-

"...

6.6.1 The maximum permitted expenditure per candidate shall be Rs. 5000/-

6.6.2 Each candidate shall, within two weeks of the declaration of the result, submit complete and audited accounts to the college/university authorities.

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The college/university shall publish such audited accounts within 2 days of submission of such accounts, through a suitable medium so that any member of the student body may freely examine the same.

6.6.3 The election of the candidate will be nullified in the event of any excessive expenditure.

6.6.4 With the view to prevent the inflow of funds from political parties into the student election process, the candidates are specially barred from utilizing funds from any other sources than voluntary contributions from the student body.

xxx xxx xxx

6.7.4 All candidates shall be prohibited from indulging or abetting, all activities which are considered to be "corrupt practices" and offences, such as bribing of voters, intimidation of voters, impersonation of voters canvassing or the use of propaganda within 100 meters of polling stations, holding public meetings during the period of 24 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.

6.7.5 No candidate shall be permitted to make use of printed posters, printed pamphlets, or any other printed material for the purpose of canvassing. Candidates may only utilize hand-made posters for the purpose of canvassing, provided that such hand-made posters are procured within the expenditure limit set out herein above.

xxx xxx xxx

6.7.8 No candidate shall, nor shall his/her supporters, deface or cause any destruction to any property of the university/college campus, for any purpose whatsoever, without the prior written permission of the college/university authorities. All candidates shall be held jointly and severally liable for any destruction/defacing of any university/college property.

xxx xxx xxx

6.7.15 Any contravention of any of the above recommendations may make the candidate liable to be stripped of his candidature, or his elected post, as the case may be. The election commission/ college/ university authorities may also take appropriate disciplinary action against such a violator...."

13. He states that last evening, the Chief Election Officer had convened an emergency meeting in which sixteen of the twenty one candidates had participated. He states that in the said meeting, the candidates were directed to remove the posters/ graffiti/ hoardings/spray paint on public walls and public property. He suggests that as the DUSU election are scheduled to be held tomorrow in the University of Delhi as well as in all the colleges and as

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all the necessary arrangements like deployment of EVMs have been made, it would not be appropriate to countermand or postpone the elections at this late stage. He, however, suggests that the counting of votes be postponed till the candidates remove all the posters/ graffiti/ hoardings/spray paint and make good the loss that the Civic Agencies have faced due to the defacement.

14. Having heard learned counsel for the parties and having perused the video and photographs on record, this Court is of the prima facie view that there has been extensive use of money and muscle power in DUSU and college elections contrary to Lyngdoh Committee Guidelines. This Court is of the opinion that elections, which are supposed to be a festival of democracy, have been converted into a festival of money laundering and defacement of public property. In some respects, it reflects the failure of the education system.

15. It also seems to this Court that the senior management of Delhi University and colleges of Delhi University have been remiss in appreciating the true import and significance of Lyngdoh Committee Guidelines accepted by this Court. Further, the officials of Delhi University and colleges have neglected to enforce the Lyngdoh Committee Guidelines and perform their duties.

16. Consequently, this Court directs that though the voting in the DUSU and college elections be held tomorrow, yet the counting of votes for either DUSU elections or the college elections shall not take place till this Court is satisfied that the posters/ graffiti/ hoardings/ spray paint are removed, the vandalized public properties are restored and the losses suffered by civic agencies, Government departments and DMRC due to defacement are made

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good by the erring candidates. The expenses incurred by the Civic Agencies, Government departments and DMRC shall be paid in the first instance by the University of Delhi who will have the right to recover the same from the respective candidates in accordance with Lyngdoh Committee Guidelines

17. Let a fresh status report be filed by the University of Delhi, DMRC, MCD and Delhi Police within a week.

18. Till further orders, the University of Delhi shall ensure that the EVMs and the ballot boxes used in DUSU and college elections are safely secured. For this purpose, necessary directions shall be issued by the University of Delhi to the respective colleges as well as to Delhi Police. List on 21st October, 2024.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 26, 2024
AS

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7824/2017**

PRASHANT MANCHANDA .....Petitioner

Through: Petitioner in person with Mr.Angad Singh, Ms.Nancy Shah, Ms.Nimit Bhimjiyani and Mr.Rohan Pratap Singh, Advocates.

versus

UNION OF INDIA & ORS .....Respondents

Through: Ms.Bharathi Raju, Senior Panel Counsel for UOI & Delhi Police.
Mr.Rishikesh Kumar, ASC with Ms.Sheenu Priya, Mr.Atik Gill, Mr.Sudhir Kumar Shukla and Mr.Sudhir, Advocates for GNCTD.
Mr.Sanjeev Sabharwal, Standing Counsel for MCD.
Mr.Mohinder J.S.Rupal, Advocate with Mr.Hardik Rupal and Ms.Aishwarya Malhotra, Advocates for University of Delhi.
Mr.Sanjay Poddar, Sr.Advocate with Mr.Jiwesh Kashyap, Mr.Saksham Kaushik and Mr.Kumar Kshitij, Advocates for ABVP.
Mr.Pushkar Sood, Advocate with Ms.Shikha Sood, Ms.Monika and Mr.Nikhil Thakur, Advocates for R-4.
Mr.Nitin Yadav, Advocate with Mr.Sumit Kumar, Mr.Shailesh Yadav, Mr.Kunal Yadav, Mr.Akash Yadav, Mr.Umesh Nainiwal and Ms.Simran Kumari, Advocates along with

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Mr.Aman Kapasiya, Mr.Mitravinda Karanwal, Mr.Yash Panwar, Mr.Rishabh Chaudhary.

Mr.Abhinav Garg, Advocate with Mr.Ram Mohan Singh, Advocate for Ms.Deepika Jha.

Mr.Jaideep Malik, Advocate with Mr.Ashok Kumar, Advocate for Mr.Yash Nandal, DUSU Candidate.

Mr.Kunal Yadav, Advocate with Mr.Prabhas Malik, Ms.Priyank and Mr.Shabahat, Advocates for Mr.Rahul Jhansla.

Mr.Mohd.Shahidi, Advocate with Mr.Yash Shukla, Mr.Akshay Kumar, Mr.Gaurav Ahlawat, Mr.Md.Kamran and Ms.Taruna, Advocates for and along with Mr.Bhanu Pratap Singh.

Mr.Ashu Bidhuri, Advocate with Mr.Swapnam Prakash Singh, Advocate for Mr.Raunak Khatri (DUSU Candidate).

Mr.Ashu Bidhuri, Advocate with Mr.Swapnam Prakash Singh, Mr.Kamal Singh and Mr.Hemant Baisla, Advocates for R-8 & 9.

Mr.Ashu Bidhuri, Advocate with Mr.Swapnam Prakash Singh and Mr.Shubham Tomar, Advocates for Mr.Lokesh Choudhary.

\+ **W.P.(C) 13538/2024 & CM APPL.56641/2024**

AKHILESH KUMAR MISHRA AND ORS .....Petitioners

Through: Mr.Govind Jee, Advocate with Ms.Rambha Singh, Advocates along with P-1 & P-2.

versus

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UNIVERSITY OF DELHI AND ORS .....Respondents

Through: Mr.Mohinder J.S.Rupal, Advocate with Mr.Hardik Rupal and Ms.Aishwarya Malhotra, Advocates for University of Delhi.
Mr.Sanjay Poddar, Sr.Advocate with Mr.Jiwesh Kashyap, Mr.Saksham Kaushik and Mr.Kumar Kshitij, Advocates for ABVP.
Ms.Monika Arora, CGSC with Mr.Subhrodeep Kurdukar, Advocate for UOI.
Mr.Shivang Singh, Advocate with Mr.Shashank Singh, Mr.Dhawan Singh and Mr.Shalindra, Advocates for Mr.Rishi Raj Singh.

% Date of Decision: 11th November, 2024

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

CM APPL.56144/2024

1. Present application has been filed seeking issuance of directions to Respondent nos. 1 to 5 to take appropriate action against the prospective candidates of Delhi University Students' Union ("DUSU") elections and student political outfits who are involved in damaging, defacing, soiling or destroying the public walls and public property.

2. The Applicant-Petitioner, in the present application, has averred that due to the DUSU elections for 2024-2025, public properties all over Delhi

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have been defaced in blatant violation of not only the applicable civil and penal provisions, Mr.J.M. Lyngdoh Committee Guidelines and undertakings given by the aspiring candidates, but also in direct contravention of the orders passed by this Court in the subject petition.

3. A number of orders have also been passed by this Court from time to time in the present application.

4. Professor Satyapal Singh, Chief Election Officer, DUSU Elections 2024-25, University of Delhi has filed a status report dated 26th October, 2024 stating that a Defacement Assessment Committee has been constituted to assess the loss of revenue of the affected parties viz. MCD, DMRC and to devise a formula for compensating or indemnifying the losses and for fixing accountability of the candidates of DUSU 2024-25.

5. Today, Mr.Rupal, Advocate for Delhi University has handed over a fresh status report dated 9th November, 2024 in which Professor Satyapal Singh, Chief Election Officer, DUSU Elections 2024-25 has stated that nearly all hoardings, posters, graffiti and banners have been removed from all the colleges, departments, institutes, centres, faculties in North and South Campuses and the said premises have been cleaned and repainted. A tabular chart and recent photographs of various colleges, departments, institutes have been annexed with the status report.

6. It is further averred in the status report that the University of Delhi vide notification dated 30th October, 2024 has constituted 'DUSU Election Reforms Committee', which Committee has submitted its report dated 8th November, 2024. Mr. Rupal, learned counsel for Delhi University states that the said report has been accepted in principle by the Vice-Chancellor. Some of the suggestions/reforms suggested by DUSU Election Reforms

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Committee are reproduced herein below:-

"***Some of the suggestions for reforms are provided below:***

1. All the guidelines/rules/Orders of the Court/Act/ Ordinance mentioned above are to be made strictly applicable.

2. Orientation/Sensitization of students at the time of admission relating to provisions of discipline, maintaining the sanctity of College walls and public property and good conduct during elections must be organized and video footage of these events must be kept for record in the College and also be uploaded on the website of the University/College.

3. For prevention of defacement of walls, size of Walls of Democracy may be increased in every College/ Department/Campus of the University. According to NGT Order in Nithin Chandran v. Union of India & Ors (2016), two notified places may be made available for the hand-made posters in every College/Department/University. In Prashant Manchanda v. Union of India (2018), the High Court of Delhi had issued guideline to designate one Wall of Democracy for the DUSU and another for the College/ Department/Centre/Institute.

4. Like anti-ragging affidavit, an anti-defacement of walls affidavit be taken from the students at the time of admission.

5. A bond has to be executed at the time of filing nomination paper to contest any post of office-bearer of College Union/DUSU for Rs. 1 lakh by the student for the act of any defacement during the course of study/election.

6. In the name of welcoming students or for membership drive by the students, no poster/banner should be used, except on the Walls of Democracy. However, electronic media can be used for the purpose of any campaign. If the student, whose name appears on a poster defacing College/ Department/ Centre/Institute premises without his/her knowledge, does not remove it within 3 days, or if he/she thinks that the poster is pasted on any College /public/ private property by someone else without his/her knowledge and he/she does not file a complaint in a police station with proof of his/her identity and does not send a copy of the same to the College/University authority, the student may be liable to pay fine Rs 25,000/- or as decided by the University/College or suspension from college/ Department/Centre/Institute, rustication from college/ Department/Centre/Institute for a specified period, expulsion from the College, and may also be debarred from contesting election according to the relevant rules of the University/other applicable laws.

7. A dedicated portal relating to defacement issues shall be created at the University/College level to sensitize the students and to enable the students to know about their rights and duties. On that portal, a concerned student may also

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report violation of NGT Guidelines, Lyngdoh Committee Guidelines, Prashant Manchanda Guidelines, and Nithin Chandran Guidelines.

8. In Prashant Manchanda v. Union of India (2018) case, the High Court of Delhi had issued guideline to constitute a 'College Committee for Prevention of Defacement of Property' at the College level and a similar Committee at the University level to be called 'University Committee for Prevention of Defacement of Property'. This Committee should be constituted on the first day of the new academic session of the year. Defacement Committee of the University/College shall remain functional round the year. The names and contact numbers of the members of the Committee shall be prominently displayed on the notice board of the University/College. A separate section in this regard be provided for on the website of the University/College. Any changes in the Constitution of these committees be notified on the notice board of the University/ College and website, as and when effected.

9. Practice of resorting to spelling errors in the name of candidates, like an extra letter, is punishable by the Prevention of Defacement Committee as well as by the Election Committee. If the student whose misspelt name appears on a poster defacing College/department/public/ private property does not remove it within 3 days, or if he/she thinks that the poster is pasted on any College/ Department/public/private property by someone else and he/she does not file a complaint in a police station enclosing proof of his/her identity, and also does not inform the University/College Committee for Prevention of Defacement, the defacement will be imputed to the student whose name appears in the poster/graffiti etc. In such case, the student may be liable to pay fine Rs 25,000/- or as decided by the University/College or be suspended from the College/ department, or be rusticated from the College/ department for a specified period and may also be debarred from contesting election according to the relevant rules of the University/other applicable laws.

The name mentioned in the Secondary and Senior Secondary certificates should be considered for all purposes. Any change in the name of a student after taking admission in the Colleges/ Departments/Centre/ Institute will not be entertained for the purpose of contesting election unless the student has changed his/her name after following the due process as per the rules of the University.

10. After the final list of candidates notified by the Election Committee, if the student, whose name appears on a poster defacing a wall without his/her knowledge, does not remove it within 3 days, or if he/she thinks that the poster is pasted on any College/Department/University/ public/private property by someone else and he/she does not file a complaint before a police station enclosing proof of his/her identity, and also does not send a copy of the same to the University/College Committee for Prevention of Defacement, the defacement will be imputed on the student whose name appears in the poster/graffiti etc. In such case, the student may be liable to pay fine Rs 25,000/- or as decided by the

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University/College or suspension from college, rustication from college for a specified period, and may also be debarred from contesting election according to the relevant rules of the University/other applicable laws.

11. College Principals/ Heads/ Deans/ Professor-in-Charges have to remain more vigilant about the student Union elections, about formation of Prevention of Defacement Committee at the start of each academic session and to sensitize the students about defacement of college/ community premises. They may also be made accountable in case of non-compliance of Lyngdoh Committee Guidelines, NGT Orders, Delhi High Court orders.

12. Act of Defacement/Damage to public property should amount to gross indiscipline and consequent punishment provisions in the relevant Ordinance of the DU Act, and DUSU Constitution need to be incorporated.

13. Canvassing by the students through posters, rallies, road-shows and Shakti Pradarshan, loud-speakers, vehicles are prohibited and an awareness campaign in this regard must be launched at the beginning of the academic year in all Colleges/department/Institutes/Centers.

14. Meeting/s related to election called by the Election Committee of the College/ University with a notice of at-least 24 Hours must be attended by the student, aspirants/ Candidates of any DUSU/College Union post as and when called. If the meeting is not attended by the candidates without assigning any genuine reason, the candidature is liable to be cancelled by the Election Committee.

15. Since the initiation of election process and till its completion, the Election Committee constituted by the University/ College shall be responsible for strict adherence to Lyngdoh Committee Guidelines, NGT Orders, High Court of Delhi orders, and the Statutes/ Ordinances of the University.

16. Colleges/Departments/Centre/Institute should organize the presidential debates after commencement of the DUSU/ College Election. The candidates contesting the DUSU/ College elections should be encouraged to participate in the Presidential debate/ speech and may get it uploaded on the website of the College/Institute/ Centre/ University.

17. Booking of rooms in University Guest Houses/University maintained hostels for the personal/official uses of the DUSU office-bearers is not permitted. DUSU office-bearers are permitted to book only three venues, namely, Conference Centre, Shankar Lal Hall, Room No. 22 of Arts Faculty for their official program with due justification and duly recommended by the DUSU Advisor.

18. University should write to all the canteens/guest houses/ hostel canteens that if any DUSU office-bearer avails any undue benefit by misusing of power, it should be immediately reported to the Proctor. The Proctor, after perusal and

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inquiry, may debar such office-bearer to enter any canteen of the University/College/department during his/her remaining term.

19. Biometric/Facial Recognition machine shall be installed for the attendance and for the entry of students to the premises of the College/ Department/ University. Outsiders are not allowed in the premises of any College/ Department/Centre/Institute.

20. Dhols, Loudspeakers are not allowed in the open/closed premises of a College/ Department/ Institute/ Centre. This rule is applicable even after the declaration of election results.

21. Six women's colleges of the University of the total 43 colleges are affiliated to the DUSU elections. The female students in the remaining colleges form almost half of the total strength. In each DUSU election held in the last 20 years, at least one female candidate has been elected, except in one election (Annexure attached). To improve the gender parity in the electoral process, the University may adopt women's reservation on a rotational basis for one post of an Office-bearer.

22. A proposal regarding the change in the current pattern of DUSU elections is also hereby proposed to prevent defacement and the use of muscle and money power at the University level. This proposal may be sent to all different stakeholders (College Unions, DUSU, College Principals/ Heads of the Department/In-charge of the Centers/Head-Director of the Institutions) of the University for further debate and discussion and for possible adoption of this model in future. Following is the proposal:

"Centralized single tier DUSU election may be replaced by two tier DUSU elections whereby the Colleges/ Departments/ Centre/ Institutes may hold elections at their own level and the President of the college Union/Department Union/ Centre Union as well as the Central Councilors may be allowed to take part in Tier II election in which the DUSU office bearers may be elected (This was one of the Lyngdoh Recommendations in Clause 6.2.4.)."

A similar model is followed in the Internal Complaints Committee elections of the University."

7. This Court has also been assured by Mr.Rupal, learned counsel for the Delhi University that henceforth non-observance of Guidelines of this Court and Lyngdoh Committee, by concerned students or officials shall be dealt with strictly.

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2024:DHC:8732-DB

8. Affidavits of undertaking have also been filed by candidates, namely, Mr.Bhanu Pratap Singh, Mr.Aman Kapasiya, Mr.Yashh Nandal, Mr.Rishabh Chaudhary, S/o Mr.Satish Chaudhary (ABVP), Mr.Lokesh Chaudhary, Ms.Mitravinda Karanwal, Mr.Yash Panwar, Mr.Rishabh Chaudhary, S/o Mr.Pramendra Singh (NSUI) and Mr.Raunak Khatri. The said candidates have also taken steps to clean and restore the campus by organizing and participating in cleaning drives to remove graffiti, posters, hoardings, banners and other forms of defacement.

9. Learned counsel for the petitioner states that though a number of colleges, faculties and departments have been cleaned up and the defacement has been removed, yet all public and private properties situated close to the campuses have not been cleaned as a number of graffiti, posters and spray paint slogans are still visible. He has handed over a compilation of photographs running into one hundred ninety (190) pages.

10. At this stage, learned counsel appearing for students to whom notices had been issued undertake to this Court that they shall get all sites, which are mentioned in one hundred ninety (190) pages' compilation, cleaned and repainted within a week, if not already done.

11. Since the students studying in Delhi University are young, this Court is of the view that they deserve a second chance. After all, the intent of the present proceeding is to reform and not punish the young and impressionable minds. In fact, the intent of the present proceedings is to ensure that the students and candidates understand that the University and public property belongs to public at large which these students, in particular, candidates who contest DUSU Elections hold in trust and enjoy/use for a limited period of time. It is the responsibility of the current batch of students

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to ensure that the next batch of students get to use the University and public infrastructure in good and clean condition.

12. Consequently, this Court accepts the undertaking given by learned counsel for the students, who have defaced public property and direct the University of Delhi to verify compliance with the said undertaking and file a status report along with report from the candidates within ten days with the Registry of this Court.

13. This Court hopes and trusts that the student community at large and the candidates who have contested this election as well as those students who plan to contest the elections in the future have received a clear message that the public and University infrastructure should be kept clean and not defaced or harmed in any manner.

14. Consequently, the present application is closed with a direction to University of Delhi to undertake the counting of votes for DUSU Elections 2024-25 on or before 26th November, 2024, provided University of Delhi is satisfied that the sites, which are mentioned in the one hundred ninety (190) pages compilation placed on record, are cleaned and repainted within a week.

15. Before parting with this matter, this Court would like to place on record its appreciation for the services rendered by Mr.Prashant Manchanda, Advocate in the present application.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 11, 2024/TS

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GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

(DEPARTMENT OF LAW, JUSTICE & LEGISLATIVE AFFAIRS)

8th LEVEL, C-WING, DELHI SECRETARIAT, NEW DELHI

No. F 14(28)/ LA-2006/LC LAW/42-51 Dated the 29th January, 2009

NOTIFICATION

F.14(28)/LA. The following Act of the Legislative Assembly of the National Capital Territory of Delhi received the assent of the President of India on the 17th, January 2009 and is hereby published for general information :-

" The Delhi Prevention of Defacement of Property Act, 2007"

(Delhi Act 1 of 2009)

(As passed by the Legislative Assembly of the National Capital Territory of Delhi on 31st March 2008)

(17th January, 2009)

An Act to provide for the prevention of defacement of properties and for matters connected therewith or incidental thereto in the National Capital Territory of Delhi.

BE it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Fifty-ninth year of the Republic of India as follows:-

1. Short title, extent and commencement

(1) This Act may be called the Delhi Prevention of Defacement of Property Act, 2007.

(2) It extends to the whole of the National Capital Territory of Delhi.

(3) It shall come into force on such date as the Lieutenant Governor of the National Capital Territory of Delhi may, by notification in the Official Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires, -

(a) "defacement" includes impairing or interfering with the appearance or beauty, damaging, disfiguring, spoiling or injuring in any other way whatsoever and the word "deface" shall be construed accordingly;

(b) "Lieutenant Governor" means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under Article 239 and designated as such under Article 239AA of the Constitution;

(c) "property" includes any building, hut, structure, wall, tree, fence, post, pole or any other erection;

(d) "writing" includes printing, painting, decoration, lettering, ornamentation etc., produced by stencil.

3. Penalty for defacement of property

(1) Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

(2) When any offence is committed under sub-section (1) is for the benefit of some other person or a company or other body corporate or an association of persons (whether incorporated or not) then, such other person and every **president, chairman, director,** partner, manager, secretary, agent or any other officer or persons connected with the management thereof, as the case maybe, shall, unless he proves the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

(3) The aforesaid penalties will be without prejudice to the provisions of Section 425 and Section 434 of the Indian Penal Code, 1860 (45 of 1860) and the provisions of relevant Municipal Acts.

4. Composition of offences

(1) Any offence of defacement whether committed before or after the commencement of this Act punishable under Section 3, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

5. **Offence to be cognizable**

An offence punishable under this act shall be cognizable

6. Power of the Lieutenant Governor to erase writing, etc.

Without prejudice to the provisions of Section 3, it shall be competent for the Lieutenant Governor to take such steps as may be necessary for erasing any writing, freeing any defacement or removing any mark from any property.

7. Act to override other Laws

The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other laws for the time being in force:

Provided that the provisions of this Act shall not be applicable to advertisements displayed at duly authorised public spaces for advertising by appropriate authorities.

8. Repeal and Savings

On the day on which the Delhi Prevention of Defacement of Property Act,2007 comes into force , the West Bengal Prevention of Defacement of Property Act, 1976 (Bengal Act no.21 of 1976) as extended to the National Capital Territory of Delhi shall cease to have effect except in case of things done or omitted to be done before the commencement of this Act.

(Sd Savita Rao)

Joint Secretary (Law)

DEPARTMENT OF URBAN DEVELOPMENT

NOTIFICATIONS

Delhi, the 24th February,2009

F.No.18(A)/43/2000/UD/Pt.F.-1/3371.

In exercise of the powers conferred by sub-section (3) of section 1 of the Delhi Prevention of Defacement of Property Act, 2007 (Delhi Act 1 of 2009), the Lt Governor of the National Capital Territory of Delhi is pleased to appoint the 1st day of March, 2009 as the date on which the said Act shall come into force.

These explanations are added by Col Shivraj.

1. Defacement is basically of four types as under :-

(a) Posters

(b) Writings on the wall

(c) Banners

These 3 are totally banned under this Act.

(d) Hoardings .

These are allowed at the specific places by the civic agencies for a specific period after paying the normal charges. All other hoardings are illegal under this Act.

2. **Property includes any property (Govt or Private) in public view like buildings, hut, structure, wall, poles / posts, trees, roof tops or any other erection.**
3. **The guilty of the defacement shall be the owner, President, Director, Partner, agent or any other officer responsible with the management thereof.**
4. **Posters, Banners and Writings on the Wall are totally banned. Hoardings are allowed only at the specified places after taking the due permission from the civic agency. All other Hoardings are illegal under this Act.**

Prevention of Defacement of Property and Other Campaign Related Items – Revised Instructions issued by ECI

ANNEXURE P-11

OFFICE OF THE CHIEF ELECTION OFFICER
DELHI UNIVERSITY STUDENTS' UNION
ELECTIONS : 2023-2024

GUIDELINES FOR THE CONDUCT OF D.U.S.U. ELECTIONS : 2023-24

1 No candidate contesting election of Office-bearers of the Union will be allowed to enter any College or Hostel premises for the purpose of canvassing without proper identification i.e. College Identity Card or an Identity Slip issued by the Office of the Chief Election Officer.

2 **Canvassing time for the DUSU Elections from 08:00 a.m. to 08:00 p.m. Each candidate will have not more than 04 (four) bonafide students while canvassing in the College/Campus.**

3 Each supporter of a candidate, if any, accompanying the candidate should also carry his/her College Identity Card while canvassing in a College/Hostel. Supporters of the candidate who are not members of DUSU will **not be** allowed to enter the College/ Department/Institution.

4 The Principal of Colleges/Head of the Departments/ Institutions may announce appropriate time in their College/Institution/ Department when a candidate can come, meet and address the students of College/Institution/ Department. This may be given adequate publicity so that the candidates and students know the arrangements so made.

5 No candidate or his supporters will indulge in any act of gross indiscipline as per provisions of the Ordinance XV B of the University of Delhi as listed below:

(a) Physical assault or threat to use physical force, against any member of the teaching and non-teaching staff of any College/Institution/ Department and against any student within the University of Delhi.
(b) Carrying of, Use of or threat of use of any weapons;
(c) Any violation of the provisions of Civil Rights Protection Act 1976;
(d) Violation of the status, dignity and honour of students belonging to the Scheduled Castes and Tribes.
(e) Any practice whether verbal or otherwise derogatory to women;
(f) Any attempt at bribing or corruption in any manner;
(g) Willful destruction of institutional property;
(h) Creating ill-will or intolerance on religious or communal grounds;
(i) Causing disruption in any manner of the academic functioning of the University System.
(j) The candidature of the candidate may be cancelled without prior intimation if the candidate/supporter is found to be involved in any such activities prohibited as per ordinance XV B of the University of Delhi.

6 On the day of polling, if a candidate visits a College/Department, HOD/Principal or Election Officer or some other teacher deputed by the HOD/Principal/Election Officer may take him/her around the Polling booths for his/her satisfaction.

Contd…2/-

7 Adequate police force be provided in each College/ Department/Institution/. The police authorities will also post some police constables around the canteens, Bus stands near the College/Department/Institution and other sensitive points.

8 The Electric Supply authorities be requested to ensure that on the day of polling there is no power failure and also at the time of counting of votes in the Evening Colleges.

9 That authorities of College/Department/Institution will make adequate arrangements for Emergency lights, etc. to cope up with any emergency situation.

10 For each office of DUSU office bearers there would be separate EVM (DUSU set up) would be provided by the Office of Chief Election Officer. For College/Department/Institution Student's Union Election, paper ballot will be used and would be provided by the Principal/Head/Director of each College/Department/Institution.

11 Colleges/Departments/Institutions/ should ensure that all EVMs are properly sealed and name of the College/Department/Institution clearly written on each EVM before these are dispatched to the Counting Centre. The EVMs for DUSU Election should reach the Counting Centre immediately after the polling is over.

12 Necessary EVMs will be dispatched to the College/Institute/Departments on **21st September, 2023** and College/Institutions/Departments will make appropriate arrangements for conduct of elections. The polling hours are from 8.30 a.m. to 1.00 p.m. for Day Classes and 3.00 p.m. to 7.30 p.m. for Evening Classes. All students who report for polling during the above timings should be allowed to cast their votes.

13 Every bonafide student should be allowed to cast his/her vote after checking his/her Identity Card.

14 The statement showing the number of votes polled should be sent in a sealed cover alongwith the EVMs.

15 Police escorts should be made available for transportation of EVMs from the Colleges/Institutions/Departments to the Counting Centre.

16 The Colleges/Institutions/Departments will give publicity to the instructions regarding how to vote with EVM for the election of DUSU office bearers and for college student's union through paper ballot.

Sd/-

Chief Election Officer

-*-*-*-*-*-*-*-*-*-*-

UNIVERSITY OF DELHI

RULES REGARDING CONDUCT OF ELECTIONS OF THE OFFICE BEARERS AND MEMBERS OF CENTRAL COUNCIL OF DELHI UNIVERSITY STUDENTS' UNION UNDER CHAPTER-VIII CLAUSE 24 OF DELHI UNIVERSITY STUDENTS UNION CONSTITUTION : EFFECTIVE FROM 1996-97.

1 The Patron shall nominate every year a Chief Election Officer to conduct the elections of the Office-bearers and members of the Central Council of Delhi University Students Union.

2 The Patron shall also appoint Election Officers in various Colleges/ Institutions affiliated to Delhi University Students' Union.

3 The Election Officers shall work in coordination with the Chief Election Officer.

4 The Chief Election Officer and the Election Officers may appoint such number of Returning Officers as they may deem necessary.

5 The Electoral College for elections will consist of all students admitted to various courses of study in colleges/institutions affiliated to Delhi University Students' Union upto One day before the date fixed for filing of nominations.

6 All Elections will be held by Secret Ballot.

7 The Chief Election Officer shall issue a complete schedule of elections giving therein the date and time for filing nominations, scrutiny of nominations, the authority with whom nominations are to be filed, the date for withdrawal of nomination and the date and time of holding the elections and other instructions, etc. if any.

8 Forms for nominations to various offices will be prescribed by the Chief Election Officer.

9 Nominations for the posts of Office-bearers will be filed at the Office of the Chief Election Officer, who will scrutinize the nominations at his office and put up on the Notice Board the final list of candidates for election of Office-bearers after withdrawals, if any.

10 The Nomination papers are accepted along with a Bank Draft for Rs. 500/- (Rupees five hundred only) as security deposit in favour of the Treasurer, DUSU, issued by a Scheduled Bank in Delhi. The Bank Draft is to be submitted in the office of the Chief Election Officer, Delhi University Students' Union Elections at the time of Nomination and the candidate is required to obtain a receipt thereof. In case any candidate fails to deposit in person, the above said bank draft alongwith Nomination paper, his/her candidature for the said post shall be deemed to have been withdrawn by the said candidate. The security deposit shall be forfeited in case a candidate fails to get atleast 10% of the total valid votes cast for the post for which he/she is seeking election. The amount so forfeited shall be deposited in the account of Delhi University Students' Union.

11 A candidate withdrawing his/her candidature before the last date fixed for such withdrawal may claim the return of bank draft from the Office of the Chief Election Officer within One week in person by showing his/her College/Institution Identity Card.

12 A candidate who has secured at least 10% of the total valid votes cast for the post he/she is seeking election may claim refund of security deposit from the Office of the

Treasurer, Delhi University Students' Union within 7 days of the declaration of the result of election.

13 Nominations for the membership of the Central Council shall be invited by and filed with the Election Officers in various Colleges/Institutions, who will also do the scrutiny of these nominations and put up on the Notice Board of the college, final list of candidates for elections after withdrawals, if any.

14 Simultaneous elections will be held for the following in the Colleges/Institutions affiliated to Delhi University Students' Union:-

(a) President of Students' Union of the College/Institution.

(b) Member(s) of the Central Council of DUSU from the College/Institution and

(c) Office-bearers of the Delhi University Students' Union

15 The Chief Election Officer will arrange for the counting of votes for the Office-bearers of the Delhi University Students' Union and also announce the results.

16 The Election Officers in the respective Colleges/Institutions will arrange for the counting of votes for :-

a. President of the Students Union of the College/Institutions.

b. Members of the Central Council from the College/Institution and announce the result and communicate the same immediately but not later than 24 hours to the Chief Election Officer.

17 The Election Petition, if any, may be made to the Patron of the Union by a candidate or candidates within 48 hours after the declaration of results by the Chief Election Officer. No election petition shall be entertained after the expiry of 48 hours of the declaration of results.

18 The Chief Election Officer may issue necessary directions to the Election Officers for the smooth and orderly conduct of elections.

Sd/-
Chief Election Officer

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Page 1 Saturday, August 23, 2025
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3, 1971. The second incident took place on August 5, 1971 also in the afternoon practically at the same place as the first incident. This time also some rice was removed from the trucks carrying rice. The third incident took place in the afternoon of August 20, 1971 also at the same place. That also related to the removal of some rice from loaded trucks. It is not clear from the record whether the petitioner was prosecuted for the theft, especially when it is seen that the first incident of removal of rice was witnessed by two constables. However, that might be, it appears to us that the District Magistrate could not have been possibly satisfied about the need for detention on March 22, 1972 having regard to the detenu's conduct some 7 months earlier. Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. It is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of foodgrains one should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place. In our opinion, the order of detention is invalid.

6. We have already passed orders after the conclusion of the hearing of the case that the petitioner should be released forthwith and we are now merely giving the reasons for that order.

(1974) 4 Supreme Court Cases 3

(Original Jurisdiction)

[BEFORE A. N. RAY, C. J. AND D. G. PALEKAR, Y. V. CHANDRACHUD, P. N. BHAGWATI AND V. R. KRISHNA IYER, JJ.]

E. P ROYAPPA . . . . . Petitioner :

Versus

STATE OF TAMIL NADU AND ANOTHER . . Respondents.

Writ Petition No. 284 of 1972,* decided on November 23, 1973

Government Servants — Transfer — When does a new post not in the same cadre involve same status and responsibility — Criterion of eqnal pay or equal powers how far relevant — Whether objection maintainable after accepting post — I. A. S. (Cadre) Rules, 1954 — Rule 4

Government Servants — Indian Administrative Service (Pay) Rules, 1954 — Rule 9(1) — Appointment to a new cadre post — Whether requirement of declara-

(Under Article 32 of the Constitution of India for the enforcement of fundamental right

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Page 2 Saturday, August 23, 2025
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tion that the post is equal in status and responsibility mandatory — Declaration if binding — Burden of proof in disproving it

Constitution of India — Articles 16 and 14 — Relative scope — Challenge on ground of arbitrariness and mala fides whether covered — Whether right of challenge limited to those having a right to post — Person in officiating post whether can challenge — Transfer of Chief Secretary for loss of confidence — Whether arbitrary — Whether Articles violated — Whether mala fide — Burden of proving mala fides if discharged

Administrative Law — Mala fides — Various incidents showing displeasure of snperior officer regarding official matters — Whether sufficient to prove mala fides

Constitution of India — Article 166 (2) — Authentication of orders how far conclusive — Effect of difference between anthenticated and real order

Government Servants — Fundamental Rule 13(d) and 86 before Constitution of India — Whether period of refused leave is period of service — Whether any formal orders necessary to keep lien on the post during such period

Government Servants — Promotion — When order states that the officer has been promoted and posted to act on a particular post, held, the promotion to be in an officiating capacity (Para 78)

Constitution of India — Article 32 — Non-compliance with mandatory provision in Service Rules — No infringement of fnndamental rights made out — Writ will not issue (Para 84)

The petitioner was a member of Indian Administrative Service. On July 11, 1969 he was posted to act on the post of Additional Chief Secretary temporarily created in the grade of Chief Secretary for one year. On November 13, 1969 he was posted to act as Chief Secretary. On April 7, 1971 he was appointed Deputy Chairman of the State Planning Commission created temporarily for a period of one year in the grade of Chief Secretary to Government. The petitioner went on leave and even after returning from leave he did not join the said post. By order dated June 27, 1972 Government created another temporary post of Officer on Special Duty for one year in the grade of Chief Secretary to Government and the petitioner was transferred to the said post but he did not join the duties and in July, 1972 the petitioner filed the writ petition under Article 32 of the Constitution before the Supreme Court asking for a writ of mandamus or any writ, direction or order directing the respondent to withdraw and cancel the order dated June 27, 1972.

HELD:

(i) **Per Ray, C. J. and Palekar, J.**

The second proviso to Rule 4(2) of the Cadre Rules does not confer any power on the State Government to alter the strength and composition of the Cadre which could only be determined by regulations made by the Central Government in consultation with the State Government. The meaning of this proviso is that the State Government may add for a period mentioned there to the Cadre one or more posts carrying the duties and responsibilities of the like nature of a Cadre post. The posts so added do not become Cadre posts. These temporary posts do not increase the strength of the Cadre. (Paras 17 and 18)

Per Chandrachud, Bhagwati and Krishna Iyer, JJ.

Posts cannot be added temporarily to the Cadre unless such posts already exist in the Cadre. The State of Tamil Nadu could not, therefore, add the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty under the second proviso, as these posts did not exist in the Cadre as constituted by the Central Government. They were new categories of posts created by the State Government. The second proviso to Rule 4(2) has, therefore, no application and the challenge based on it must fail. (Para 81)

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(ii) Per Ray, C. J. and Palekar, J.

Rule 9 of the Cadre Rules requires a declaration that the post is equivalent in status and responsibility to a post specified in Schedule III. The declaration is desirable but not conclusive. (Para 30)

It cannot be said that equal pay will by itself alone be decisive of the equation of status and responsibility of the post. But pay scale will primarily show status and responsibilities of equal nature. (Para 22)

The post of Deputy Chairman, Planning Commission and the post of Officer on Special Duty carried the same pay and were not lower in status and responsibility and the petitioner could be transferred to those posts. (Paras 25 to 37)

The post of Officer on Special Duty is of enormous magnitude and importance in formulation and shaping of the revenue structure of the State. The duties and responsibilities of the Officer on Special Duty are beyond any measure of doubt equal in status and responsibility to those of the Chief Secretary. (Para 29)

Comparisons between functions, duties and responsibilities of posts at the apex of different departments are not always possible. The status of the post would also depend on the incumbent, because a brilliant officer can so augment the opportunities of public service in that post that others may covet it. (Para 32)

Per Chandrachud, Bhagwati and Krishna Iyer, JJ.

If the State Government wants to appoint a member of the Indian Administrative Service to a non-Cadre post created by it, it cannot do so unless it makes a declaration setting out which is the Cadre post to which such non-Cadre post is equivalent in status and responsibility. The making of such a declaration is a sine quo non of the exercise of power under sub-rule (1). It is not an idle formality which can be dispensed with at the sweet will of the Government. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a non-Cadre post which is inferior in status and responsibility to that occupied by him. The object of this provision clearly is to ensure that the public services are, in the discharge of their duties, not exposed to the demoralising and depraving effects of personal or political nepotism or victimisation or the vagaries of the political machine. The determination of equivalence is, therefore, made a condition precedent before a member of the Indian Administrative Service can be appointed to a non-Cadre post under sub-rule (1). It is a mandatory requirement which must be obeyed. The Government must apply its mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post and determine the equivalence. Pay attached to the non-Cadre post is not material. (Para 82)

The only exception to rule (1) is to be found in sub-rule (4) and that applies where the non-Cadre post is such that it is not possible to equate it with any Cadre post. (Para 82)

This declaration of equivalence, though imperative, is not conclusive in the sense that it can never be questioned. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence, that the non-Cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-Cadre post is in violation of Article 311 or Articles 14 and 16. The burden of establishing this would undoubtedly be very heavy and the Court would be slow to interfere with the declaration of equivalence made by the Government. (Para 82)

Where it appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities

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of the functions and duties of the two posts are so dis-similar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is mala fide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a Cadre post which he is occupying, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. (Para 82)

The status and responsibility of a non-Cadre post for the purpose of determining equivalence cannot depend on who is going to occupy it. It is really the other way round. The equivalence in status and responsibility determined on an objective assesment of the nature and responsibilities of the functions and duties attached to the post should decide which officer should occupy it. (Para 83)

The appointment of the petitioner to the post of Deputy Chairman was in contravention of Rule 9(1). But the Court cannot grant relief to the petitioner on this ground, because he accepted the appointment without demur as he thought that the post of Deputy Chairman "was of the same rank and carried the same emoluments as the post of Chief Secretary" and actually stated so and, therefore, he cannot now be permitted to challenge the validity of the appointment. (Para 83)

Again, there was no compliance with the requirement of Rule 9, sub-rule (1) and the appointment of the petitioner to the post of Officer on Special Duty was accordingly liable to be held invalid for contravention of that sub-rule. But the Supreme Court cannot under Article 32 give relief to the petitioner by striking down his appointment to the post of Officer on Special Duty, as mere violation of Rule 9, sub-rule (1) does not involve infringement of any fundamental right. (Para 84)

(iii) Per Ray, C. J. and Palekar, J.

The various instances showing the displeasure of Chief Minister to the attitude adopted by the petitioner while acting as Chief Secretary do not constitute sufficient evidence of mala fides. (Paras 38 to 70)

Per Chandrachud, Bhagwati and Krishna Iyer, JJ.

Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. These Articles strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16. (Para 85)

Articles 14 and 16 of the Constitution are not limited to cases where a servant has a right to the post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. The objection that the person was officiating might have some relevance to Article 311 but not to Articles 14 and 16. (Para 86)

Transfer of Chief Secretary is justified when he forfeits the confidence of the Chief Minister provided that it does not involve violation of any of his

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legal rights. There can be no question in such a case as to who is right and who is wrong. The displacement of the Chief Secretary from his post in such a case would not be arbitrary and it would not attract the inhibition of Articles 14 and 16. (Para 87)

So long as the transfer is made on account of exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Articles 14 and 16. (Para 88)

Though the post of Officer on Special Duty was not equal in status and responsibility to the post of Chief Secretary it is equally not possible to hold on the material on record that it was inferior. So the challenge under Articles 14 and 16 must fail. (Para 89)

The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. That onus has not been discharged by the petitioner. (Paras 92 and 93)

(iv) Per Ray, C. J. and Palekar J.

The authenticated order prevails over the draft order. (Para 10)

Per Chandrachnd, Bhagwati and Krishna Iyer, JJ.

Validity of authenticated order can be challenged on grounds other than that it was made by competent authority. The authentication does not, therefore, preclude the contention that the order, though made by the Governor, suffers from some other infirmity. The authenticated order is merely an expression of the actual order which precedes it and which is made by the appropriate authority entitled to act on behalf of the State Government. If the authenticated order does not correctly reflect the actual order made, or to put the same thing differently, the actual decision taken by the State Government, it must be open to correction. The formal expression of the order cannot be given such sanctity that even if found to be mistaken, it must prevail over the actual order made and override it. That would not be consonant with reason or principle. It would be an artificial rule calculated to obstruct the cause of truth and justice. So it was competent to the petitioner to contend, by reference to the draft order which contained the original decision of the State Government, that the authenticated order did not correctly reflect such decision and suffered from an error. (Para 78)

King Emperor v. Shivnath Banerjee, 72 IA 241 : AIR 1945 PC 156, relied on.

State of Bihar v. Sonabati Kumari, (1961) 1 SCR 728, 746 : AIR 1961 SC 221, relied on.

When real order is silent on a point which is mentioned in authenticated order then there is no discrepancy.

(v) Per Ray, C. J. and Palekar, J.

The effect of refused leave under the Fundamental Rules is that there is no extension of service by the period of that leave. Again, during the period of refused leave there is no earning of pension. The effect of Fundamental Rules 86 and 13(d) as they stood prior to the commencement of the Constitution is that an Officer does not continue on duty but draws leave salary by virtue of a privilege granted to him. There is no formal extension of service. He retains lien on his post. The post cannot be substantively filled till he actually retires from service. (Paras 12 and 14)

Petition dismissed M/1805/SCL

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Advocates who appeared in this case :

A. K. Sen, Senior Advocate (A. J. Rana, U. N. R. Rao, V. Selvaraj and B. R. Agarwala, Advocates, with him) for the Petitioner ;

S. Govind Swaminathan, Advocate-General, Tamil Nadu, M. C. Setalvad, Senior Advocate (Ratnaval Pandian, S. Mohan, A. V. Rangam, Habibullah Basha, N. S. Sivam, D. Raju and Miss A. Subhashini, Advocates, with them) for Respondent No. 1.

S. V. Gupte, Senior Advocate (S. Ratnaval Pandian, S. Mohan, A. V. Rangam, D. Raju, and Miss A. Subhashini, Advocates, with him) for Respondent No. 2.

F. S. Nariman, Additional Solicitor-General of India (M. N. Shroff, Advocate, with him) for Intervener.

The Judgments of the Court were delivered by

Ray, C. J. (*for himself and D. G. Palekar, J.*)—The petitioner in this writ petition under Article 32 of the Constitution asks for a mandamus or any other appropriate writ, direction or order directing the respondents to withdraw and cancel the Order dated June 27, 1972. The petitioner further asks for direction to re-post the petitioner to the post of Chief Secretary in the State of Tamil Nadu. The respondents are the State of Tamil Nadu and the Chief Minister of Tamil Nadu.

2. The petitioner is a member of the Indian Administrative Service in the Cadre of the State of Tamil Nadu. On August 2, 1968 the petitioner was confirmed in the Selection Grade of the Indian Administrative Service with effect from May 22, 1961. There were 8 Selection Grade posts in the State of Tamil Nadu. The petitioner was No. 4 in that list. The petitioner in the years 1964, 1965, 1966, 1968 and 1969 was posted to act as Fifth Member, Board of Revenue; Fourth Member, Board of Revenue; Third Member, Board of Revenue; Second Member, Board of Revenue. On April 5, 1969 the petitioner was posted to act as Second Member, Board of Revenue. On July 11, 1969 the petitioner was posted to act as Additional Chief Secretary.

3. On July 11, 1969 the post of Additional Chief Secretary was temporarily created in the grade of Chief Secretary for one year. The State Government further directed that the post of Chief Secretary to Government, Additional Chief Secretary to Government and the First Member, Board of Revenue were deemed to be in the same category and they were interchangeable selection posts.

4. On August 7, 1969 the State of Tamil Nadu wrote to the Central Government to amend Schedule III-A of the Indian Administrative Service (Pay) Rules, 1954, so that the posts of Chief Secretary to Government, Additional Chief Secretary to Government and First Member, Board of Revenue could be of the same cadre carrying the same pay. The Government of India by a letter dated September 26, 1969 stated that the status of Chief Secretary as the head of the Secretariat organisation in the State should remain unquestioned. The view of the Central Government was that the status of Chief Secretary should not be allowed to be diluted by the creation of the post of Additional Chief Secretary carrying the same status and emoluments as the Chief Secretary. The Central Government also stated that the post of Additional Chief Secretary was not a cadre post. The Central Government, however, expressed the view that the post of First Member, Board of Revenue in the State should carry pay as admissible to the Chief Secretary.

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5. On November 13, 1969 the petitioner was posted to act as Chief Secretary to Government with effect from the afternoon of November 13, 1969 vice C. A. Ramakrishnan whose date of superannuation was November 14, 1969 who has been granted refused leave with effect from November 14, 1969.

6. On April 7, 1971 the petitioner was appointed Deputy Chairman of the State Planning Commission. That post was created temporarily for a period of one year in the grade of Chief Secretary to Government. The petitioner did not join the post. The petitioner went on leave from April 13, 1971 to June 5, 1972. When the petitioner was on leave Raja Ram, the First Member, Board of Revenue was by an Order dated August 18, 1971 asked to hold the additional charge of the post of Deputy Chairman for one year with effect from August 13, 1971. On June 6, 1972 the petitioner returned from leave. He was again posted as Deputy Chairman, State Planning Commission on a salary of Rs. 3,500/- per month. The petitioner did not join that post. The petitioner pointed out that the post of Deputy Chairman which was created for one year did not exist after April 13, 1972.

7. By an Order dated June 27, 1972 the Government of Tamil Nadu accorded sanction to the creation of a temporary post of Officer on Special Duty in the grade of Chief Secretary to Government for a period of one year from the date of appointment or till the need for it ceased whichever was earlier. By the same order the petitioner was transferred and appointed as Officer on Special Duty in the post sanctioned aforesaid. The petitioner did not join that post. The petitioner in the month of July, 1972 filed this petition.

8. The petitioner's contentions were these. First, the petitioner is appointed to a post or transferred to a post which is not validly created. The post of Officer on Special Duty is said to be not a post carrying duties and responsibilities of a like nature to cadre posts within the meaning of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954. Second, under Rule 9 of the Indian Administrative Service (Pay) Rules, 1954 no member of the Service shall be appointed to a post other than a post specified in Schedule III unless the State Government concerned in respect of posts under its control or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule. It is, therefore, said that the petitioner who is a Cadre post holder, viz., holding the post of Chief Secretary cannot be posted to a non-scheduled post without a declaration that the non-scheduled post is equal in status and responsibilities to a scheduled post. Third, the petitioner is posted to an office which is inferior in status and office to that of the Chief Secretary. Therefore, the order is a hostile discrimination offending Articles 14 and 16. Fourth, the creation of the post as well as the appointment and transfer of the petitioner to the post is mala fide.

9. In this context it is to be ascertained as to whether the petitioner was appointed to the substantive post of Chief Secretary to the State of Tamil Nadu. The petitioner relied on draft order of the Chief Minister dated November 13, 1969 which stated that the petitioner "is promoted and posted as Chief Secretary". The petitioner also relied on the following note of the Chief Minister at the time of the passing of the order. There were 11 senior I. C. S./I. A. S. Officers borne on the Tamil Nadu State Cadre. The petitioner's position was No. 10 in the list of Senior I. C. S./

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I. A. S. Officers borne on the Tamil Nadu State Cadre. Ramakrishnan, the then Chief Secretary was No. 1 in the list. Kaiwar, Subramanyam, Mani, Govindan Nair, Vaidyanathan, Ramachandran, Raman, Raja Ram were above the petitioner in the list. Ramakrishnan and Kaiwar were retiring from service in the month of November, 1969. Subramanyam and Govindan Nair were acting as Secretaries to the Government of India. Vaidyanathan was away from the State for over 8 years and was working under the Central Government. Ramachandran and Raman were also working under the Government of India since 1955 and 1959 respectively. Raja Ram had left the State Cadre in 1960. In 1969 Raja Ram was the Special Representative to the Government of Tamil Nadu. The choice was between Mani whose position was No. 4 and the petitioner. Mani's work was not satisfactory during the flood relief operations in 1967. There was adverse criticism on his work from the public and the press. The petitioner was commended by his superiors to be dynamic, efficient, vigorous. The petitioner was, therefore, described by the Chief Minister to be best suited for the post.

10. It thus appears that the Chief Minister's note as well as the draft order stated that the petitioner was promoted and posted as Chief Secretary. But the Gazette Notification dated November 13, 1969 was that the petitioner was "promoted and posted to act as Chief Secretary to the Government vice C. A. Ramakrishnan, who has been granted refused leave with effect from November 14, 1969". The Gazette Notification prevails over the draft order.

11. The substantive appointment of the petitioner was in the selection grade of Rs. 1,800—2,000. The petitioner was appointed on November 13, 1969 to act as Chief Secretary. It was a temporary appointment. He was not appointed substantively to the post of Chief Secretary. The fact that the petitioner was not appointed substantively to the post of Chief Secretary will appear from the note signed by the petitioner himself on November 16, 1970. When Ramakrishnan went on refused leave for four months from November 14, 1969 there was no substantive vacancy in the post of Chief Secretary. The petitioner in his note dated November 16, 1970 stated that the post of Chief Secretary fell vacant substantively from March 14, 1970 and was available for confirmation of an Officer. The petitioner signed the note as acting Chief Secretary. The note was put up as to whether there was any objection in confirming the petitioner as Chief Secretary. No order was passed on that note.

12. Under Fundamental Rule 56(*f*) a member of the Indian Civil Service shall retire after 35 years' service counted from the date of his arrival in India. Ramakrishnan completed 35 years' service on November 14, 1969. When the petitioner was posted on November 14, 1969 to act as Chief Secretary, Ramakrishnan went on what is described as refused leave for four months. Under Fundamental Rule 86 clause (*c*) the grant of refused leave extending beyond the date on which a Government servant must compulsorily retire or beyond the date up to which a Government servant has been permitted to remain in service, shall not be construed as an extension of service. Fundamental Rule 13(*d*) provides that a Government servant ceases to retain lien on a permanent post while he is on refused leave granted after the date of compulsory retirement under Fundamental Rule 56 or corresponding other Rules. The effect of refused leave under the Fundamental Rules is that there is no extension of service by the period of that leave. Again, during the period of refused leave there is no earning of pension. Counsel for the petitioner relied on Fundamental Rules 56(*f*)

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and 86(*c*) and contended that the post of Chief Secretary fell vacant as Ramakrishnan did not hold a lien on his post.

13. It was contended that the petitioner was appointed in an officiating capacity to the post of Chief Secretary and reliance was placed on Fundamental Rule 9(19). Under that Rule a Government servant officiates in a post when he performs the duties of a post on which another person holds a lien or the Government may, if it thinks fits, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien.

14. Ramakrishnan, who was on refused leave being a member of the Indian Civil Service, was entitled under Article 314 of the Constitution to conditions of service as respects remuneration, leave and pension to which members of the Civil Service were entitled immediately before the commencement of the Constitution. Fundamental Rule 13(*d*) as it stood prior to the commencement of the Constitution provided for the retention of lien on a permanent post while on leave without making any exception with regard to refused leave. Fundamental Rule 86 as it stood prior to the commencement of the Constitution did not contain any provision to the effect that the grant of refused leave would not amount to extension of service. The Government of India, Finance Department Notification No. 520-CER dated May 31, 1922 contained the Government decision that the grant of leave under Fundamental Rule 86 automatically carried with it the extension required and no formal sanction to the extension was necessary. The effect of Fundamental Rules 86 and 13(*d*) as they stood prior to the commencement of the Constitution is that an officer does not continue on duty but draws leave salary by virtue of a privilege granted to him. There is no formal extension of service. He retains lien on his post. The post cannot be substantively filled till he actually retires from service.

15. The Fundamental Rules of the Madras Government corrected up to June 30, 1966 issued by the Finance Department, 2nd Ed. 1966 at pages 133-134 contain a note appended to Fundamental Rule 56 of Tamil Nadu State Government. In that note an exception in respect of Indian Civil Service Officers is created by providing that in the case of an Officer of the former Secretary of State Service the grant of such leave shall be treated as sanctioning an extension of service up to the date on which the leave expires. Therefore, Ramakrishnan held lien on his post until March 14, 1970.

16. The petitioner in the note for circulation dated November 14/16, 1970 prepared by the Joint Secretary, Public Department, noted that the date of retirement of Ramakrishnan would take effect from the date of expiry of the refused leave, namely, March 14, 1970. That is why the petitioner asked to be confirmed as Chief Secretary with effect from March 14, 1970. The petitioner was, however, not confirmed in the post. Therefore, the petitioner was not substantively appointed to the post of Chief Secretary. The petitioner's substantive appointment was in the selection grade of Rs. 1,800-2,000. The petitioner during the period of refused leave of Ramakrishnan acted as Chief Secretary by way of a temporary arrangement. The petitioner did not have any right to hold the post of Chief Secretary.

17. It was contended that neither the post of Deputy Chairman, Planning Commission nor the post of Officer on Special Duty was a Cadre

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post within the meaning of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954. The Additional Solicitor-General as well as the Advocate-General of the State did not contend that either of the posts was a Cadre post within the meaning of the Indian Administrative Service (Cadre) Rules. The strength and composition of the Cadre as contemplated by Rule 4 of the Indian Administrative Service (Cadre) Rules is to be determined by the Central Government in consultation with the State Government. The relevant provision is sub-rule (2) of Rule 4. It states that the Central Government shall at the interval of every three years re-examine the strength and composition of each such Cadre in consultation with the State Government or the State Governments concerned and may make such alternations as it deems fit. There are two provisos in the sub-rule. The first proviso states that nothing shall be deemed to affect the power of the Central Government to alter the strength and composition of the Cadre at any other time. The second proviso states that the State Government may add for a period not exceeding one year and with the approval of Central Government for a further period not exceeding two years, to a State or joint Cadre one or more posts carrying duties and responsibilities of a like nature of Cadre posts. It, therefore, follows that the strength and composition of the Cadre shall be determined by regulations made by the Central Government in consultation with the State Government. The State Government alone cannot alter the strength and composition of the Cadre.

18. The aforementioned second proviso to Rule 4(2) of the Cadre Rules does not confer any power on the State Government to alter the strength and composition of the Cadre. If such power were conferred on the State examination of the strength and composition at the interval of every three years by the Central Government in consultation with the State Government would be nullified. The meaning of the second proviso to Rule 4(2) is that the State Government may add for a period mentioned there to the Cadre one or more posts carrying duties and responsibilities of the like nature of a Cadre post. The posts so added do not become Cadre posts. These temporary posts do not increase the strength of the Cadre. The addition of the post of Deputy Chairman, Planning Commission or Officer on Special Duty to the Indian Administrative Service Cadre of Tamil Nadu State is not permissible because that would result in altering the strength and composition of the Cadre. The State has no such power within the second proviso to Rule 4(2) of the Cadre Rules.

19. Counsel for the petitioner contended that the post of Deputy Chairman, Planning Commission as well as the post of Officer on Special Duty was no equivalent in status and responsibility to the post of Chief Secretary to Government within the meaning of Rule 9(1) of the Indian Administrative Service (Pay) Rules, 1954. The petitioner alleged that both the posts were upgraded or downgraded depending upon the persons to occupy them and therefore the posts were not equivalent in status and responsibility to the post of the Chief Secretary. When the petitioner was appointed to the post of Deputy Chairman, Planning Commission it was upgraded. When Raja Ram was appointed to hold an additional charge of Deputy Chairman in addition to the post of First Member, Board of Revenue it was downgraded. When the petitioner was appointed to occupy the post the post was said to be equivalent to that of Chief Secretary. When Raja Ram was appointed it was downgraded to the level of the First Member, Board of Revenue. The post of Deputy Chairman, Planning

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Commission was created for one year in the month of April, 1971. On June 26, 1972 the State created a new post of Special Officer for Commercial Taxes which was stated to be of the rank of Member, Board of Revenue. On June 27, 1972 the petitioner was appointed to that post in the grade of Chief Secretary for a period of one year or till the need of the post ceased whichever was earlier. The petitioner alleged that on June 26, 1972 when the post of Special Officer for Commercial Taxes was created it was supposed to be of the rank of a Member, Board of Revenue but on June 27, 1972 the post was upgraded and regarded as of the grade of Chief Secretary.

20. When the petitioner did not take charge as Deputy Chairman of the Planning Commission on April 7, 1971, the Government directed Raja Ram, the seniormost officer in the State who was the First Member, Board of Revenue to hold additional charge. Again when the petitioner did not join on June 6, 1972 as Deputy Chairman of the Planning Commission, it was decided to post Raja Ram in his place. Raja Ram was drawing only a salary of Rs. 3,000/- per month. The post of Deputy Chairman was to be filled either by the petitioner or by Raja Ram. The post was not inferior. The Planning Commission is an advisory body to the Government like the Planning Commission at the Centre. The Chief Minister is the Chairman of the Planning Commission. The petitioner was drawing a salary of Rs. 3,500/- per month when he acted as Chief Secretary. Therefore, the post of Deputy Chairman, Planning Commission carried a pay of Rs. 3,500/- per month when the petitioner was appointed as Deputy Chairman of the Planning Commission. The upgrading and the downgrading of the post of Deputy Chairman, Planning Commission alleged by the petitioner is not correct. The post was not upgraded or downgraded. The incumbent of the post carried a higher or a lower salary according to the salary enjoyed by the incumbent at the time of the appoirtment.

21. Broadly stated, the petitioner's contentions about the two posts of Deputy Chairman, Planning Commission and the Officer on Special Duty were first that there was no declaration in accordance with Rule 9 of the Indian Administrative Service (Pay) Rules that the posts were equivalent in status and responsibility to a post specified in the Schedule to the aforesaid Rules; and secondly, that the functions and responsibilities of the two posts were such that no comparison could be made between those posts and the posts in the Schedule.

22. Rule 9 speaks of a declaration that the post is equivalent in status and responsibility to a post specified in Schedule III to those Rules. Sub-rule (4) of Rule 9 states that where equation of posts is not possible the State Government or the Central Government may, for sufficient reasons to be recorded in writing appoint a member of a service to such a post without making a declaration. It is, therefore, said on behalf of the petitioner that a declaration in writing is necessary where a post is declared to be equivalent in status and responsibility just as reasons are to be recorded in writing where it is not possible to have a post equivalent in status and responsibility. In other words it is said that in one case it is a declaration in positive terms that the post is equivalent in status and responsibility and in the other case the declaration is negative in content that though the post is not equivalent in status and responsibility yet a cadre officer of the Service is appointed to such a post. It is not in dispute that the posts of Deputy Chairman, Planning Commission and the Officer on Special Duty carried the same pay as that of the Chief Secretary. It cannot be said that equal pay will by itself alone be

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decisive on the equation of status and responsibility of the post. But pay scale will primarily show status and responsibilities of equal nature.

23. The Chairman of the Planning Commission is the Chief Minister. The Planning Commission is a high powered Commission. The position of the Deputy Chairman is equal in status and responsibility to the duties of the Chief Secretary. The real significance of aforementioned Rule 9 is that Members of Cadre posts cannot be deployed to non-cadre posts unless posts are of a calibre which can be filled up by Cadre men.

24. It also appears that the State since the year 1970 had been contemplating the setting up of a Planning Commission. In the month of March, 1970 the Finance Department prepared a note that a Planning Commission was necessary in industrial project, power project and irrigation. A properly organised plan for a region is to be an adjustment of the continuing rate of growth of economic product and a plan of continuing investments. A plan of long term development is necessary. Such a plan would spell out the various resources which can be utilised and the manner in which the fuller life can be attained by the people. The Finance Department of the State in 1970 advocated engagement of a group of qualified economists to work in collaboration with the Institute of Economic Growth, New Delhi. The State wanted to set up an Institute of Economic Planning, to work with the advice of the National Council of Applied Economic Research. A separate department of planning was suggested by the State. The reason was to have the advice of experts with knowledge in the specialised field.

25. The petitioner as the Chief Secretary on March 23, 1970 did not accept the advice of the Finance Secretary of the State. He was against the proposal to entrust formulation of plan to a body of experts. The petitioner advised utilising the services of senior officers of Government department and enlisting the services of experts in any particular sphere of activity or project, if found necessary. The Chief Minister on December 25, 1970 recorded a note that a 10-year plan was necessary. The State Planning Commission was set up in the month of April, 1971. The Planning Commission was to consist of Chairman, Deputy Chairman, Members, Secretary and Deputy Secretary. The Chief Minister was to be the Chairman. A full time officer in the grade of Chief Secretary was to be the Deputy Chairman. The Planning Commission was to achieve the declared objectives of the Government to promote a rapid rise in the standard of living of the people. The other objects were to see that the ownership and control of the material resources of the community are so distributed as to sub-serve the common good. The character and content of the Planning Commission shows that the Chairman being the Chief Minister the Deputy Chairman was equal in status and responsibility to the post of the Chief Secretary.

26. The State Government in the year 1969 sanctioned the constitution of a statistical cell for preparing scientifically processed data of production and the source of production of various commodities liable to sales tax. A scientific analysis was also made of the pattern of trade and revenue accruing from different sections of the trade. In the month of August, 1970 the Government examined the suggestion of the Commissioner, Commercial Taxes to constitute an expert committee to look into the various aspects of sales tax. In the month of October, 1970 the Chief Minister indicated that a committee might be constituted for going into the working of the sales tax

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law and to suggest methods for simplification of the legislative measures. In the month of April, 1971 the Chief Minister reviewed the important aspects of administration of Commercial Taxes Department. There were persistent demands from one section of the trade for single point levy. There were also demands from the other section for changing the existing single point items to multi point levy of sales tax. The idea of appointing a committee was still engaging the attention of the Government. A note was prepared by the Revenue Department with regard to constitution of a committee to undertake a comprehensive study of the sales tax structure in the State. Eventually the Government in the month of June, 1972 decided to appoint a senior Indian Administrative Service Officer for "streamlining and rationalising" the structure of Tamil Nadu General Sales Tax Act and similar enactments relating to Commercial Taxes and Rules made thereunder.

27. The State General Sales Tax and other Commercial Taxes for long contributed the preponderant share towards the revenue receipts of the State. Sales Tax played a significant role in the context of development programme of the State. These taxes fetched Rs. 112 crores in 1971-72. The General Sales Tax Act was enacted in 1959. In order to meet the srituations arising from changing patterns of trade and commerce, the interpetations of the Act by Courts of law, the discovery of loop-holes in the statutory frame work, the Sales Tax Act has been amended from time to time. The Chambers of Commerce represented to the Government for simplification and rationalisation of the tax structure and statutory procedures and practices. It is in this context that the State Government created the post of Officer on Special Duty.

28. The Officer on Special Duty was entrusted to deal with these matters. First, there is to be general review of the Commercial Taxes Acts from the point of view of the rate of growth of revenue in relation to the rate of growth of income and the rate of growth of commerce and industry. Second, the Sales Tax Act, the Entertainment Tax Act, the Local Authorities Finance Act, the Motor Spirit Taxation Act, the Betting Tax Act being all State Acts and the Central Sales Act could be rationalised and simplified so as to facilitate easy administration and also to reduce hardship to the trading community. Third, the present classification of commodities taxed at single point and multi point is to be studied in order to find out as to what extent there is a case for transfer of commodities from multi point to single point and vice versa. Fourth, it is to be found out whether there is any need and justification for the continuance of the concessional rate of taxation under the General Sales Tax Act on components coming under single point levy, and, if so, whether there is a case for extending the same concession to all raw materials. Fifth, measures are to be found to improve the procedure of inspection, search and seizure in order to make them more effective and at the same time to minimise the apprehension of harassment on the part of the trading community. Sixth, measures are to be taken to make the check post more effective and arrangements for the collation and interpretation of data collected at the check posts and the cross verification of such data with assessment records are also to be made. Seventh, measures to ensure regular and systematic flow of vital data such as tax yield from various commodities and changes in trade practices affecting tax yield to the Board of Revenue (Commercial Taxes) are to be devised and arrangements are to be made for their collation and interpretation to facilitate tax policy.

29. These are some of the principal duties and responsibilities of the

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Officer on Special Duty. These duties indicate in no uncertain terms that the post of Officer on Special Duty is of enormous magnitude and importance in formulation and shaping of the revenue structure of the State. The duties and responsibilities of the Officer on Special Duty are beyond any measure of doubt equal in status and responsibility to those of the Chief Secretary.

30. It was contended on behalf of the petitioner that there should be a declaration in writing. The purpose of the declaration that the post is equivalent in status and responsibility to Cadre post specified in the Schedule to the Indian Administrative Service (Pay) Rules is to ensure that members of the Cadre are not taken to posts beneath their status and responsibility. These measures are intended to preserve respectability and responsibility of the Cadre officers. The declaration is not one of mere form. It is of substance. A declaration in writing is desirable. The absence of a declaration will not be an impediment in ascertaining the equivalent status and responsibility. Similarly the presence of a declaration may not be conclusive if the declaration is a mere cloak. The facts and circumstances will be looked into in order to find out whether there is in real substance equality in status and responsibility.

31. Fundamental Rule 15 provides that no Government servant can be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14. The position of the petitioner was that he was holding a lien in the selection grade post. It was open to the Government to transfer him to a post or to appoint him to officiate in a post carrying pay not less than what he was entitled to in the selection grade of Rs. 1,800—2,000. However, the petitioner was appointed to the post of Deputy Chairman, Planning Commission on April 6, 1971 carrying a salary of Rs. 3,500/- per month. The petitioner went on leave from April 13, 1971 to June 5, 1972. On June 6, 1972 when the petitioner returned from leave he was again posted as Deputy Chairman of the State Planning Commission. The post carried a salary of Rs. 3,500/- per month which is the same as that of the Chief Secretary. The petitioner made a representation on June 17, 1972 that the post of Deputy Chairman in the rank of Chief Secretary could not continue for a period of more than one year since April, 1971. The Government on June 26, 1972 sanctioned the creation of a temporary post of Officer on Special Duty. On June 27, 1972 the petitioner was promoted to the post of Officer on Special Duty. The post of Officer on Special Duty also carried the same salary as that of the Chief Secretary. Therefore, the petitioner who was in the selection grade could be transferred to any of these two posts of Deputy Chairman, Planning Commission or Officer on Special Duty which were posts not lower in status and responsibility to the Cadre posts in Schedule III of the Indian Administrative Service (Pay) Rules, 1954 and which carried the same salary as that of the Chief Secretary.

32. The posts of the Deputy Chairman, Planning Commission and the Officer on Special Duty were created for Cadre officers to discharge duties and responsibilities of a high order. These posts were not created all of a sudden with any oblique purpose. The Planning Commission had been in contemplation for some time. Similarly, the post of Officer on Special Duty was created after consideration and evaluation of serious problems of State Revenue. Each one of the posts carried specific functions and responsibilities. Comparisons between functions, duties and responsibilities of posts at the apex of different departments are not always possible. The status of the post would also depend on the incumbent, because a brilliant officer can so

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augment the opportunities of public service in that post that others may covet it. The posts were created under the inherent executive powers of the State Government. These posts were not additions to posts specified in the Cadre Schedule of the Indian Administrative Service (Cadre) Rules, 1954. These were posts outside the Cadre.

33. On an objective consideration we find that the two posts were created for discharging functions requiring very high calibre and specialized experience and must be counted as no less respcnsible than the topmost Cadre posts. Finding suitable officers for such specialized jobs is always a difficult problem for the administration. The Cadres do not always overflow with superabundance of specialized experience. The choice, therefore, becomes limited. The Administration has also to take into account the willingness or otherwise of an officer to take up a new job which may not invest him with wide executive powers which he wields while holding even less important posts. The choice in the present case fell on the petitioner when the post of the Deputy Chairman was created and then again when the post of Special Officer was created. He was given the pay scale of the Chief Secretary, because that was the scale of pay he was drawing when he was appointed to these posts. The fact that on his refusal to join the posts, somebody else was appointed on Rs. 3,000/- does not devalue the job. The job remains the same. The question for the administration is to choose the man for the job, and it is only to be expected that whosoever is chosen will take with him his pay unless Government thinks of paying him more. When the petitioner was posted to the new posts he was permitted to draw his salary as the Chief Secretary and when Raja Ram the First Member of the Board of Revenue was appointed, he took with him his salary as the First Member. When the petitioner was to occupy the post of Deputy Chairman or Special Officer the post was graded to give him his old scale of pay and when Raja Ram was appointed to these posts, he was given his old scale as First Member. That the posts of Chief Secretary and First Member were interchangeable, though the former got a higher salary, was recognized by the State Government and also endorsed by the Central Government long back in January, 1970. There was, therefore, no upgrading or downgrading of the post.

34. The petitioner had worked as Deputy Commissioner of Commercial Taxes and subsequently as Secretary to Government Revenue Department dealing with Commercial Taxes also. The petitioner was also Commissioner, Board of Revenue in charge of commercial taxes. In view of the wide experience of the petitioner in the field of commercial taxes the Government decided to post him as Officer on Special Duty. This was neither unjust nor unfair nor mala fide. There was no reduction in rank. The petitioner's status as well as pay was in conformity with the Rules.

35. The petitioner could not claim that till retirement he must continue to act in the post of the Chief Secretary. The orders of transfer were passed in the administrative exigencies.

36. The members of Indian Administrative Service and particularly those who are in the high posts are described as the steel framework of the Administration. The smooth and sound administration of the country depends on the sense of security and stability of the officers. These officers should not be made to feel that their position or posts are precarious with the change of Government. Their service must be completely free from the fear or threat of arbitrary act of the authorities. Similarly, the members

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of the Service should keep themselves isolated from turmoils of political parties. It is this sense of disinterestedness and detached devotion to duty which has to be recognised and rewarded.

37. The posts of Deputy Chairman, Planning Commission and Officer on Special Duty are equal in status and responsibility. The services of Cadre officers are utilised in different posts of equal status and responsibility because of exigencies of administration and employing the best available talent in the suitable post. There is no hostile discrimination in transfers from one post to another when the posts are of equal status and responsibility.

38. The petitioner alleged that the creation of the posts of Deputy Chairman, Planning Commission and Officer on Special Duty as well as the appointment of the petitioner to the posts was mala fide. Broadly stated, the petitioner's allegations were that the Chief Minister acted mala fide in removing the petitioner from the post of Chief Secretary. The petitioner alleged that in the discharge of his duty he was fearless and he suggested action against persons who were friendly to the Chief Minister. It is said that the Chief Minister therefore wreaked his vengeance on the petitioner.

39. One of the instances alleged by the petitioner which gave rise to the anger of the Chief Minister relates to irregularities in the accounts of Thanjavur Co-operative Marketing Federation. V. S. Thiagaraja Mudaliar was the head of the Federation. Mudaliar was a powerful and influential person. He was a close associate of the Chief Minister. The petitioner put up a note to the Chief Minister that the case should be handed over to the police and the persons responsible should be hauled up. The petitioner alleged that the Minister for Co-operation called the petitioner and asked him to modify the note. The modification suggested was to leave out any reference to Mudaliar and to omit the suggestion for handing over the matter to the police.

40. Another allegation concerning Mudaliar is that he was flouting orders of the Government and health authorities and allowing effluents from the distillery at Tirucharapalli without proper treatment into the river and thereby causing hazards. The petitioner wrote a note asking for deterrent action and launching prosecution against Mudaliar. The petitioner alleged that the Chief Minister expressed his annoyance.

41. The Minister for Co-operation denied that he asked the petitioner to modify any note. The Chief Minister denied that he ever asked for any modification in the note. The Chief Minister further alleges in the affidavit that there is no note written by the petitioner suggesting the launching of prosecution against Mudaliar. Both the Chief Minister and the Minister for Co-operation state in their affidavits that action has been taken and is being pursued against all the persons concerned relating to the affairs of the Federation. The petitioners' suggestion was accepted. There is no occasion for vindictiveness.

42. The petitioner's allegation that the Chief Minister expressed annoyance at the petitioner's note against Mudaliar for causing hazards by discharge of effluent from the distillery is belied by the action taken by the Government. The petitioner in his note suggested a joint inspection and satisfactory arrangement for treatment of the effluent in accordance with the recommendation of the Water and Sewage Advisory Committee. The petitioner also recommended implementation of a plant scheme on pain of cancellation of licence. Industrial alcohol is manufactured in the distillery.

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This product is required by the cordite factory of the Defence Department, and for pharmaceutical, medicinal and industrial products. The petitioner's recommendation to close the distillery would not only have created unemployment of a large section but also loss of important products. The way the affairs of the distillery were handled according to the suggestion and recommendation of the petitioner does not disclose any evidence of mala fide on the part of the Government.

43. The third instance of mala fide alleged by the petitioner was that the Chief Minister did not like the suggestion of the petitioner that Vaithialingam, the Private Secretary to the Chief Minister should be transferred. The Chief Minister is also alleged to have said that the Chief Secretary should be transferred but not the Private Secretary. The Chief Minister denied that he ever made any statement that the Chief Secretary should be transferred.

44. It is also alleged that the Chief Minister wanted to prefer Vaithialingam in the preparation of the seniority list of the Indian Administrative Service. The petitioner alleged that he declined to oblige. Therefore, it is said that the petitioner suffered by the mala fides of the Chief Minister. There were disputes between direct recruits and promotees in regard to fixation of seniority. The Chief Minister on the advice of the petitioner passed an Order on December 22, 1969 that the Government could finalise the seniority list after considering the representations of the members. The petitioner thereafter submitted a file to the Chief Minister that direct recruit Assistant Engineers of the Public Works Department also made requests for revision of seniority as between them and the promotee Engineers. The Chief Minister under these circumstances cancelled his Order dated December 22, 1969. Subsequent to the cancellation of the order direct recruit Deputy Collectors filed writ petitions in the High Court claiming revision of seniority on the basis of Government Order dated December 22, 1969. Those petitions are pending disposal in the High Court of Madras.

45. The petitioner also alleges that the Chief Minister refused to allow Deputy Collectors in the select list to act in the Indian Administrative Service posts and many retired at the age of 55 without acting as I. A. S. Officers. The petitioner alleges that the Chief Minister thought that Vaithialingam would thereby gain seniority in the inter se seniority list of Deputy Collectors because the age of superannuation of I. A. S. Officers is 58. The respondents in their affidavits stated that the I. A. S. Selection Committee could not meet for the years 1968, 1969 and 1970 for various reasons. The petitioner in a note suggested that the inclusion of name in the Select List did not confer any right of promotion. The Chief Minister agreed with the petitioner.

46. These facts in relation to Vaithialingam indicate that the petitioner was not only a party to all the decisions but also he was responsible for the decisions taken by the Government. There is no ground whatever for attributing bad faith or improper motive to the Government against the petitioner.

47. The petitioner alleged other instances which gave rise to the wrath of the Chief Minister against the petitioner. There was land acquisition at Manali for Madras Refineries. Large compensation was paid to the owner Ramakrishnan. The petitioner caused the suspension of the District Revenue Officer and other Officers for suppressing the note that the Law Department had strongly opposed the proposal to award large compensation. The affidavit

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evidence of the respondents is that the awards were passed by the land acquisition authorities. The Law Department was of the view that land acquisition officers did not follow the correct principles in the award of compensation. The Law Department advised disciplinary action against the officers. The Law Department recommended that the awards should be set aside. The Chief Minister, the Minister of Law both directed that suitable action should be taken. The file was sent to the petitioner for further action. The petitioner asked for suspension of the Officers. The Government approved the suspension because of the clear instructions of the Government. Disciplinary proceedings are pending against these officers. It is obvious that the petitioner's allegations of mala fide against the Chief Minister are totally repelled by the correct facts.

48. The petitioner alleged that the Chief Minister expressed the view that the Government could not tolerate the Chief Secretary who dared to oppose the proposal relating to Anna Samadhi. It is alleged as follows. The D. M. K. Party decided to erect a Samadhi called Anna Samadhi. The Chief Minister wanted to appoint a committee for management and maintenance of the Samadhi. The Chief Minister wanted to issue an Ordinance in that behalf. The petitioner opposed the promulgation of the Ordinance. The idea of the Ordinance was dropped. It is said that thereafter a private trust was created for administering the Samadhi. The trustees requested the Government to hand over the Samadhi to the trust. The petitioner opposed the proposal on the ground that the portion of the land belonged to the Municipal Corporation and the land together with the Samadhi cost the Government and the Corporation over Rs. 40 lakhs. The petitioner's allegations are all baseless. The Public Works Department examined the proposal to hand over the Samadhi to the private trust. The file was marked to the Chief Minister. The petitioner merely noted "Chief Minister may decide". The petitioner did not oppose the proposal. This fact also indicates that the Chief Minister did not bear any grudge against the petitioner.

49. The petitioner alleges that an extraordinary procedure was followed in connection with the tender for the Veeranam Water Supply Scheme to the city of Madras. One Satyanarayana submitted the tender. The amount involved was Rs. 20 crores. The Government agreed to pay an advance of Rs. 90 lakhs as loan to the contractor for buying machinery. The petitioner did not approve the proposal. The petitioner said that a considerable time would be required to scrutinise the tender for such a large amount. The petitioner returned the file without scrutiny because the Minister for Works wanted it. This annoyed the Chief Minister. On the other hand Government alleges that eight firms submitted tenders for the Veeranam project. The tender of Satyanarayana Brothers was the lowest. They were a local company with wide experience in civil works and defence works. The Chief Secretary received the file on April 27, 1970. Orders were to be issued urgently. The file was obtained by the Additional Chief Secretary from the Chief Secretary's Office. It was then ordered by the Minister for Works after discussion with the Chief Minister that the lowest tender of Satyanarayana might be accepted. Orders were issued on May 7, 1970 accepting the tender of Satyanarayana Brothers. The petitioner's alleged note that he wanted time to scrutinise the file is not found in the file. An expert team recommended the acceptance of the tender of Satyanarayana Brothers. It thus appears that the petitioner saw the file on May 11, 1970 after the tender

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had been accepted on May 7, 1970. The petitioner did not raise any objection to the procedure which was adopted. When the matter came for final orders on July 13, 1970 the petitioner did not record any objection. This is yet another instance which establishes that the petitioner made reckless allegations imputing mala fides to the Chief Minister.

50. The other allegation of the petitioner concerns the Cooum River Project. The allegation is that the petitioner pressed for an investigation of the Cooum River Project. The Chief Minister issued orders for an enquiry. Later on the Chief Minister cancelled the order. The Chief Minister directed the Director of Vigilance to look into certain rumours about malpractices in the execution of the Cooum Improvement Scheme. The Director of Vigilance informed the petitioner and requested him to accord sanction to enable the Director to embark upon such an enquiry. The relevant section put up before the petitioner a draft letter authorising the Director to embark on an enquiry. It is discovered that no action was taken by the petitioner. The letter of the Director dated February 25, 1970 addressed to the petitioner indicates that the Director asked for authorisation to make an enquiry. The file indicates that the petitioner on February 26, 1970 submitted a note for Public (Secret /Confidential) Department for perusal. The Public (Secret /Confidential) Department received the file on September 20, 1970. There are minutes of the Chief Minister ordering the enquiry. The file was put up before the petitioner on September 21, 1970. The file was not received back. On July 31, 1971 the Chief Secretary asked the petitioner to send back the file. The petitioner on August 8, 1971 said that the file was not with him. These are indeed strange things. It is baseless to allege mala fides against the Chief Minister.

51. The brunt of the petitioner's allegations against the Chief Minister centres on the mid-term poll in the month of February, 1971. The petitioner's allegations are these. In or about the end of January, 1971, the D. M. K. Party of which Ramaswami Naicker is the leader took out an anti-religious procession at Salem. It is alleged that the procession hurt the feelings of devout Hindus. One Ramaswami, popularly known as "Cho" who is the Editor of a magazine called "Tughlak" took photographs of the procession. The D. M. K. Party obtained information that Cho was likely to publish the photographs. The D. M. K. Party thought that in view of the impending elections the publication of the photographs would affect their prospects at the election. The petitioner received a trunk call from the Law Minister who asked him to take action to prohibit publication of the photographs. The petitioner said that the Government had no power to prevent the publication.

52. The Chief Minister shouted on the telephone that the Deputy Superintendent of Police should be suspended and action should be taken against the magazine. The petitioner discussed the matter with the Inspector General of Police who said that is would be most unfair to suspend the Deputy Superintendent of Police, Salem. The petitioner suggested that the matter might be dropped. The Chief Minister thereupon asked the Inspector General of Police to suspend the Circle Inspector of Police at Salem. The Inspector General of Police suspended the Circle Inspector and registered a case against him. When the Chief Minister returned from his camp, he took the petitioner to task for registering a case against Naicker.

53. The Chief Minister in his affidavit states that he told the petitioner

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that action should be taken against the persons who had broken the law. He denies that he took the petitioner to task for registering a case against Naicker. He denies that he shouted at the petitioner and ordered the Inspector General of Police to suspend any police officer.

54. The other allegations by the petitioner are these. On February 28, 1971 the petitioner received a telephone message from the Deputy Inspector General of Police about various clashes involving looting, killing, burning of houses in the village in Tireunelveli District on the previous night. The Inspector General of Police informed the petitioner that the Minister of Co-operation was at the back of the clashes. The District Collector was not helpful in taking action against the Minister. The petitioner told the Collector that it was a serious dereliction of duty. The petitioner asked the Collector to proceed immediately to the spot to take steps to maintain law and order. The petitioner also asked for a full report.

55. At 4 p.m. on February 28, 1971 the Governor summoned the petitioner and the Inspector General of Police. The Governor summoned them to discuss about the deteriorating law and order situation in the city and the Districts. The Governor made special reference to the complaints received by him about violence and intimidation particularly from Tirupattur (Ramnad), Shivai Kundam, Udumalpet. Tiruvannamalai and Saidapet constituencies from where the Chief Minister and other Cabinet Ministers were contesting the elections. The Inspector General of Police told the Governor that lorry loads of goondas armed with deadly weapons had arrived in the city of Madras. The goondas numbered about 1,500. They were brought at the instance of the Chief Minister. The Governor was annoyed and shouted "how was it possible to transport 1,500 goondas from nearly 300 miles by lorries without the knowledge of the police. I expect the police to do their duty. The law and order situation has deteriorated considerably throughout the State. In the Tirupattur Constituency of Ramnad District there was no semblance of law and order. I had received telegrams and complaints. Unless the Collectors and the Superintendent of Police do their duty there would be no free and fair elections". The Governor told the petitioner "Mr. Chief Secretary, throughout your career, you have the reputation of carrying out the duties without fear or favour and without bothering about the consequences. I am sure that I could rely upon you to take special steps to arrest the deteriorating law and order situation and ensure free and fair elections". The petitioner assured the Governor that he would take strong action.

56. The petitioner then discussed with the Inspector General of Police about the special steps to be taken to maintain law and order. The petitioner gave orders to the Inspector General of Police that the goondas should be arrested. The Inspector General of Police agreed to carry out the orders. Raid was carried out in the night.

57. The Chief Minister sent for the petitioner and shouted at him, "I am the Chief Minister. I am in charge of the Police Portfolio. How dare you order the arrest of persons in my constituency without my prior permission?" The petitioner said that he carried out his duty without favour and fear. The Chief Minister flared up and said "You had deployed Central Police every two feet at Thiagarayanagar, Mylapore, Saidapet and other places. I order you to withdraw immediately the Central Reserve Police". The petitioner said that he had asked for five battalions of Central Reserve Police for maintaining law and order situation. It was not possible

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to withdraw the Central Reserve Police. The Chief Minister shouted at the petitioner.

58. After the polling was over the police force posted in the city was moved to other polling areas. Law and order situation deteriorated considerably in the city. A lady M. L. A. belonging to the Congress Party was dragged from her car and molested. Goondas armed with sticks and weapons were at large. The Inspector General of Police discussed the matter with the petitioner. The petitioner asked them to round up all bad elements. More than 2,600 bad elements were rounded up. In the absence of the Chief Minister, two Ministers phoned the Commissioner of Police to release the D. M. K. ring leaders. The Commissioner of Police in accordance with the petitioner's instructions refused to release them unless proper bail was offered. The Commissioner of Police informed the petitioner that the Chief Minister himself had phoned him. The Inspector General of Police reported that the D. M. K. was pressing into service goondas. He apprehended trouble as some of the Ministers were indulging in dangerous activities. The petitioner ordered the Inspector General of Police to intercept lorry-loads of goondas. The Chief Minister and the Minister of Law, when they came to know about the instructions issued by the petitioner to the Inspector General of Police asked the petitioner to withdraw the instructions. The petitioner refused to do so.

59. On March 4, 1971 a Code message was received from the Home Ministry that the Ministry had received disturbing reports about clashes between various political groups in parts of the city. Officers were asked to be fully vigilant and take preventive measures. The petitioner discussed the matter with the Home Secretary, Inspector General of Police, Commissioner of Police and other officers and issued instructions. The instructions were that the people should not be allowed to collect within three furlongs of the counting centres. Bad elements should be rounded up 24 hours before the counting began. The Collectors and the Commissioner of Police should form Peace Committees and request the political parties not to take out victory processions or indulge in violence. Section 41 of the City Police Act and Section 30 of the District Police Act were to be promulgated to regulate crowds.

60. On March 6, 1971 the Chief Minister rang up the petitioner and asked him to be present at the Cabinet meeting along with the Inspector General of Police, the Commissioner of Police and the Home Secretary. At the Cabinet meeting the petitioner was attacked and abused by the Law Minister. The petitioner, the Inspector General of Police and the Commissioner of Police were threatened with dire consequences. The results were declared on March 11. The D. M. K. maintained its majority.

61. After the elections a meeting of all the District Collectors was fixed for April 6, 1971, at Madras. The Chief Secretary as the Service Chief was responsible for conducting the proceedings. The Chief Minister called a Press Conference around 12 midnight at which he announced that the petitioner was appointed a Deputy Chairman of the State Planning Commission and that he would be transferred forthwith.

62. It is in this background of long narration of events at the time of election that the petitioner alleges that the Government and the Chief Minister acted mala fide against the petitioner because of the stern attitude of the petitioner against the D. M. K. Party.

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63. The Chief Secretary of the State in his affidavit states that there is no record of any one of the matters alleged by the petitioner with regard to law and order situation on the eve and at the time of the election save and except the instructions issued by the petitioner on March 4, 1971 with regard to promulgation of Section 41 of the City Police Act and Section 30 of the District Police Act; rounding up of bad elements and probation offenders and prohibition of processions. The order passed by the petitioner was reviewed at the State Cabinet Meeting on March 6, 1971. There were two modifications. First, the prohibition against collection of people within three furlongs of the counting centre was changed into safe distance, in place of three furlongs. The rounding up of rowdies and bad elements and probation offenders was restricted only to "listed rowdies". The Home Ministry Code message dated March 4, 1971 about clashes between political groups was received but the Government did not attach special or particular importance to the message. The Secretary Ministry of Home Affairs sent a message on March 16, 1971 commending the excellent arrangements made for ensuring free and fair elections. The Government, therefore, states that law and order was well maintained. The letter dated March 16, 1971 was a circular letter sent to all the Chief Secretaries and therefore the Government states that no special credit can be claimed by the petitioner or ascribed to the petitioner's alleged instructions.

64. There is an affidavit by the Chief Minister that no goondas were brought by him into the city and that allegation about raid on March 1, to round up the goondas is described by the Chief Minister to be false. The Chief Minister also denies that the petitioner at any time stated that the Inspector General of Police was expecting serious clashes in Saidapet, Mylapore and Thyagaraya Nagar. The Chief Minister denies that he asked the Commissioner of Police to release the D. M. K. leaders.

65. The Governor of Tamil Nadu in his affidavit states that the petitioner and the Inspector General of Police met him on February 28, 1971 at 4 p.m. at his instance to discuss the arrangements made or being made for the effective maintenance of law and order. The Governor brought to the notice of the petitioner and the Inspector General of Police that certain allegations had been made in regard to incidents of violence and intimidation. The Inspector General of Police told the Governor that the reports would be investigated. The Governor denies that he made a reference to complaints of violence or intimidation from the constituencies of Chief Minister and Cabinet Ministers. The Governor also denies that the Inspector General of Police had informed him that 1,500 goondas had been rounded up. The Governor denies that he ever paid compliments to the petitioner about his reputation or carrying out his duties without favour or fear.

66. The Minister of Labour in his affidavit denies that he phoned up the Commissioner of Police. The Minister for Harijan Welfare to the Government of Tamil Nadu denies having telephoned the Commissioner of Police to release the arrested leaders. The Minister for Food denies that the D. M. K., employed goondas and he with other Ministers indulged in violence. He also denies that the Minister started a tirade against the petitioner, the Inspector General of Police and the Commissioner of Police.

67. The Inspector General of Police states that there was no deterioration in the law and order situation. He states that out of 160 complaints received throughout the State 69 were againt D. M. K. 46 against the

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Congress(O) and 6 against the other parties and the remaining 39 are against the Police and other non-political bodies. The Inspector General of Police denies that there was any organised violence. Kuppuswamy, the Inspector General of Prisons who held the post of Commissioner of Police at the time of the election states that the allegations made by the petitioner about tirade against the petitioner and the Inspector General of Police and the Commissioner of Police are baseless.

68. The petitioner made allegations of mala fides to suggest that the petitioner was an honest officer and the Chief Minister and the other Ministers did not want such an honest officer and therefore they got rid of him. The most significant feature in the allegations of mala fides is that when on April 7, 1971 the petitioner was appointed to act as Deputy Chairman, Planning and he went on leave he did not at any stage state anywhere that the order was made mala fide. The first letter where the petitioner alleged mala fides is dated June 7, 1972. The allegations of mala fides are not contemporaneous but after thoughts at a distance of one year. That was when the petitioner returned from leave after one year and he was appointed to the post of Deputy Chairman, Planning Commission. Even in that letter the only allegation about mala fide is that the petitioner took strong steps about maintenance of law and order at the time of elections in 1971 against the views of the Chief Minister and the Ministers. It, therefore, follows that until the petition was filed in the month of July, 1972 the respondents were not aware of various allegation of mala fide made in the petition. Therefore, when the impugned order was made on June 26/27, 1972 it is manifest that the Government did not make the order out of any improper motive or any indecent haste or out of any ingenious inspiration to get rid of the petitioner. Another noticeable feature in the allegations of mala fides is that the petitioner all throughout describes himself as a person who acted without any fear or favour and enjoyed the reputation of being a strict and honest officer, and, therefore, the Government contrived to remove the petitioner from the post of Chief Secretary. Honest and fearless Cadre officers are not unknown and rare as the petitioner suggests. Nor are intrepid officers in Cadre posts thrown out of office because of expression of views about law and order situation. In the petition the petitioner has ascribed to the Chief Minister, the Governor and a few other Ministers certain statements having been made by them. The statements are quoted to be words of mouth of the Chief Minister or the Governor or the Ministers. The petitioner has nowhere made contemporaneous entry or record of such utterances. It is difficult to believe that the petitioner would remember identical words in long sequence and set them out with exactitude in the petition. These allegations are made in the petition for the purpose of giving semblance of truth and lending colour to chronicle.

69. The affidavit evidence indicates that the petitioner carried out normal duties and exercised care and caution at the time of the election. That is expected of all officers. It is also expected that officers will maintain a balanced and firm hand in regard to law and order situation as well as administration. Civil servants are expected to advise Ministers in the context of files and rules. The Government and Ministers are also expected to maintain a balanced and impersonal attitude in regard to advice given by civil servants. In the present case, it appears that the petitioner gave advice in course of duty. The Government practically in all cases accepted the advice of the petitioner. There does not appear any instance of acrimony

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or disagreement between the Government and the petitioner. There are no records to suggest that the petitioner advised one way and the Government acted in an opposite manner.

70. The events alleged at the time of the elections are in aid of the petitioner's contention that his dealing of the law and order situation was so firm that the Chief Minister and other members of his party became alienated. The petitioner suggested that the Chief Minister and the members of his party were responsible for introducing violence and intimidation. The further suggestion of the petitioner is that the petitioner exposed the activities of the D. M. K. Party. Complaints against the D. M. K. Party were like complaints against other political parties. The affidavit evidence indicates that the law and order situation was kept under normal control. All the officers of the State including the police service discharged their duty in the best interest of administration as also in public interest. The petitioner did not achieve anything extraordinary. As the Chief Secretary it was the duty of the petitioner to see that situation nowhere went out of control. The Chief Minister and the members of his party cannot be said on the affidavit evidence to have committed acts of violence or intimidation. The entire affidavit evidence establishes beyond any measure of doubt that the petitioner's allegations imputing mala fides against the Chief Minister are baseless. The petitioner's allegations were in aid of suggesting vindictiveness and vengeance on part of the Chief Minister. Facts and circumstances repel any such insinuation and innuendo.

71. For these reasons the contention of the petitioner fail. The petition is dismissed. Each party will pay and bear its own costs.

Bhagwati, J.—(*Concurring*) (*for himself, Y. V. Chandrachud and V. R. Krishna Iyer, JJ.*).—We are in agreement with the final conclusion reached in the judgment delivered by the learned Chief Justice, but our approach and reasoning are a little different and we are, therefore, delivering separate judgment expressing our views on the various questions arising in the petition.

73. The petitioner is a member of the Indian Administrative Service in the Cadre of the State of Tamil Nadu. On August 2, 1968, the petitioner was confirmed in the Selection Grade of the Indian Administrative Service with effect from May 22, 1961. The petitioner was successively posted to act as Fifth Member, Board of Revenue, Fourth Member, Board of Revenue, Third Member, Board of Revenue and Second Member, Board of Revenue on February 25, 1964, August 5, 1965, March 30, 1966 and April 5, 1969. On July 11, 1969, the State of Tamil Nadu passed an order sanctioning the creation of a temporary post of Additional Chief Secretary to the Government for a period of one year and directed that the posts of Chief Secretary to Government, Additional Chief Secretary to Government and First Member of the Board of Revenue should be deemed to be in the same category and should be interchangeable selection posts, and by the same order promoted and posted the petitioner to act as Additional Chief Secretary to Government in the newly created post. Now, according to Schedule III-A of the Indian Administrative Service (Pay) Rules, 1954 the posts of Chief Secretary to Government and First Member, Board of Revenue carried respectively pay of Rs. 3,000 and Rs. 2,750. But since the State Government had by the order dated July 11, 1969 directed that the posts of Chief Secretary to Government,

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Additional Chief Secretary to Government and First Member, Board of Revenue should be in the same category and interchangeable, it was necessary that there should be same pay for all the three posts and the State Government, therefore, by a letter dated August 7, 1969 requested the Central Government to amend Schedule IIIA of the Indian Administrative Service (Pay) Rules, 1954, so that all the three posts could be of the same rank carrying the same pay, namely Rs. 3,000. The Central Government by its letter in reply dated September 26, 1969 pointed out to the State Government that the status of Chief Secretary to Government as the head of the Secretariat organisation in the State should remain unquestioned and it should not be allowed to be diluted by the creation of the post of Additional Chief Secretary carrying the same status and emoluments as the Chief Secretary and suggested that the State Government may consider adding the post of Additional Secretary to the Cadre temporarily for one year in the pay of Rs. 2,750 or in smaller scale, but not in the scale of Rs. 3,000 as desired by the State Government. So far as the request of the State Government in regard to the post of First Member of the Board of Revenue was concerned, the Central Government agreed that there should be one non-secretariat post in the State Cadre carrying the same salary as that of the Chief Secretary and stated that they were taking steps to provide that the First Member, Board of Revenue should carry the same pay as admissible to the Chief Secretary. The Central Government accordingly issued a Notification dated January 14, 1970 in pursuance of Rule 11 of the Indian Administrative Service (Pay) Rules, 1954 amending Schedule III with effect from December 17, 1969, so as to provide that the pay of First Member, Board of Revenue shall be Rs. 3,000, that is, the same as that of the Chief Secretary. The post of First Member, Board of Revenue was thus equated to that of the Chief Secretary in rank and status, though the post of Additional Chief Secretary was not.

74. In the meantime, on November 13, 1969, the then Chief Secretary Ramakrishnan, who was a member of the Indian Civil Service, was retiring on completion of 35 years service, and the question, therefore, arose as to who should be appointed in his place. The file in this connection was placed before the Chief Minister, who is the second respondent before us, and a list of eleven seniormost members of the Indian Civil Service and the Indian Administrative Service was submitted to him for his consideration on October 30, 1969. The second respondent made an elaborate note on the file on November 12, 1969 pointing out that the post of Chief Secretary is a selection post and in making selection merit should be considered and not seniority alone and the person best fitted to discharge the onerous duties of the post should be selected. The second respondent then proceeded to consider the merits of the eleven officers whose names had been placed before him and selected the petitioner for the post stating that "among the present set of senior officers——E. P. Royappa is the best suited for the post" and "he may, therefore, be promoted as Chief Secretary". This note was approved by the Governor on the same day, namely, November 12, 1969. On the next day, that is November 13, 1969 the draft order in regard to the appointment of the petitioner was prepared and it was approved by the second respondent. The draft order stated inter alia that the petitioner "is promoted and posted as Chief Secretary vice Thiru Ramakrishnan, I. C. S. retiring from service with effect from the afternoon of November 13, 1969". The final order in the name of the Governor duly authenticated by the Chief Secretary was issued on the same day but it was differently worded in one material respect. Paragraph 5 of that order provided that the petitioner "is promoted and posted as *to act* as Chief Secretary to Government vice Thiru

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Ramakrishnan, I. C. S. who has been granted refused leave with effect from November 14, 1969". The reference here was to the fact that Ramakrishnan has been granted refused leave for four months from November 14, 1969 under Fundamental Rule 86, clause (*a*). The petitioner was accordingly promoted as Chief Secretary. Whether such promotion was by way of substantive appointment or in an officiating capacity is a matter which we would have to decide when we deal with the arguments of the parties.

75. On April 1, 1970, the Government of India proposed that in view of the fact that the responsibilities of Chief Secretary to State Government had multiplied and become complex to such an extent that they could no longer be regarded as less onerous than those of Secretary to the Government of India, the post of Chief Secretary to State Government should be equated to the post of Secretary to the Government of India in respect of pay and invited the comments of various State Governments on this proposal. The State of Tamil Nadu conveyed its assent to the proposal but suggested that since the posts of Chief Secretary and First Member, Board of Revenue in the State were equal in status and interchangeable, both these posts should be upgraded to that of Secretary to the Government of India. The Government of India did not accede to the request of the State of Tamil Nadu in so far as the post of First Member, Board of Revenue was concerned, but in regard to the post of Chief Secretary, amended Schedule III to the Indian Administrative Service (Pay) Rules, 1954 by a Notification dated August 31, 1970 raising the pay of Chief Secretary from Rs. 3,000 to Rs. 5,500 per month so as to bring him on par with Secretary to the Government of India. The rank and status of the post of Chief Secretary was thus enhanced and that post was raised above every other Cadre post in the State including the post of First Member, Board of Revenue.

76. The general elections to the Parliament and the State Legislature were held in Tamil Nadu in the first week of March 1971. The results of the poll were declared on March 11, 1971 and the D. M. K. party under the leadership of the second respondent retained its majority in the State Legislature and formed the new Government with the second respondent as the Chief Minister. According to the petitioner, there were several matters in which he had the misfortune to incur the displeasure and wrath of the second respondent during the period prior to the elections as also at the time of the elections whilst acting in discharge of his duties as Chief Secretary, and the second respondent, therefore, on being returned to power, decided to remove him from the post of Chief Secretary. With that end in view the second respondent announced at a Press Conference held by him at midnight on April 6, 1971 that the petitioner was transferred as Deputy Chairman of the State Planning Commission. There was no State Planning Commission in existence on that date though it appears that the proposal to set it up had been under consideration of the Government for some time. The petitioner was also not given any inkling of the proposed appointment and he came to learn about it for the first time on reading the newspapers in the morning of April 7, 1971. The formal order in this connection was issued by the State Government on April 7, 1971 and by this order the State Government accorded sanction to the creation of a temporary post of Deputy Chairman in the State Planning Commission in the grade of Chief Secretary for a period of one year with effect from the date of appointment and appointed the petitioner to that post providing that he shall be entitled to the same rank and emoluments as admissible to the post of Chief Secretary. The petitioner obviously felt that he was being denigrated and he, therefore,

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did not join this post and went on leave from April 18, 1971 and the leave was renewed by him from time to time up to June 5, 1972. The State Planning Commission was in the meantime constituted on May 25, 1971 and since the petitioner was on leave, an order dated August 19, 1971 was issued by the State Government directing, in modification of the earlier order dated April 7, 1971, that the post of Deputy Chairman should be deemed to have been sanctioned for a period of one year from April 13, 1971 and that Raja Ram, who was First Member, Board of Revenue, should be placed in charge of that post until further orders. The post of Deputy Chairman having been created for a period of one year only, came to an end on April 13, 1972 and it was not thereafter continued until June 6, 1972 when it was again revived on return of the petitioner from leave. The State Government passed an order dated June 6, 1972 sanctioning once again the creation of a temporary post of Deputy Chairman on a pay of Rs. 3,500/- per month for a period of one year and appointing the petitioner to that post on return from leave. Against this order the petitioner made a representation to the second respondent on June 7, 1972 stating that, without the approval of the Central Government, the continuance of the post of Deputy Chairman in the rank of Chief Secretary for a period of more than one year would be invalid under Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954. How far this contention was valid is a matter we shall presently examine and it need not detain us. The next event that happened was—whether as a sequel to the representation of the petitioner or not, we do not know—that the State Government issued an order dated June 26, 1972 sanctioning the creation of a temporary post of Officer on Special Duty "of the rank of Member, Board of Revenue" for a period of one year for streamlining and rationalising the structure of Tamil Nadu General Sales Tax Act and similar enactments relating to commercial taxes and rules. On the next day, i. e., June 27, 1972 another order was issued by the State Government modifying the earlier order to the effect that the temporary post of Officer on Special Duty shall be "in the grade of Chief Secretary to Government" and appointing the petitioner to this post. The petitioner did not join this post too and proceeded on long leave which continues till today. We enquired of the learned Advocate-General who appeared on behalf of the State of Tamil Nadu as to what arrangement had been made to fill the post of Officer on Special Duty in the absence of the petitioner who had gone on leave and in answer to our inquiry, we were informed by him that a Member of the Board of Revenue was discharging the functions of this post in addition to his normal functions. It may be pointed out here that after the petitioner was transferred from the post of Deputy Chairman and appointed Officer on Special Duty, an Order dated June 29, 1972 was passed by the State Government abolishing the post of Deputy Chairman sanctioned under the earlier Order dated June 6, 1972, sanctioning the creation of a new post of Deputy Chairman "in the grade of First Member, Board of Revenue" on a pay of Rs. 3,000 per month and appointing Raja Ram, First Member, Board of Revenue to that post "in addition to his appointment as First Member, Board of Revenue". One other fact may also be noticed—and that is a little important—that on transfer of the petitioner from the post of Chief Secretary, one Sabanayagam, who was admittedly junior to the petitioner, was promoted as Chief Secretary and we are told that he has been confirmed in that post. The petitioner was obviously hurt by these rather disingenuous moves adopted by the State Government at the instance of the second respondent to remove him from the post of Chief Secretary and he, therefore, filed the present petition under Article 32 of the Constitution challenging the validity of his transfer from the post of Chief Secretary, first to the post of

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Deputy Chairman, State Planning Commission and then to the post of Officer on Special Duty, on the following grounds, namely: (1) it was contrary to the proviso to Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 and Rule 9, sub-rule (1) of the Indian Administrative Service (Pay) Rules, 1954; (2) it was violative of Articles 14 and 16 of the Constitution as the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty were inferior in rank and status to that of the Chief Secretary; and (3) it was made in mala fide exercise of power, not on account of exigencies of administration or public service, but because the second respondent was annoyed with the petitioner on account of various incidents referred to in the petition and wanted him out of the way. We shall elaborate these grounds as we proceed to discuss them.

77. But before we examine these grounds we must first determine what was the nature of the appointment when the petitioner was promoted as Chief Secretary? Was he promoted in a substantive capacity or in an officiating capacity? The contention of the petitioner was that he was appointed substantively to the post of Chief Secretary and for this purpose he relied on the draft order approved by the second respondent as well as the Governor which did not use any words suggesting that his promotion was in an acting capacity and promoted and posted him as Chief Secretary without any qualifying or limitative words. The petitioner of course could not dispute that the words used in the authenticated order were "promoted and posted *to act* as Chief Secretary", but his argument was, firstly, that the words "to act" qualified only "posted" and not "promoted" and in this context they meant nothing more than this, namely, that the petitioner was posted to function or work as Chief Secretary and not that he was promoted in an acting capacity, and secondly, that even if the words "to act" had the effect of making promotion an acting one, the authenticated order did not correctly embody the real decision of the State Government which was to be found in the draft order and the draft order must, therefore, prevail over the authenticated order. The respondents sought to repel this contention by a two-fold argument. The first argument was based on the terms of the authenticated order and it was said that that was the final order duly authenticated by the then Chief Secretary and it was not open to the petitioner to go behind that order and refer to the draft order for purpose of varying its terms. The authenticated order, contended the respondents, clearly showed that the promotion and posting of the petitioner as Chief Secretary was in an officiating capacity. The other argument urged in the alternative was that though Ramakrishnan retired on attaining the age of superannuation on the afternoon of November 13, 1969, he was granted refused leave for a period of four months after the date of his retirement under Fundamental Rule 86, clause (*a*) and his service was, therefore, extended and he continued to retain his lien on the post of Chief Secretary until the expiration of such period of four months, i. e., up to March 14, 1970 and the petitioner could not, therefore, possibly be appointed substantively to the post of Chief Secretary till that time. We think, on a consideration of these arguments, that the contention of the petitioner that he was promoted as Chief Secretary in a substantive capacity is not well founded.

78. The authenticated order provided in terms clear and explicit that the petitioner was promoted and posted to act as Chief Secretary. The words "to act", according to plain grammar and language, governed not only "posted" but also "promoted". The petitioner was both "promoted and posted" as one single composite event, "to act" as Chief Secretary and that clearly meant that the promotion was in an acting capacity. But the

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argument of the petitioner was that the words "to act" were not to be found in the draft order which recorded the original decision of the State Government and they were introduced in the authenticated order by mistake and should therefore be ignored, or in other words, the authenticated order should be read without the words "to act" so as to be in conformity with the draft order. The respondents resisted this attempt to go behind the authenticated order and contended that the authenticated order was the final order and it was not open to the petitioner to say that it did not correctly reflect the order as made by the State Government. We do not think this contention of the respondents is sound. It is not well settled law that when an order is authenticated, the only challenge that is excluded by the authentication is that it is not an order made by the Governor. The validity of such an order can be questioned on other grounds. (Vide *King Emperor* v. *Shivnath Banerjee*[1] and *State of Bihar* v. *Sonabati*.[2]) The authentication does not, therefore, preclude the contention that the order though made by the Governor suffers from some other infirmity. The authenticated order is merely an expression of the actual order which precedes it and which is made by the appropriate authority entitled to act on behalf of the State Government. As pointed out by this Court in *State of Bihar* v. *Sonabati* (supra) "the process of making an order precedes and is different from the expression of it". It should therefore, be axiomatic that if the authenticated order does not correctly reflect the actual order made, or to put the same thing differently, the actual decision taken by the State Government, it must be open to correction. The formal expression of the order cannot be given such sanctity that even if found to be mistaken, it must prevail over the actual order made and override it. That would not be consonant with reason or principle. It would be an artificial rule calculated to obstruct the cause of truth and justice. Here in the present case it is the citizen who contends that the authenticated order does not correctly reproduce the actual order made by the State Government. But there may conceivably be cases where the Government may also find that there is a mistake in the authenticated order and it requires to be rectified. Take for example a case where the actual decision taken by the State Government is that a person should be appointed to a post in an officiating capacity but by mistake the appointment is described as substantive appointment in the authenticated order. Can it be suggested in such a case that the Government cannot rectify the mistake by amending the authenticated order so as to bring it in accord with the real decision? We have, therefore, no doubt that it was competent to the petitioner to contend, by reference to the draft order which contained the original decision of the State Government, that the authenticated order did not correctly reflect such decision and suffered from an error. But the question is whether such contention can succeed.

79. Now, if we look at the draft order it is clear that it merely uses the words "promoted and posted as Chief Secretary". It is silent as to the nature of the promotion. It does not say whether the promotion is by way of substantive appointment or in an officiating capacity. It could be either, consistently with the words used. It is the authenticated order which says for the first time clearly and definitely by using the words "to act" that the promotion is in an officiating capacity. There is thus no inconsistency between the draft order and the authenticated order from which any error can be spelt out in the authenticated order. The authenticated order in so far as it uses the words "to act", does no more than speak on a matter on

1. 72 IA 241 : AIR 1945 PC 156. 2. (1961) 1 SCR 728, 746 : AIR 1961

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which the draft order was silent. It appears that before issuing the authenticated order the appropriate authority applied its mind to the question as to whether the promotion should be in a substantive capacity or in an officiating capacity and since Ramakrishnan was going on refused leave for four months from November 14, 1969 and was accordingly, as we shall presently point out, entitled to retain his lien on the post of Chief Secretary till that date, decided that the promotion should be an officiating one as indeed it could not be otherwise, and that is why the authenticated order was issued with the addition of the words "to act" after the expression "promoted and posted". There is of course no positive evidence to this effect, but it would appear to be a reasonable inference to make in view of the substitution of the words "retiring from service with effect from the afternoon of November 13, 1969" in the authenticated order. It is, therefore, clear that the authenticated order correctly reflected the final decision of the State Government and under it the promotion of the petitioner was in an acting or officiating capacity.

80. The alternative argument of the respondents must also lead us to the same conclusion. This argument has been dealt with in the judgment of the learned Chief Justice and we do not think we can usefully add anything to what has been stated there by the learned Chief Justice. We entirely agree with the reasoning and the conclusion of the learned Chief Justice on this point and hold that since Ramakrishnan proceeded on refused leave for a period of four months from the date of his superannuation he continued to retain his lien on the post of Chief Secretary until March 14, 1970 during the period of refused leave granted to him, and the promotion of the petitioner under the Order, dated November 13, 1969 could not therefore be otherwise than in an officiating capacity. The post of Chief Secretary became vacant on March 14, 1970 but at no time thereafter the petitioner was confirmed as Chief Secretary and he had, therefore, no right to hold the post of Chief Secretary at the date when he was transferred as Deputy Chairman, State Planning Commission. But that does not mean that he was not entitled to be considered for confirmation, and since he was not confirmed, but Subanayagam, who was junior to him, was promoted and confirmed, the question must inevitably arise whether what was done was in mala fide exercise of power or in violation of Articles 14 and 16 of the Constitution.

81. We now turn to the first ground of challenge which alleges contravention of the second proviso to Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 and Rule 9(1) of the Indian Administrative Service (Pay) Rules, 1954. So far as the second proviso to Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 is concerned, we do not think it has any application. That proviso merely confers limited authority on the State Government to make temporary addition to the Cadre for a period not exceeding the limit therein specified. The strength and composition of the Cadre can be determined only by the Central Government under Rule 4(1) and the Central Government alone can review it triennially or at any other intermediate time under Rule 4(2). The State Government cannot add to the Cadre a different category of post than that already existing in the Cadre, nor can it make any permanent addition to the number of posts of a particular category in the Cadre, for to do so would mean, in the first case, alteration in the composition of the Cadre, and in the second, alteration in the strength of the Cadre, both of which would be impermissible to the State Government. But the State Government can, by virtue of the relaxation granted by the second proviso, make temporary

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addition to the Cadre provided the post added carries duties or responsibilities of a like nature to a Cadre post. This would mean, as pointed out by the Government of India in its decision recorded at 4.1 at page 741 of the All Indian Services Manual (Second Edition): "The exercise of this power by the State Government with reference to a post involves an objective assessment of the nature of the duties and responsibilities attached to that post in comparison to those attached to a Cadre post. *Thus posts cannot be added temporarily to the Cadre unless such posts already exist in the Cadre*". The State of Tamil Nadu could not, therefore, add the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty under the second proviso, as these posts did not exist in the Cadre as constituted by the Central Government. They were new categories of posts created by the State Government. The second proviso to Rule 4(2) has, therefore, no application and the challenge based on it must fail.

82. The petitioner is, however, on firmer ground when he bases his challenge under Rule 9, sub-rule (1) of the Indian Administrative Service (Pay) Rules, 1954. Rule 9, in so far as material, provides as follows:

> "(1) No Member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.
>
> (2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to, had he been appointed in the post to which the said post is declared equivalent.
>
> (3) * * * * * *
>
> (4) Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its control, or the Central Government in respect of any posts under its control, may, for sufficient reasons to be recorded in writing, where equation is not possible, appoint any member of the Service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III."

This Rule is intended to provide a safeguard for the protection of a member of the Indian Administrative Service. Sub-rule (1) enacts that no member of the Indian Administrative Service shall be appointed to a post other than a post specified in Schedule III, or in other words, to a non-Cadre post unless the Government makes a declaration that such non-Cadre post is "equivalent in status and responsibility" to a post specified in the said Schedule, i. e., to a Cadre post. If the State Government wants to appoint a member of the Indian Administrative Service to a non-Cadre post created by it, it cannot do so *unless* it makes a declaration setting out which is the Cadre post to which such non-Cadre post is equivalent in status and responsibility. The making of such a declaration is a *sine qua non* of the exercise of power under sub-rule (1). It is not an idle formality which can be dispensed with at the sweet will of the Government. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a non-Cadre post which is inferior in status and responsibility to that occupied by him. So far as Cadre posts are concerned,

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their hierarchy would be known, but a non-Cadre post created by the Government would be stranger in the hierarchy, and that is why sub-rule (1) requires that before appointing a member of the Indian Administrative Service to such non-Cadre post, the Government must declare which is the Cadre post to which such non-Cadre post is equivalent in status and responsibility, so that the member of the Indian Administrative Service who is appointed to such non-Cadre post, would know what is the status and responsibility of his post in terms of Cadre posts and whether he is placed in a superior or equal post or he is brought down to an inferior post. If it is the latter, he would be entitled to protect his rights by pleading violation of Article 311 or Articles 14 and 16 of the Constitution, whichever may be applicable. That would provide him effective insulation against unjust or unequal or unlawful treatment at the hands of the Government. The object of this provision clearly is to ensure that the public services are, in the discharge of their duties, not exposed to the demoralising and depraving effects of personal or political nepotism or victimisation or the vagaries of the political machine. The determination of equivalence is, therefore, made a condition precedent before a member of the Indian Administrative Service can be appointed to a non-Cadre post under sub-rule (1). It is a mandatory requirement which must be obeyed. The Government must apply its mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post and determine the equivalence. There the pay attached to the non-Cadre post is not material. As pointed out by the Government of India in a decision given by it in MHA letter No. 32/52/56-AIS(II), dated July 10, 1956 the basic criterion for the determination of equivalence is "the nature and responsibilities duties of attached to the post *and not the pay attached to the post*". Once the declaration of equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post, sub-rule (2) says that the pay of the member of the Indian Administrative Service appointed to such non-Cadre post shall be the same as he would have been entitled to, had he been appointed in the Cadre post to which such non-Cadre post is declared equivalent. He is thus assured the pay of the equivalent Cadre post and his pay is protected. Now this declaration of equivalence, though imperative, is not conclusive in the sense that it can never be questioned. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence, that the non-Cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-Cadre post is in violation of Article 311 or Articles 14 and 16. The burden of establishing this would undoubtedly be very heavy and the Court would be slow to interfere with the declaration of equivalence made by the Government. The Government would ordinarily be the best judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility and when the Government has declared equivalence after proper application of mind to the relevant factors, the Court would be most reluctant to venture into the uncharted and unfamiliar field of administration and examine the correctness of the declaration of equivalence made by the Government. But where it appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dis-similar that no reasonable man can possibly say

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that they are equivalent in status and responsibility or the declaration of equivalence is mala fide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a Cadre post which he is occupying, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. The declaration of equivalence must, however, always be there if a member of the Indian Administrative Service is to be appointed to a non-Cadre post. The only exception to this rule is to be found in sub-rule (4) and that applies where the non-Cadre post is such that it is not possible to equate it with any Cadre post. Where the Government finds that the *equation is not possible,* it can appoint a member of the Indian Administrative Service to a non-Cadre post but only for sufficient reasons to be recorded in writing. This again shows that the Government is required to apply its mind and make an objective assessment on the basis of relevant factors for determining whether the non-Cadre post to which a member of the Indian Administrative Service is sought to be appointed can be equated to a Cadre post, and if so, to what Cadre post it can be so equated. This is the plain requirement of Rule 9, sub-rule (1) and the question is whether the appointment of the petitioner to the non-Cadre posts of Deputy Chairman, State Planning Commission and Officer on Special Duty was in compliance with this requirement.

83. Turning first to the appointment of the petitioner as Deputy Chairman, State Planning Commission, it was made by the Order dated April 7, 1971. The Government by this Order sanctioned the creation of a temporary post of Deputy Chairman "in the grade of Chief Sectetary" and appointed the petitioner to this post, stating that he would be entitled to the same rank and emoluments as admissible to the Chief Secretary. Howsoever favourably to the State Government we may try to read this Order, it is not possible to discern in it any trace of a declaration that the State Government found, on an objective assessment of the nature and responsibility of the functions and duties attached to the post of Deputy Chairman, that it was equivalent in status and responsibility to that of Chief Secretary. It is one thing to create a post of Deputy Chairman in the grade of Chief Secretary and another to determine, on an objective assessment of the nature and responsibilities of the functions and duties, that the post of Deputy Chairman is equivalent in status and responsibility to that of Chief Secretary. Here the State Government seems to have proceeded on the hypothesis that it can create a non-Cadre post in the rank or grade of any Cadre post it likes, irrespective of the nature and responsibilities of the functions and duties attached to such non-Cadre post and that would be sufficient compliance with the requirement of Rule 9, sub-rule (1). But that hypothesis is plainly incorrect. The State Government cannot artificially create equivalence by saying that a particular non-Cadre post, whatever be the nature and responsibilities of the functions and duties attached to it, shall be in the rank or grade of any Cadre post it likes. The State Government has to apply its mind and make an objective assessment of the nature and responsibilities of the functions and duties and determine which is the Cadre post to which such non-Cadre post can be regarded as equivalent in status and responsibility and then only it can make a declaration of equivalence. This exercise does not seem to have been gone through by the State Government when it made the Order dated April 7, 1971 sanctioning the creation of the post of Deputy Chairman and appointing the petitioner to that post. This becomes abundantly clear if we look at the subsequent orders. As we have already pointed out above, the post of Deputy Chairman first created came to an end on April 13, 1972. Thereafter there was no post of Deputy Chairman till June 6, 1972 when it was created once

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again by the Order dated June 6, 1972. Strangely enough this Order, unlike the earlier Order dated April 7, 1971, did not even mention that the post of Deputy Chairman was in the grade or rank of Chief Secretary. It merely prescribed the pay which shall attach to the post of Deputy Chairman. There was admittedly no declaration in it equating the post of Deputy Chairman to that of Chief Secretary. Then we come to the Order dated June 29, 1972. This order is most eloquent. It abolished the post of Deputy Chairman created under the Order dated June 6, 1972 and sanctioned the creation of a fresh post of Deputy Chairman "in the grade of First Member, Board of Revenue" on a pay of Rs. 3,000 per month and appointed Raja Ram, First Member, Board of Revenue to that post. Now it was not the case of the respondents that when the post of Deputy Chairman was sanctioned again by this Order, there was any change in the nature and responsibilities of the functions and duties attached to the post of Deputy Chairman. These remained the same, namely, what they were when the post of Deputy Chairman was first created under the Order dated April 7, 1971 and then again under the Order dated June 6, 1972. If that be so, how could the post of Deputy Chairman be declared to be equivalent in status and responsibility to the post of Chief Secretary at one time and to the post of First Member, Board of Revenue at another. The nature and responsibilities of the functions and duties remaining the same, the equivalence, which is a matter of objective assessment, could not vary from time to time. This clearly shows that the Government did not apply its mind and objectively determine the equivalence of the post of Deputy Chairman but gave it a rank or grade according as who was going to be appointed to it. That is in fact what the State Government has categorically and in so many terms admitted in paragraphs 25(*b*) and 28 of its affidavit in reply: "Since Thiru M. G. Raja Ram was drawing only a salary of Rs. 3,000 per month there was no option but to down grade the post": "With the recent appointment of Thiru M. G. Raja Ram as Deputy Chairman of the Planning Commission the post has been equated to that of the First Member, Board of Revenue". But this is precisely what is impermissible. The status and responsibility of a non-Cadre post for the purpose of determining equivalence cannot depend on who is going to occupy it. It is really the other way round. The equivalence in status and responsibility determined on an objective assessment of the nature and responsibilities of the functions and duties attached to the post should decide which officer should occupy it. It may be pointed out that, even if the Order dated April 7, 1971 be construed most liberally in favour of the State Government, which, in our opinion, should not be done when there is a contest between a public servant and the State Government, it did not contain a declaration of equivalence in regard to "responsibility". There can, therefore, be no doubt that the appointment of the petitioner to the post of Deputy Chaiman was in contravention of Rule 9 (1). But we cannot grant relief to the petitioner on this ground, because, as admitted by him in his letter dated June 7, 1972 addressed to the second respondent, he accepted the appointment without demur as he thought that the post of Deputy Chairman "was of the same rank and carried the same emoluments as the post of Chief Secretary" and actually stated in a chat with newsmen on April 7, 1971 that "he was, looking forward with confidence to discharge the duties of the Deputy Chairman, Planning Commission, which is considered a challenging task", and he cannot now be permitted to challenge the validity of the appointment.

84. So far as the question of validity of the appointment to the post of Officer on Special Duty is concerned, we think that this appointment also

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suffers from the same infirmity. The Order dated June 26, 1972 first created the post of Officer on Special Duty "of the rank of Member, Board of Revenue", but on the next day, when it was decided to appoint the petitioner to that post, the Order dated June 26, 1972 was modified by the Order dated June 27, 1972 and the post of Officer on Special Duty was created "in the grade of Chief Secretary". These two Orders dated June 26, 1972 and June 27, 1972 being of the same nature and in almost identical words as the Order dated April 7, 1971, what we have said above in regard to the Order dated April 7, 1971 must apply equally in relation to these two Orders dated June 26, 1972 and June 27, 1972. It is clear, for reasons we have already discussed while dealing with the Order dated April 7, 1971, that in making these two Orders dated June 26, 1972 and June 27, 1972, the State Government proceeded on the wrong assumption that it can create a non-Cadre post in the rank or grade of any Cadre post it likes, regardless of the nature and responsibilities of the functions and duties attached to such non-Cadre post. The State Government first created the post of Officer on Special Duty in the rank of Member, Board of Revenue and on the very next day, because it was decided that the petitioner should be appointed to that post, converted it into one in the grade of Chief Secretary. This shows clearly that the State Government did not apply its mind and determine on an objective appraisal of the nature and responsibilities of the functions and duties attached to the post of Officer on Special Duty whether it was equivalent in status and responsibility to the post of Member, Board of Revenue or to the post of Chief Secretary. The nature and responsibilities of the functions and duties attached to the post of Officer on Special Duty could not change in a day and indeed it was not the case of the respondents that they changed at any time. If that be so, how could the post of Officer on Special Duty be declared to be equivalent in status and responsibility to the post of Member, Board of Revenue on one day and to the post of Chief Secretary, on the very next day. Either it was equivalent to the post of Member, Board of Revenue or equivalent to the post of Chief Secretary. But it could not be equivalent to one post at one time and to another post at another time, when the nature and responsibilities of the functions and duties attached to it remained the same. This establishes beyond doubt that, in making the Orders dated June 26, 1972 and June 27, 1972, the State Government did not apply its mind and objectively determine the equivalence of the post of Officer on Special Duty, but gave it a rank or grade according as who was the officer going to be appointed to it. That is in fact what the State Government clearly and in so many words admitted in paragraph 28 of its affidavit in reply: "——although the post of Officer on Special Duty was first created in the rank of Member, Board of Revenue, with the appointment of the petitioner to that post, the status of that post was equated to that of the Chief Secretary". This is also borne out by the fact that when the petitioner went on leave, a Member of the Board of Revenue was appointed to discharge the functions of the post of Officer on Special Duty and that post was once again brought down to the rank of Member, Board of Revenue. The Order dated June 27, 1972 in any event did not contain any declaration as to equivalence in "responsibility". There was thus no compliance with the requirement of Rule 9, sub-rule (1) and the appointment of the petitioner to the post of Officer on Special Duty was accordingly liable to be held invalid for contravention of that sub-rule. But we cannot in this petition under Article 32 give relief to the petitioner by striking down his appointment to the post of Officer on Special Duty, as mere violation of Rule 9, sub-rule (1) does not involve infringement of any fundamental right. We however, hope that the State Government will not

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drive the petitioner to take appropriate proceedings for obtaining the necessary relief.

85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16 Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

86. It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Article 311 but not to Articles 14 and 16. We must, therefore, proceed to consider whether the transfer of the petitioner first to the post of Deputy Chairman and then to the post of Officer on Special Duty was

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arbitrary, hostile and in mala fide exercise of power. What was the operative reason for such transfer: was it the exigencies of public administration or extra administrative considerations having no relevance to the question of transfer? Was the transfer to the post of Deputy Chairman or Officer on Special Duty so irrational or unjust that it could not have been made by any reasonable administration except for collateral reasons? These are the questions which call for our consideration.

87. Now, two important considerations must weigh with us in determining our approach to these questions. First, the post of Chief Secretary is a highly sensitive post. It is a post of great confidence—a lynchpin in the administration—and smooth functioning of the administration requires that there should be complete rapport and understanding between the Chief Secretary and the Chief Minister. The Chief Minister as the head of the Government is in ultimate charge of the administration and it is he who is politically answerable to the people for the achievements and failures of the Government. If, therefore, *for any valid reason* the Chief Secretary forfeits the confidence of the Chief Minister, the Chief Minister may legitimately, in the larger interests of administration, shift the Chief Secretary to another post, *provided of course that does not involve violation of any of his legal or constitutional rights*. There can be no question in such a case as to who is right and who is wrong. The displacement of the Chief Secretary from his post in such a case would not be arbitrary and it would not attract the inhibition of Articles 14 and 16. It may, however, be pointed out that such an action would not, we think, ordinarily be taken except for the most compelling reasons, because, if resorted to without proper justification, it would tend to affect the political neutrality of the public service and lead to demoralisation and frustration amongst the public servants.

88. Secondly, with the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialised experience. It is always a difficult problem for the Government to find suitable officers for such specialised posts. There are not ordinarily many officers who answer the requirements of such specialised posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these posts, though important and having onerous responsibilities, do not carry wide executive powers and officers may not, therefore, generally be willing to be transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration. When, in exercise of this choice, the Government transfers an officer from one post to another, the officer may feel unhappy because the new post does not give him the same amplitude of powers which he had while holding the old post. But that does not make the transfer arbitrary. So long as the transfer is made on account of the exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Articles 14 and 16.

89. Now, here the post of Chief Secretary was admittedly a selection post and after careful examination of the merits of the senior most eleven officers of the Tamil Nadu Cadre of the Indian Administrative Service, the second respondent selected the petitioner for the post of Chief Secretary. The petitioner worked as Chief Secretary from November 14, 1969 up to April 6, 1971 and evidently during this period he acquitted himself creditably. It was not the case of either of the respondents that the petitioner

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was not found equal to the task or that his work was not satisfactory. In fact the affidavit in reply filed on behalf of the first respondent clearly indicates that the petitioner discharged the duties of his office efficiently and to the satisfaction of everyone concerned. Yet the petitioner was transferred first to the post of Deputy Chairman and then to the post of Officer on Special Duty and in his place Sabanayagam, who was admittedly junior to him, was not only promoted but also confirmed. The result of confirmation of Sabanayagam as Chief Secretary was that the petitioner, though senior and proved competent, was permanently excluded from the post of Chief Secretary. This clearly shows, contended the petitioner, that his transfer first to the post of Deputy Chairman and then to the post of Officer on Special Duty was not on account of administrative reasons but solely to displace him from the key post of Chief Secretary. That perhaps might have been legally and constitutionally unobjectionable, if the posts of Deputy Chairman and Officer on Special Duty were of the same status and responsibility as the post of Chief Secretary, but the argument of the petitioner was that neither of these two posts could be regarded as of equal status and responsibility as the post of Chief Secretary because the post of Chief Secretary is always a unique and unrivalled post in the State administration. The transfer of the petitioner from the post of Chief Secretary first to the post of Deputy Chairman and then to the post of Officer on Special Duty coupled with the promotion and confirmation of Sabanayagam in the post of Chief Secretary was, therefore, clearly arbitrary and violative of Articles 14 and 16. This contention, plausible though it may seem, cannot be accepted by us, because there is no adequate material placed before us to sustain it. The premise on which this contention is founded is that the posts of Deputy Chairman and Officer on Special Duty were not of the same status and responsibility as the post of Chief Secretary, but we cannot say on the material on record that the validity of this premise has been established by the petitioner. So far as the post of Deputy Chairman is concerned, the petitioner himself accepted that post as being of the same status and responsibility as the post of Chief Secretary and did not raise any objection against it and we need not, therefore, say anything more about it. The only question is as to the post of Officer on Special Duty. We think that this post has not been satisfactorily established by the petitioner to be inferior in status and responsibility to the post of Chief Secretary. This of course does not mean, and we are not prepared to go as far as the learned Chief Justice in asserting positively that that post was equal in status and responsibility to the post of Chief Secretary. The fact that sales tax accounts for a very large segment of the revenues of the State and it runs into about 120 crores of rupees does not necessarily make the post of Officer on Special Duty equal in status and responsibility to that of the Chief Secretary. What has to be seen for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Merely giving the salary of one post to the other does not make for equivalence. We are, therefore, not prepared to accept the thesis that the post of Officer on Special Duty was equal in status and responsibility to the post of Chief Secretary as claimed by the respondents. We entertain serious doubts about it. But equally it is not possible for us to hold it established on the material on record that this post was inferior in status and responsibility to the post of Chief Secretary, though prima facie it does appear to be so. We cannot, therefore, say that the petitioner was arbitrarily or unfairly treated or that equality was denied to him when he was transferred from the post of Chief Secretary and in his place Sabanayagam, his junior, was promoted and confirmed. The challenge based on Articles 14 and 16 must therefore fail.

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90. We may now turn to the ground of challenge based on mala fide exercise of power. The petitioner set out in the petition various incidents in the course of administration where he crossed the path of the second respondent and incurred his wrath by inconvenient and uncompromising acts and notings and contended that the second respondent, therefore, nursed hostility and malus animus against the petitioner and it was for this reason and not on account of exigencies of administration that the petitioner was transferred from the post of Chief Secretary. The incidents referred to by the petitioner, if true, constituted gross acts of maladministration and the charge levelled against the second respondent was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in these acts of maladministration, that the second respondent was annoyed with him and it was with a view to putting him out of the way and at the same time deflating him that the second respondent transferred him from the post of Chief Secretary. The transfer of the petitioner was, therefore, in mala fide exercise of power and accordingly invalid.

91. Now, when we examine this contention we must bear in mind two important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had malus animus against the petitiouer which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side track the issue and escape the burden of establishing hostility and malus animus on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against

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the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up—these considerations are wholly irrelevant in judicial approach—but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent.

93. Now extensive arguments were addressed before us by Counsel on both sides and we were taken through a mass of documents, papers and official notings on this part of the case but we are afraid it is not possible for us to say that the onus of establishing mala fides against the second respondent, heavy as it is, has been discharged by the petitioner, The allegations of mala fides have been dealt with fully in the judgment of the learned Chief Justice and we do not think it will serve any useful purpose for us to discuss the merits of those allegations once again in this judgment, as we are substantially in agreement with what the learned Chief Justice has said. But we cannot help mentioning that there are certain disturbing features which cause us anxiety. We may take by way of example the imputation in regard to the Cooum River Project. It seems that in or about the beginning of February, 1970 the second respondent asked the Director of Vigilance to look into the affairs relating to Cooum Improvement Project as he apprehended that there were certain malpractices in the execution of that scheme. Whether this was done by the second respondent on his own initiative or at the instance of the petitioner is immaterial and we need not go into that controversy. The Director of Vigilance, as his subsequent letter dated February 25, 1970 shows informed the second respondent that without a discreet inquiry it would not be possible to allay or confirm the apprehensions with any degree of credibility since the head of the concerned engineering department was personally involved in the execution of the scheme and he accordingly by that letter pointed out to the petitioner that he needed authorisation to embark on the inquiry and Government order in that behalf should therefore be obtained and communicated to him. The petitioner made an endorsement on this letter on the very next day with a remark that the Public (Secret/Confidential) Department should deal with it immediately. The Public (Secret/Confidential) Department prepared a note at the foot of the letter and submitted it for circulation to the Minister for Works and the second respondent for orders whether the Director of Vigilance should be requested to make a discreet inquiry and send his report. The endorsement made below the note shows that it was submitted for circulation on March 3, 1970. It appears, however, that this note remained unattended until the middle of September, 1970. On September 12, 1970 the Minister for Works made an endorsement that the Director of Vigilance may make a discreet inquiry and this endorsement was approved by the second respondent on September 20, 1970. The file containing the note together with the endorsements of the Minister for Works and the second respondent was thereafter placed before the petitioner along with a draft of the memorandum to be addressed by the petitioner to the Director of Vigilance. It is common ground that no memorandum in terms of this draft was issued by the petitioner to the Director of Vigilance. The case of the petitioner was that he did not do so because the second respondent subsequently ordered that no inquiry need be made in this matter. This position was disputed by the second respondent who stated that to the best of his recollec-

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tion he did not make any such order cancelling the inquiry. That is a matter of controversy between the parties and as pointed out above it does not fall within our province to investigate it. But the fact remains, and that cannot be disputed, that no inquiry thereafter took place in the affairs of the Cooum Improvement Scheme. It is a little interesting to note that Sabanayagam addressed a letter dated July 31, 1971 to the petitioner stating that though the Personal Assistant to the Chief Secretary had been reminded to send back the file relating to this matter, it had not been received and the petitioner should arrange to send it back, if it was with him. The petitioner immediately replied to this letter on August 8, 1971, pointing out that he distinctly remembered that the second respondent had subsequently ordered that no inquiry need be made in this matter and the file was not with him. It is significant that though the petitioner stated categorically that the second respondent had subsequently ordered that no inquiry need be made, Sabanayagam did not write back challenging the correctness of this statement. The file pertaining to this matter was all throughout in the possession of the Government and even after the petitioner pointed out that it was not with him, curiously enough, it could not be traced until the filing of the petition. In fact, the absence of the file could not have stood in the way of ordering an inquiry. These and a few other circumstances do create suspicion but suspicion cannot take the place of proof and, as pointed out above, proof needed here is high degree of proof. We cannot say that evidence generating judicial certitude in up-holding the place of mala fides has been placed before us in the present case. We must, therefore, reject this contention of the petitioner as well.

94. We accordingly dismiss the petition with no order as to costs.

(1974) 4 Supreme Court Cases 43

(Original Jurisdiction and from the High Courts of Madras, Bombay, Andhra Pradesh, Gujarat and Mysore)

[BEFORE A. N. RAY, C. J. AND H. R. KHANNA, K. K. MATHEW, A. ALAGIRISWAMI AND P. N. BHAGWATI, JJ.]

Civil Appeals Nos. 1553, 1614-1618, 1769 of 1971; 1131-1133 and 1440 of 1972; 2516-2523, 2560-2569, 2661-2664 of 1972; 66-69 and 72-75 of 1973

MANGALORE GANESH BEEDI WORKS AND OTHERS .. .. .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. .. Respondents.

Writ Petitions Nos. 127–132 of 1972

M. SARVETHAM KAMATH AND OTHERS .. Petitioners;

Versus

UNION OF INDIA AND OTHERS .. .. Respondents.

Civil Appeal No. 1307 of 1973

D. C. DIWAN MOHIDEEN AND SONS .. .. Appellants;

Versus

STATE OF TAMIL NADU AND OTHERS .. Respondents.

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(2003) 8 Supreme Court Cases 369 : 2004 Supreme Court Cases (L&S) 561 : 2003 SCC OnLine SC 771

(BEFORE R.C. LAHOTI, ASHOK BHAN AND ARUN KUMAR, JJ.)

JAVED AND OTHERS . . Petitioners;

Versus

STATE OF HARYANA AND OTHERS . . Respondents.

Writ Petition No. 302 of 2001[†] with CAs Nos. 5355-72, 5380-82, 5385-86, 5397-5450 of 2003, WPs (C) Nos. 269, 316, 315, 329, 362-63, 258, 403, 395, 420, 438, 475, 507-08, 495, 567, 560, 559, 561, 538, 539, 579 of 2001, 19, 30, 32, 1, 49-50, 79, 94, 130, 93, 127, 144, 169, 168, 128, 177, 112, 71, 91, 178, 184, 183, 185, 68 of 2002, 430 of 2001, 213-14, 162, 230, 225, 228, 254, 296, 280, 281, 305, 317, 309 of 2002, CA No. 3629 of 2002, WP (C) No. 306 of 2002, CA No. 4053 of 2002, WPs (C) Nos. 341-42, 395 of 2002, CA No. 4066 of 2002, WPs (C) Nos. 396, 406 of 2002, CAs Nos. 4501, 4487 of 2002, WPs (C) Nos. 402, 336, 424, 355, 381, 380, 430-31, 421, 404 of 2002, CAs Nos. 5080-81 of 2002, WPs (C) Nos. 443, 457, 451 of 2002, CA No. 5270 of 2002, WPs (C) Nos. 462, 491, 495 of 2002, CAs Nos. 5902-03 of 2002, WP (C) No. 278 of 2002, CA No. 7034 of 2002, WPs (C) Nos. 612, 574, 607, 240, 655, 676-77, 547, 645, 620, 682 of 2002, 8 of 2003, 669 of 2002, 18, 28, 40 of 2003, CA No. 2033 of 2003, WPs (C) Nos. 63, 121, 123 of 2003, CA No. 2395 of 2003, WPs (C) Nos. 149, 193, 195, 204, 155, 161, 188, 245, 247-48, 250, 257, 268, 270, 277 and 281 of 2003, decided on July 30, 2003

A. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) & 177(1) — Election to the office of Sarpanch, Up-Sarpanch or Panch — Disqualification — Persons having more than two living children disqualified — Arbitrariness — Classification based on intelligible differentia and such differentia having a rational relation to the object sought to be achieved viz. implementation of family planning**

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programme as enumerated under S. 21, which is consistent with National Population Policy and mandate of Art. 243-G — Hence classification not arbitrary — Constitution of India, Arts. 14 & 243-G — Classification — Upheld

B. **Constitution of India — Art. 14 — Arbitrariness — Test restated**

C. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) & 177(1) — Election to the office of Sarpanch, Up-Sarpanch or Panch — Disqualification — Persons having more than two living children disqualified — Discrimination — Merely because similar provisions are not enacted in connection with election to public offices in other institutions of local self-governance or in State Legislature and Parliament and also in legislations of other States, the provision cannot be held to be discriminatory — After formulating a uniform policy regarding family planning by the State, the same may be implemented in a phased manner by first introducing at the grass-root level institution of local self-governance — Provision not discriminatory — Constitution of India, Art. 14 — Discrimination — Selective/Phased implementation/enactment of policy/law**

D. **Constitution of India — Art. 14 — Discrimination — Phased implementation of a legislative policy across the country — If discriminatory — A legislation made by one State cannot be held to be discriminatory merely because similar legislations have not been made by other States — Likewise a State legislation in respect of a governmental organ cannot be**

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held to be discriminatory merely because similar legislation not made in respect of other governmental organs of the State — A uniform policy of far-reaching implications devised by the State can be implemented in phased manner by legislation introducing it first at the grass-root level or at the top level — Such legislation cannot be held to be discriminatory merely because the State policy had not been introduced simultaneously at other levels also

In these batch of writ petitions and appeals the core issue was the vires of the provisions of Sections 175(1)(*q*) and 177(1) of the Haryana Panchayati Raj Act, 1994 (11 of 1994). The said provisions disqualify a person having more than two living children from holding the specified offices in Panchayats. The enforcement of disqualification is postponed for a period of one year from the date of the commencement of the Act. A person having more than two children up to the expiry of one year of the commencement of the Act is not disqualified. This postponement for one year takes care of any conception on or around the commencement of the Act, the normal period of gestation being nine months. If a woman has conceived at the commencement of the Act then any one of such couples would not be disqualified. Though not disqualified on the date of election, if any person holding any of the said offices incurs a disqualification by giving birth to a child one year after the commencement of the Act he becomes subject to disqualification and is disabled from continuing to hold the office. The disability is incurred by the birth of a child which results in increasing the number of living children, including the additional child born one year after the commencement of the Act, to a figure more than two. If the factum is disputed, the Director is entrusted with the duty of holding an enquiry and declaring the office vacant. The decision of the Director is subject to appeal to the

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Government. The Director has to afford a reasonable opportunity of being heard to the holder of office sought to be disqualified.

It was inter alia contended that the provision is arbitrary and hence violative of Article 14 and that the disqualification does not serve the purpose sought to be achieved by the legislation. It was further contended that the provision is also discriminatory. It was submitted that though the State of Haryana has introduced such a provision of disqualification by reference to elective offices in Panchayats, a similar provision is not found to have been enacted for disqualifying aspirants or holders of elective or public offices in other institutions of local self-governance and also not in State Legislatures and Parliament. So also all the States i.e. other than Haryana have not enacted similar laws, and therefore, people aspiring to participate in Panchayati Raj governance in the State of Haryana have been singled out and meted out hostile discrimination.

Rejecting the contentions, the Supreme Court

Held :

Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. To satisfy the constitutional test of permissibility, two conditions must be satisfied, namely : (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that such differentia has a rational relation to the object sought to be achieved by the statute in question. The basis for classification may rest on conditions which may be geographical or according to objects or occupation or the like.

(Para 8)

Budhan Choudhry v. *State of Bihar*, AIR 1955 SC 191 : (1955) 1 SCR 1045 : 1955 Cri LJ 371, *relied on*

The classification made by the impugned provisions is well defined and well perceptible. Persons having more than two living children are clearly distinguishable from persons having not more than two living children. The two constitute two different classes and the classification is founded on an intelligible differentia clearly distinguishing one from the other. One of the objects sought to be achieved by the legislation is popularizing the family welfare/family planning programme. The disqualification enacted by the provision seeks to achieve the objective by creating a disincentive. The classification does not suffer from any arbitrariness. The number of children viz. two is based on legislative wisdom. It could have been more or less. The number is a matter of policy decision which is not open to judicial scrutiny.

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(Para 8)

There is no merit in the submission that the number of children which one has, whether two or three or more, does not affect the capacity, competence and quality of a person to serve in any office of a Panchayat and, therefore, the impugned disqualification has no nexus with the purpose sought to be achieved by the Act. One of the objects of the enactment is to popularize family welfare/family planning programme which is consistent with the National Population Policy. "Family welfare" being one of the functions and duties enumerated under clause XIX(1) of Section 21 of the Act would include family planning as well. To carry out the purpose of the Act as well as the mandate of the Constitution under Article 243-G the legislature has made a provision for making a person having more than two living children ineligible to either contest for the post of Panch or Sarpanch. Such a provision would serve the purpose of the Act as mandated by

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the Constitution. It cannot be said that such a provision would not serve the purpose of the Act.

(Paras 9 and 10)

A legislation by one of the States cannot be held to be discriminatory or suffering from the vice of hostile discrimination as against its citizens simply because Parliament or the legislatures of other States have not chosen to enact similar laws. Such a submission, if accepted, would be violative of the autonomy given to the Centre and the States within their respective fields under the constitutional scheme. It is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though pari materia it may be, but enacted by Parliament or by another State Legislature within its own power to legislate. The sources of power are different and so do differ those who exercise the power. Similarly, legislations referable to different organs of local self-government, that is, Panchayats, Municipalities and so on may be, rather are, different. Many a time they are referable to different entries of Lists I, II and III of the Seventh Schedule. All such laws need not necessarily be identical. So is the case with the laws governing legislators and parliamentarians.

(Paras 12, 14 and 13)

State of M.P. v. *G.C. Mandawar*, AIR 1954 SC 493 : (1955) 1 SCR 599; *Bar Council of U.P.* v. *State of U.P.*, (1973) 1 SCC 261; *State of T.N.* v. *Ananthi Ammal*, (1995) 1 SCC 519; *Prabhakaran Nair* v. *State of T.N.*, (1987) 4 SCC 238, *relied on*

A uniform policy may be devised by the Centre or by a State. However, there is no constitutional requirement that any such policy must be implemented at one go. Policies are capable of being implemented in a phased manner. More so, when the policies have far-reaching implications and are dynamic in nature, their implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance. The implementation of policy decision in a phased manner is suggestive neither of arbitrariness nor of discrimination. To make a beginning, the reforms may be introduced at the grass-root level so as to spiral up or may be introduced at the top so as to percolate down. Panchayats are grass-root-level institutions of local self-governance. They have a wider base. There is nothing wrong in the State of Haryana having chosen to subscribe to the national movement of population control by enacting a legislation which would go a long way in ameliorating health, social and economic conditions of rural population, and thereby contribute to the development of the nation which in its turn would benefit the entire citizenry.

(Paras 16 to 18)

L.N. Mishra Institute of Economic Development and Social Change v. *State of Bihar*, (1988) 2 SCC 433 : 1988 SCC (L&S) 577; *Pannalal Bansilal Pitti* v. *State of A.P.*, (1996) 2 SCC 498, *relied on*

No fault can therefore be found with the State of Haryana having enacted the legislation. It is for others to emulate.

(Para 19)

The provisions for enquiry, appeal and hearing in the impugned legislation satisfy the requirements of natural justice.

(Para 4)

Hence, the impugned provision is neither arbitrary nor unreasonable nor discriminatory. The

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disqualification contained in Section 175(1)(*q*) of Haryana Act 11 of 1994 seeks to achieve a laudable purpose — socio-economic welfare and health care of the masses — and is consistent with the national population policy. It is not violative of Article 14 of the Constitution.

(Para 20)

[**Ed.** : *See also Sunil Kumar Rana* v. *State of Haryana*, (2003) 2 SCC 628]

E. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) and 177(1) — Election to the office of Sarpanch,**

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Up-Sarpanch and Panch — Disqualification — Persons having more than two living children disqualified — Held, not violative of any fundamental right — It is reasonable and devised in national interest

F. **Election — Disqualification — Right to contest election — Nature of — Held, is a statutory right or at the most a constitutional right, but not a fundamental right — Therefore, the statute which confers the right to contest election can prescribe disqualifications for contesting the election**

Held :

The disqualification on the right to contest an election by having more than two living children does not contravene any fundamental right nor does it cross the limits of reasonability. Rather it is a disqualification conceptually devised in national interest.

(Para 25)

Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right — a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

(Para 22)

Jyoti Basu v. *Debi Ghosal*, (1982) 1 SCC 691; *Jamuna Prasad Mukhariya* v. *Lachhi Ram*, AIR 1954 SC 686 : (1955) 1 SCR 608; *Sakhawat Ali* v. *State of Orissa*, AIR 1955 SC 166 : (1955) 1 SCR 1004, *relied on*

N.P. Ponnuswami v. *Returning Officer, Namakkal Constituency*, (1952) 1 SCC 94 : AIR 1952 SC 64 : 1952 SCR 218; *Jagan Nath* v. *Jaswant Singh*, AIR 1954 SC 210 : 1954 SCR 892, *referred to*

G. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) and 177(1) — Election to Sarpanch, Up-Sarpanch and Panch — Disqualification — Persons having more than two living children disqualified — Held, not violative of Art. 21, having regard to Arts. 243-G, 243-C, 38, 47 and 51-A and Sch. VII List III Entries 6 and 20-A — It is a legislative measure to check menace of growing population — Constitution of India, Arts. 243-C, 243-F, 243-G, 38, 47, 51-A and Sch. VII List III Entries 6 & 20-A and List II Entry 5**

H. **Constitution of India — Art. 21 — Right to life — Must be construed in a reasonable and rational manner — Tests of reasonableness stated — Art. 21 to be read along with directive principles and fundamental duties — Hence, does not include right to procreate as many children as one pleases**

I. **Constitution of India — Parts III, IV and IV-A — Fundamental rights must not be read in isolation but along with directive principles and fundamental duties**

It was urged that the fundamental right to life and personal liberty emanating from Article 21 of the Constitution should be allowed to stretch its span to its optimum so as to include in the compendious term of the article all the varieties of rights which go to make up the personal liberty of man including the right to enjoy all the materialistic pleasures and to procreate as many children as one pleases.

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Held :

The test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice — economic, social and political — cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty. Reasonableness and rationality, legally as well as philosophically, provide colour to the meaning of fundamental rights.

(Para 28)

Maneka Gandhi v. *Union of India*, (1978) 1 SCC 248; *Kasturi Lal Lakshmi Reddy* v. *State of J&K*, (1980) 4 SCC 1, *referred to*

The legislative competence of the State of Haryana to enact the legislation is not in dispute. The legislation is within the permitted field of State subjects. Article 243-C makes provision for the legislature of a State enacting laws with respect to constitution of Panchayats. Article 243-F in Part IX of the Constitution itself contemplates disqualification for being chosen as a member of Panchayat. Article 243-G casts one of the responsibilities of Panchayats as preparation of plans and implementation of schemes for economic development and social justice. Some of the schemes that can be entrusted to Panchayats, as spelt out by Article 243-G read with the Eleventh Schedule are schemes for economic development and social justice in relation to health and sanitation, family welfare, women and child development and social welfare. Family planning is essentially a scheme referable to health, family welfare, women and child development and social welfare. Thus the Constitution contemplates Panchayat as a potent instrument of family welfare and social welfare schemes coming true for the betterment of people's health, especially women's health and family welfare coupled with social welfare. Under Section 21 of the Act, the functions and duties entrusted to Gram Panchayats include "public health and family welfare", "women and child development" and "social welfare". Family planning falls therein. Who can better enable the discharge of functions and duties and such constitutional goals being achieved than the leaders of Panchayats themselves taking a lead and setting an example?

(Para 38)

Fundamental rights are not to be read in isolation. They have to be read along with the chapter on directive principles of State policy and the fundamental duties enshrined in Article 51-A. None of the lofty ideals envisaged under Articles 38 and 47 can be achieved without controlling the population inasmuch as our materialistic resources are limited and claimants are many. The concept of sustainable development which emerges as a fundamental duty from several clauses of Article 51-A too dictates the expansion of population being kept within reasonable bounds.

(Para 39)

The problem of population explosion is a national and global issue for which priority in policy-oriented legislations, wherever needed, is necessary. Legislative means to check the menace of growing population has been held to be valid.

(Para 37)

Air India v. *Nergesh Meerza*, (1981) 4 SCC 335 : 1981 SCC (L&S) 599, *relied on*

Therefore, it is futile to assume or urge that the impugned legislation violates right to life and liberty guaranteed under Article 21 in any of the meanings, howsoever expanded the meanings may be.

(Para 41)

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J. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) & 177(1) — Election to the office of Sarpanch, Up-Sarpanch and Panch — Disqualification — Persons having more than two living children disqualified — Held, such a provision casting disqualification on contesting or holding the office not violative of Art. 25 — Practice of having four wives is permissible under Muslim law and one can also procreate more than two children but there is no mandate or obligation under any religion not to have less than four wives or to procreate more than two children and hence such a practice is not integral part of the practice of religion — A practice does not acquire sanction of religion merely because it is permitted — Practice of having more than one wife or procreating more than one child can be regulated or prohibited in the interest of public order, morality and health and social welfare and reform — Though there is no general restriction on having more than two children, but legislation can validly prescribe it as a disqualification for the purpose of election — Constitution of India, Art. 25**

K. **Constitution of India — Art. 25 — Freedom under, is subject to public order, morality and health — It permits legislation in the interest of social welfare and reform as part of public order, national morality and collective health of the people — Religious practice which is not integral part of the practice of that religion is not protected under Art. 25**

It was submitted that the personal law of Muslims permits performance of marriages with four women obviously for the purpose of procreating children and any restriction thereon would be violative of the right to freedom of religion enshrined in Article 25 of the Constitution.

Rejecting the submission,

Held :

The freedom under Article 25 is subject to public order, morality and health. So the article itself permits a legislation in the interest of social welfare and reform which are obviously part and parcel of public order, national morality and the collective health of the nation's people. The protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25. A statutory provision casting disqualification on contesting for, or holding, an elective office is not violative of Article 25 of the Constitution.

(Paras 43, 45 and 59)

M. Ismail Faruqui (Dr) v. *Union of India*, (1994) 6 SCC 360, *relied on*

The challenge to the constitutional validity of Sections 175(1)(*q*) and 177(1) must fail. The right to contest an election for any office in Panchayat is neither fundamental nor a common law right. It is the creature of a statute and is obviously subject to qualifications and disqualifications enacted by legislation. It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more wives than one or procreating more children than one is

a practice followed by any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.

(Para 60)

Sarla Mudgal v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569; *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556 : 1985 SCC (Cri) 245; *Mohd. Hanif Quareshi* v. *State of Bihar*, AIR 1958 SC 731 : 1959 SCR 629, *relied on*

State of Bombay v. *Narasu Appa Mali*, AIR 1952 Bom 84 : 53 Cri LJ 354; *Badruddin* v. *Aisha Begum*, 1957 All LJ 300; *R.A. Pathan* v. *Director of Technical Education*, (1981) 22 Gui LR 289; *Ram*

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Prasad Seth v. *State of U.P.*, (1957) 2 LLJ 172 : AIR 1957 All 411 and AIR 1961 All 334 : (1961) 2 LLJ 247, *approved*

If anyone chooses to have more living children than two, he is free to do so under the law as it stands now but then he should pay a little price and that is of depriving himself from holding an office in Panchayat in the State of Haryana. There is nothing illegal about it and certainly no unconstitutionality attaches to it.

(Para 61)

L. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) & 177(1) — Election to the office of Sarpanch, Up-Sarpanch or Panch — Disqualification — Persons having more than two children disqualified — Held, disqualification is not removed by merely giving the third child away in adoption**

Held :

The disqualification is attracted no sooner a third child is born and is living after two living children. Merely because the couple has parted with one child by giving the child away in adoption, the disqualification does not come to an end. While interpreting the scope of disqualification, the evil sought to be cured and purpose sought to be achieved by the enactment must be kept in view. If the person sought to be disqualified is responsible for or has given birth to children more than two who are living then merely because one or more of them are given in adoption the disqualification is not wiped out.

(Para 62)

M. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) & 177(1) — Election to the office of Sarpanch, Up-Sarpanch or Panch — Disqualification — Persons having more than two children disqualified — Argument that the women almost helplessly bear a third child if their husbands want them to do so and thus women are affected most by this disqualification has no merit — If a husband compels his wife to bear a third child, he would disqualify himself as well**

N. **Constitution of India — Art. 14 — Classification — Underclassification — Disqualification on holding elected office imposed on having more than two children — Helplessness of women against desire of husband pleaded — Assuming the plea to be correct, failure of legislature to carve out an exception in favour of women would not render the provision unconstitutional**

Held :

A male who compels his wife to bear a third child would disqualify not only his wife but himself as well. With the awareness which is arising in Indian womenfolk, they are not so helpless as to be compelled to bear a third child even though they do not wish to do so. At the end, suffice it to say that if the legislature chooses to carve out an exception in favour of females it is free to do

so but merely because women are not excepted from the operation of the disqualification does not render it unconstitutional.

(Para 63)

O. **Panchayats and Zila Parishads — Haryana Panchayati Raj Act, 1994 (11 of 1994) — Ss. 175(1)(q) & 177(1) — Election to the office of Sarpanch, Up-Sarpanch or Panch — Disqualification — Provision cannot be challenged on the basis of hypothetical and abnormal situations — Constitution of India — Arts. 32 & 226 and 13 — Constitutionality of any provision, held, cannot be adjudged on the basis of hypothetical or abnormal situations — Exceptions do not make the rule**

Hypothetical examples were tried to be floated across the Bar by submitting that there may be cases where triplets are born or twins are born on the second pregnancy and consequently both of the parents would incur disqualification for reasons beyond their control or just by a freak of divinity.

Held :

Such are not normal cases and the validity of the law cannot be tested by applying it to abnormal situations. Exceptions do not make the rule nor render the rule irrelevant. One swallow does not

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make a summer; a single instance or indicator of something is not necessarily significant.

(Para 64)

CONCLUSION

The challenge to the constitutional validity of Sections 175(1)(*q*) and 177(1) fails on all the counts. Both the provisions are held intra vires the Constitution. The provisions are salutary and in public interest. All the petitions which challenge the constitutional validity of the abovesaid provisions are held liable to be dismissed.

(Para 65)

R-M/ANWTZ/28726/C

Advocates who appeared in this case:

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Sunita Pandit, Jaswant Rajpal, M.M. Kashyap, Ugra Shankar Prasad, Rohit Minocha, S.N. Bhat, N.P.S. Panwar, D.P. Chaturvedi, Rishiraj Barooah, J.P. Dhanda, Ms Raj Rani Dhanda, Ms Geetanjali Mohan, Vinay Kr. Garg, Ms Kavita Wadia, Krishnan Venugopal, Uday N. Tiwary, Prasad Vijaya Kumar, Balaram Das, K.G. Bhagat, Vineet Bhagat, Kamal Baid, Nipun Sharma, R.D. Upadhyay, Manish Singhvi and Ashok K. Mahajan, Advocates, with them) for the appearing parties.

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3. (1995) 1 SCC 519, *State of T.N.* v. *Ananthi Ammal* 383*a*

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20. AIR 1954 SC 493 : (1955) 1 SCR 599, *State of M.P.* v. *G.C. Mandawar* 382*f*

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The Judgment of the Court was delivered by

R.C. LAHOTI, J.— Leave granted in all the special leave petitions.

2. In this batch of writ petitions and appeals the core issue is the vires of the provisions of Sections 175(1)(*q*) and 177(1) of the Haryana Panchayati Raj Act, 1994 (Act 11 of 1994) (hereinafter referred to as the Act for short). The relevant provisions are extracted and reproduced hereunder:

"175. (1) No person shall be a Sarpanch, Up-Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who—

* * *

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(*q*) has more than two living children:

Provided that a person having more than two children on or up to the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified.

* * *

177. (1) If any member of a Gram Panchayat, Panchayat Samiti or Zila Parishad—

(*a*) who is elected, as such, was subject to any of the disqualifications mentioned in Section 175 at the time of his election;

(*b*) during the term for which he has been elected, incurs any of the disqualifications, mentioned in Section 175,

shall be disqualified from continuing to be a member, and his office shall become vacant.

(2) In every case, the question whether a vacancy has arisen, shall be decided by the Director. The Director may give its decision either on an application made to it by any person, or on its own motion. Until the Director decides that the vacancy has arisen, the members shall not be disqualified under sub-section (1) from

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continuing to be a member. Any person aggrieved by the decision of the Director may, within a period of fifteen days from the date of such decision, appeal to the Government and the orders passed by Government in such appeal shall be final:

Provided that no order shall be passed under this sub-section by the Director against any member without giving him a reasonable opportunity of being heard."

3. Act 11 of 1994 was enacted with various objectives based on past experience and in view of the shortcomings noticed in the implementation of preceding laws and also to bring the legislation in conformity with Part IX of the Constitution of India relating to "the Panchayats" added by the Seventy-third Amendment. One of the objectives set out in the Statement of Objects and Reasons is to disqualify persons for election to Panchayats at each level, having more than two children after one year of the date of commencement of this Act, to popularize family welfare/family planning programme [vide clause (*m*) of para 4 of SOR].

4. Placed in plain words, the provision disqualifies a person having more than two living children from holding the specified offices in Panchayats. The enforcement of disqualification is postponed for a period of one year from the date of the commencement of the Act. A person having more than two children up to the expiry of one year of the commencement of the Act is not disqualified. This postponement for one year takes care of any conception on or around the commencement of the Act, the normal period of gestation being nine months. If a woman has conceived at the commencement of the Act then any one of such couples would not be disqualified. Though not disqualified on the date of election, if any person holding any of the said offices incurs a disqualification by giving birth to a child one year after the commencement of the Act he becomes subject to disqualification and is disabled from continuing to hold the office. The disability is incurred by the

birth of a child which results in increasing the number of living children, including the additional child born one year after the commencement of the Act, to a figure more than two. If the factum is disputed, the Director is entrusted with the duty of holding an enquiry and declaring the office vacant. The decision of the Director is subject to appeal to the Government. The Director has to afford a reasonable opportunity of being heard to the holder of office sought to be disqualified. These safeguards satisfy the requirements of natural justice.

5. Several persons (who are the writ petitioners or appellants in this batch of matters) have been disqualified or proceeded against for disqualifying either from contesting the elections for, or from continuing in the office of Panchas/Sarpanchas in view of their having incurred the disqualification as provided by Section 175(1)(*q*) or Section 177(1) read with Section 175(1)(*q*) of the Act. The grounds for challenging the constitutional validity of the abovesaid provision are very many, couched differently in different writ petitions. We have heard all the learned counsel representing the different petitioners/appellants. As agreed to at the Bar, the grounds of challenge can be categorized into five: (*i*) that the provision is arbitrary and hence violative of Article 14 of the Constitution; (*ii*) that the disqualification does not serve the purpose sought to be achieved by the legislation; (*iii*) that the provision is discriminatory; (*iv*) that the provision adversely affects the liberty of leading personal life in all its freedom and having as many children as one chooses to have and hence is violative of Article 21 of the Constitution; and (*v*) that the provision interferes with the freedom of religion and hence violates Article 25 of the Constitution.

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6. The State of Haryana has defended its legislation on all counts. We have also heard the learned Standing Counsel for the State. On notice, Shri Soli J. Sorabjee, the learned Attorney General for India, has appeared to assist the Court and he too has addressed the Court. We would deal with each of the submissions made.

Submissions (i), (ii) and (iii)

7. The first three submissions are based on Article 14 of the Constitution and, therefore, are taken up together for consideration.

Is the classification arbitrary?

8. It is well settled that Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. To satisfy the constitutional test of permissibility, two conditions must be satisfied, namely: (*i*) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (*ii*) that such differentia has a rational relation to the object sought to be achieved by the statute in question. The basis for classification may rest on conditions which may be geographical or according to objects or occupation or the like. (See Constitution Bench decision in *Budhan Choudhry* v. *State of Bihar*[1].) The classification is well defined and well

perceptible. Persons having more than two living children are clearly distinguishable from persons having not more than two living children. The two constitute two different classes and the classification is founded on an intelligible differentia clearly distinguishing one from the other. One of the objects sought to be achieved by the legislation is popularizing the family welfare/family planning programme. The disqualification enacted by the provision seeks to achieve the objective by creating a disincentive. The classification does not suffer from any arbitrariness. The number of children viz. two is based on legislative wisdom. It could have been more or less. The number is a matter of policy decision which is not open to judicial scrutiny.

Does the legislation not serve its object?

9. It was submitted that the number of children which one has, whether two or three or more, does not affect the capacity, competence and quality of a person to serve on any office of a Panchayat and, therefore, the impugned disqualification has no nexus with the purpose sought to be achieved by the Act. There is no merit in the submission. We have already stated that one of the objects of the enactment is to popularize family welfare/family planning programme. This is consistent with the National Population Policy.

10. Under Article 243-G of the Constitution, the legislature of a State has been vested with the authority to make law endowing the Panchayats with such powers and authority which may be necessary to enable the Gram Panchayats to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein. Clause (*b*) of Article 243-G provides that Gram Panchayats may be entrusted the powers to implement the schemes for economic development and social justice including those in relation to matters listed in the Eleventh Schedule. Entries 24 and 25 of the Eleventh Schedule read:

"24. Family welfare.

25. Women and child development."

In pursuance of the powers given to the State Legislatures to enact laws, the Haryana Legislature enacted the Haryana Panchayati Raj Act, 1994 (Haryana Act 11 of 1994).

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Section 21 enumerates the functions and duties of Gram Panchayat. Clause XIX(1) of Section 21 reads:

"XIX. Public Health and Family Welfare—

(1) Implementation of family welfare programme."

Family welfare would include family planning as well. To carry out the purpose of the Act as well as the mandate of the Constitution the legislature has made a provision for making a person having more than two living children ineligible to either contest for the post of Panch or Sarpanch. Such a provision would serve the purpose of the Act as mandated by the Constitution. It cannot be said that such a provision would not serve the purpose of the Act.

11. In our opinion, the impugned disqualification does have a nexus with the purpose sought to be achieved by the Act. Hence it is valid.

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Is the provision discriminatory?

12. It was submitted that though the State of Haryana has introduced such a provision of disqualification by reference to elective offices in Panchayats, a similar provision is not found to have been enacted for disqualifying aspirants or holders of elective or public offices in other institutions of local self-governance and also not in State Legislatures and Parliament. So also all the States i.e. other than Haryana have not enacted similar laws, and therefore, it appears that people aspiring to participate in Panchayati Raj governance in the State of Haryana have been singled out and meted out hostile discrimination. The submission has been stated only to be rejected. Under the constitutional scheme there is a well-defined distribution of legislative powers contained in Part XI of the Constitution. Parliament and every State Legislature has power to make laws with respect to any of the matters which fall within its field of legislation under Article 246 read with the Seventh Schedule of the Constitution. A legislation by one of the States cannot be held to be discriminatory or suffering from the vice of hostile discrimination as against its citizens simply because Parliament or the legislatures of other States have not chosen to enact similar laws. Such a submission, if accepted, would be violative of the autonomy given to the Centre and the States within their respective fields under the constitutional scheme.

13. Similarly, legislations referable to different organs of local self-government, that is, Panchayats, Municipalities and so on may be, rather are, different. Many a time they are referable to different entries of Lists I, II and III of the Seventh Schedule. All such laws need not necessarily be identical. So is the case with the laws governing legislators and parliamentarians.

14. It is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though pari materia it may be, but enacted by Parliament or by another State Legislature within its own power to legislate. The sources of power are different and so do differ those who exercise the power. The Constitution Bench in *State of M.P.* v. *G.C. Mandawar*[2] held that the power of the Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. Two laws enacted by two different Governments and by two different legislatures can be read neither in conjunction nor by comparison for the purpose of finding out if they are discriminatory. Article 14 does not authorize the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject, its provisions are

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discriminatory. When the sources of authority for the two statutes are different, Article 14 can have no application. So is the

view taken in *Bar Council of U.P.* v. *State of U.P.*[3], *State of T.N.* v. *Ananthi Ammal*[4] and *Prabhakaran Nair* v. *State of T.N.*[5]

15. Incidentally, it may be noted that so far as the State of Haryana is concerned, in the Haryana Municipal Act, 1973 (Act 24 of 1973) Section 13-A has been inserted to make a provision for similar disqualification for a person from being chosen or holding the office of a member of a Municipality.

16. A uniform policy may be devised by the Centre or by a State. However, there is no constitutional requirement that any such policy must be implemented at one go. Policies are capable of being implemented in a phased manner. More so, when the policies have far-reaching implications and are dynamic in nature, their implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance.

17. The implementation of policy decision in a phased manner is suggestive neither of arbitrariness nor of discrimination. In *L.N. Mishra Institute of Economic Development and Social Change* v. *State of Bihar*[6] the policy of nationalizing educational institutes was sought to be implemented in a phased manner. This Court held that all the institutions cannot be taken over at a time and merely because the beginning was made with one institute, it could not complain that it was singled out and, therefore, Article 14 was violated. Observations of this Court in *Pannalal Bansilal Pitti* v. *State of A.P.*[7] are apposite. In a pluralistic society like India, people having faith in different religions, different beliefs and tenets, have peculiar problems of their own.

> "A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counterproductive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages." (SCC p. 510, para 12)

18. To make a beginning, the reforms may be introduced at the grass-root level so as to spiral up or may be introduced at the top so as to percolate down. Panchayats are grass-root-level institutions of local self-governance. They have a wider base. There is nothing wrong in the State of Haryana having chosen to subscribe to the national movement of population control by enacting a legislation which would go a long way in ameliorating health, social and economic conditions of rural population, and thereby contribute to

the development of the nation which in its turn would benefit the entire citizenry. We may quote from the National Population Policy, 2000 (Government of India Publication, p. 35):

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> "Demonstration of support by elected leaders, opinion-makers and religious leaders with close involvement in the reproductive and child health programme greatly influences the behaviour and response patterns of individuals and communities. This serves to enthuse communities to be attentive towards the quality and coverage of maternal and child health services, including referral care.
>
> * * *
>
> The involvement and enthusiastic participation of elected leaders will ensure dedicated involvement of administrators at district and sub-district levels. Demonstration of strong support to the small-family norm, as well as personal example, by political, community, business, professional and religious leaders, media and film stars, sports personalities and opinion-makers, will enhance its acceptance throughout society."

19. No fault can be found with the State of Haryana having enacted the legislation. It is for others to emulate.

20. We are clearly of the opinion that the impugned provision is neither arbitrary nor unreasonable nor discriminatory. The disqualification contained in Section 175(1)(*q*) of Haryana Act 11 of 1994 seeks to achieve a laudable purpose — socio-economic welfare and health care of the masses — and is consistent with the National Population Policy. It is not violative of Article 14 of the Constitution.

Submissions (iv) and (v): the provision if it violates Article 21 or 25?

21. Before testing the validity of the impugned legislation from the viewpoint of Articles 21 and 25, in the light of the submissions made, we take up first the more basic issue — whether it is at all permissible to test the validity of a law which enacts a disqualification operating in the field of elections on the touchstone of violation of fundamental rights.

22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right — a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

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23. Reiterating the law laid down in *N.P. Ponnuswami* v. *Returning Officer, Namakkal Constituency*[8] and *Jagan Nath* v. *Jaswant Singh*[9] this Court held in *Jyoti Basu* v. *Debi Ghosal*[10]: (SCC p. 696, para 8)

> "*8*. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

24. In *Jamuna Prasad Mukhariya* v. *Lachhi Ram*[11] a candidate at the election made a systematic appeal to voters of a particular caste to vote for him on the basis of his

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caste through publishing and circulating leaflets. Sections 123(5) and 124(5) of the Representation of the People Act, 1951, were challenged as ultra vires Article 19(1)(*a*) of the Constitution, submitting that the provisions of the Representation of the People Act interfered with a citizen's fundamental right to freedom of speech. Repelling the contention, the Constitution Bench held that these laws do not stop a man from speaking. They merely provide conditions which must be observed if he wants to enter Parliament. The right to stand as a candidate and contest an election is not a common law right; it is a special right created by a statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by a statute. The appellants have no fundamental right to be elected and if they want to be elected they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. In *Sakhawat Ali* v. *State of Orissa*[12] the appellant's nomination paper for election as a Councillor of the Municipality was rejected on the ground that he was employed as a legal practitioner against the Municipality which was a disqualification under the relevant Municipality Act. It was contended that the disqualification prescribed violated the appellant's fundamental rights guaranteed under Articles 14 and 19(1)(*g*) of the Constitution. The Constitution Bench held that the impugned provision has a public purpose behind it i.e. the purity of public life which would be thwarted where there was a conflict between interest and duty. The Constitution Bench further held that the right of the appellant to practise the profession of law guaranteed by Article 19(1)(*g*) cannot be said to have been violated because in laying down the disqualification the Municipal Act does not prevent him from practising his profession of law; it only lays down that if he wants to stand as a candidate for election he shall not either be employed as a paid legal

practitioner on behalf of the Municipality or act as a legal practitioner against the Municipality. There is no fundamental right in any person to stand as a candidate for election to the Municipality. The only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. The impugned disqualification does not violate the latter right. Primarily no fundamental right is violated and even assuming that it be taken as a restriction on his right to practise his profession of law, such restriction would be liable to be upheld being reasonable and imposed in the interests of the general public for the preservation of purity in public life.

25. In our view, disqualification on the right to contest an election by having more than two living children does not contravene any fundamental right nor does it cross the limits of reasonability. Rather it is a disqualification conceptually devised in national interest.

26. With this general statement of law which has application to Articles 21 and 25 both, we now proceed to test the sustainability of attack on constitutional validity of the impugned legislation separately by reference to Articles 21 and 25.

The disqualification, if violates Article 21?

27. Placing strong reliance on *Maneka Gandhi* v. *Union of India*[13] and *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[14] it was forcefully urged that the fundamental right to life and personal liberty emanating from Article 21 of the Constitution should be allowed to stretch its span to its optimum so as to include in the compendious term of the article all the varieties of rights which go to make up the personal liberty of man

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including the right to enjoy all the materialistic pleasures and to procreate as many children as one pleases.

28. At the very outset we are constrained to observe that the law laid down by this Court in the decisions relied on is either being misread or read divorced of the context. The test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice — economic, social and political — cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty. Reasonableness and rationality, legally as well as philosophically, provide colour to the meaning of fundamental rights and these principles are deducible from those very decisions which have been relied on by the learned counsel for the petitioners.

29. It is necessary to have a look at the population scenario of the world and of our own country.

30. India has the (dis)credit of being second only to China at the top in the list of the 10 most populous countries of the world. As on 1-2-2000 the

population of China was 1277.6 million while the population of India as on 1-3-2001 was 1027.0 million (Census of India, 2001, Series I, India — Paper I of 2001, p. 29).

31. The torrential increase in the population of the country is one of the major hindrances in the pace of India's socio-economic progress. Everyday, about 50,000 persons are added to the already large base of its population. The Karunakaran Population Committee (1992-93) had proposed certain disincentives for those who do not follow the norms of the development model adopted by the national public policy so as to bring down the fertility rate. It is a matter of regret that though the Constitution of India is committed to social and economic justice for all, yet India has entered the new millennium with the largest number of illiterates in the world and the largest number of people below the poverty line. The laudable goals spelt out in the directive principles of State policy in the Constitution of India can best be achieved if the population explosion is checked effectively. Therefore, population control assumes a central importance for providing social and economic justice to the people of India (Usha Tandon, Reader, Faculty of Law, Delhi University — *Research Paper on Population Stabilization*, Delhi Law Review, Vol. XXIII, 2001, pp. 125-31).

32. In the words of Bertrand Russell, "Population explosion is more dangerous than hydrogen bomb." This explosive population overgrowth is not confined to a particular country but it is a global phenomenon. India being the largest secular democracy has the population problem going side by side and directly impacting on its per capita income, and resulting in shortfall of foodgrains in spite of the green revolution, and has hampered improvement on the educational front and has caused swelling of unemployment numbers, creating a new class of pavement and slum dwellers and leading to congestion in urban areas due to the migration of rural poor. (Paper by B.K. Raina on *Population Policy and the Law*, 1992, edited by B.P. Singh Sehgal, p. 52.)

33. In the beginning of this century, the world population crossed six billion, of which India alone accounts for one billion (17 per cent) in a land area of 2.5 per cent of the world area. The global annual increase of population is 80 million. Out of this, India's growth share is over 18 million (23 per cent), equivalent to the total population of Australia, which has two-and-a-half times the land space of India. In other words,

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India is growing at the alarming rate of one Australia every year and will be the most densely populous country in the world, outbeating China, which ranks first, with a land area thrice this country's. China can withstand the growth for a few years more, but not India, with a constricted land space. Here, the per capita crop land is the lowest in the world, which is also shrinking fast. If this falls below the minimum sustainable level, people can no longer feed themselves and shall become dependent on imported food, provided there are nations with exportable surpluses. Perhaps, this may lead to famine and abnormal conditions in some parts of the country. (Source — *Population Challenge*, Arcot Easwaran, *The Hindu*, dated 8-7-2003.) It is emphasized that as the

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population grows rapidly there is a corresponding decrease in per capita water and food. Women in many places trek long distances in search of water which distances would increase every next year on account of excessive groundwater withdrawals catering to the need of the increasing population, resulting in lowering of the levels of water tables.

34. Arcot Easwaran has quoted the example of China. China, the most populous country in the world, has been able to control its growth rate by adopting the "carrot-and-stick" rule. Attractive incentives in the field of education and employment were provided to the couples following the "one-child norm". At the same time drastic disincentives were cast on the couples breaching "one-child norm" which even included penal action. India being a democratic country has so far not chosen to go beyond casting minimal disincentives and has not embarked upon penalizing procreation of children beyond a particular limit. However, it has to be remembered that complacence in controlling population in the name of democracy is too heavy a price to pay, allowing the nation to drift towards disaster.

35. The growing population of India had alarmed the Indian leadership even before India achieved independence. In 1940 the Sub-Committee on Population, appointed by the National Planning Committee set up by the President of the Indian National Congress (Pandit Jawaharlal Nehru), considered "family planning and a limitation of children" essential for the interests of social economy, family happiness and national planning. The Committee recommended the establishment of birth-control clinics and other necessary measures such as raising the age of marriage and a eugenic sterilization programme. A Committee on Population set up by the National Development Council in 1991, in the wake of the census result, also proposed the formulation of a national policy. (Source — Seminar, March 2002, p. 25.)

36. Every successive five-year plan has given prominence to a population policy. In the first draft of the First Five-Year Plan (1951-56) the Planning Commission recognized that population policy was essential to planning and that family planning was a step forward for improvement in health, particularly that of mothers and children. The Second Five-Year Plan (1956-61) emphasized the method of sterilization. A Central Family Planning Board was also constituted in 1956 for the purpose. The Fourth Five-Year Plan (1969-74) placed the family planning programme, "as one amongst items of the highest national priority". The Seventh Five-Year Plan (1985-86 to 1990-91) has underlined "the importance of population control for the success of the plan programme …". But, despite all such exhortations, "the fact remains that the rate of population growth has not moved one bit from the level of 33 per thousand reached in 1979. And in many cases, even the reduced targets set since then have not been realised". (*Population Policy and the Law*, ibid., pp. 44-46.)

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37. The above facts and excerpts highlight the problem of population explosion as a national and global issue and provide justification for priority in policy-oriented legislations, wherever needed.

38. None of the petitioners has disputed the legislative competence of the State of Haryana to enact the legislation. Incidentally, it may be stated that the Seventh Schedule List II — State List, Entry 5 speaks of "Local Government, that is to say, the constitution and powers of Municipal Corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration." Entry 6 speaks of "Public health and sanitation" *inter alia*. In List III — Concurrent List, Entry 20-A was added which reads "Population control and family planning". The legislation is within the permitted field of State subjects. Article 243-C makes provision for the legislature of a State enacting laws with respect to constitution of Panchayats. Article 243-F in Part IX of the Constitution itself provides that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified by or under any law made by the legislature of the State. Article 243-G casts one of the responsibilities of Panchayats as preparation of plans and implementation of schemes for economic development and social justice. Some of the schemes that can be entrusted to Panchayats, as spelt out by Article 243-G read with the Eleventh Schedule are schemes for economic development and social justice in relation to health and sanitation, family welfare, women and child development and social welfare. Family planning is essentially a scheme referable to health, family welfare, women and child development and social welfare. Nothing more needs to be said to demonstrate that the Constitution contemplates Panchayat as a potent instrument of family welfare and social welfare schemes coming true for the betterment of people's health, especially women's health and family welfare coupled with social welfare. Under Section 21 of the Act, the functions and duties entrusted to Gram Panchayats include "public health and family welfare", "women and child development" and "social welfare". Family planning falls therein. Who can better enable the discharge of functions and duties and such constitutional goals being achieved than the leaders of Panchayats themselves taking a lead and setting an example?

39. Fundamental rights are not to be read in isolation. They have to be read along with the chapter on directive principles of State policy and the fundamental duties enshrined in Article 51-A. Under Article 38 the State shall strive to promote the welfare of the people and developing a social order empowered at distributive justice — social, economic and political. Under Article 47 the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the constitutionally downtrodden. Under Article 47 the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. None of these lofty ideals can be achieved without controlling the population inasmuch as our materialistic resources are limited and claimants are many. The concept

of sustainable development which emerges as a fundamental duty from several

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clauses of Article 51-A too dictates the expansion of population being kept within reasonable bounds.

40. The menace of growing population was judicially noticed and constitutional validity of legislative means to check the population was upheld in *Air India* v. *Nergesh Meerza*[15]. The Court found no fault with the rule which would terminate the services of air hostesses on the third pregnancy with two existing children, and held the rule both salutary and reasonable for two reasons: (SCC p. 374, para 101)

> "In the first place, the provision preventing third pregnancy with two existing children would be in the larger interest of the health of the air hostess concerned as also for the good upbringing of the children. Secondly, … when the entire world is faced with the problem of population explosion it will not only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels so as to meet the danger of overpopulation which, if not controlled, may lead to serious social and economic problems throughout the world."

41. To say the least, it is futile to assume or urge that the impugned legislation violates right to life and liberty guaranteed under Article 21 in any of the meanings, howsoever expanded the meanings may be.

The provision if it violates Article 25?

42. It was then submitted that the personal law of Muslims permits performance of marriages with four women, obviously for the purpose of procreating children and any restriction thereon would be violative of the right to freedom of religion enshrined in Article 25 of the Constitution. The relevant part of Article 25 reads as under:

> "25. *Freedom of conscience and free profession, practice and propagation of religion*.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
>
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
>
> (*a*) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
>
> (*b*) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

43. A bare reading of this article deprives the submission of all its force, vigour and charm. The freedom is subject to public order, morality and health. So the article itself permits a legislation in the interest of social welfare and reform which are obviously part and parcel of public order, national morality and the collective health of the nation's people.

44. The Muslim law permits marrying four women. The personal law nowhere mandates or dictates it as a duty to perform four marriages. No religious scripture or authority has been brought to our notice which provides that marrying less than four women or abstaining from procreating a child from each and every wife in case of permitted bigamy or polygamy would be irreligious or offensive to the dictates of the religion. In our view, the question of the impugned provision of the Haryana Act being violative of Article 25 does not arise. We may have a reference to a few decided cases.

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45. The meaning of religion — the term as employed in Article 25 and the nature of protection conferred by Article 25 stands settled by the pronouncement of the Constitution Bench decision in *M. Ismail Faruqui (Dr)* v. *Union of India*[16]. The protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25.

46. In *Sarla Mudgal* v. *Union of India*[17] this Court has judicially noticed it being acclaimed in the United States of America that the practice of polygamy is injurious to "public morals", even though some religions may make it obligatory or desirable for its followers. The Court held that polygamy can be superseded by the State just as it can prohibit human sacrifice or the practice of *sati* in the interest of public order. The personal law operates under the authority of the legislation and not under the religion and, therefore, the personal law can always be superseded or supplemented by legislation.

47. In *Mohd. Ahmed Khan* v. *Shah Bano Begum*[18] the Constitution Bench was confronted with a canvassed conflict between the provisions of Section 125 CrPC and Muslim personal law. The question was: when the personal law makes a provision for maintenance to a divorced wife, the provision for maintenance under Section 125 CrPC would run in conflict with the personal law. The Constitution Bench laid down two principles; firstly, the two provisions operate in different fields and, therefore, there is no conflict, and secondly, even if there is a conflict it should be set at rest by holding that the statutory law will prevail over the personal law of the parties, in cases where they are in conflict.

48. In *Mohd. Hanif Quareshi* v. *State of Bihar*[19] the State legislation placing a total ban on cow slaughter was under challenge. One of the submissions made was that such a ban offended Article 25 of the Constitution because such ban came in the way of the sacrifice of a cow on a particular day where it was considered to be religious by Muslims. Having made a review of various religious books, the Court concluded that it did not appear

to be obligatory that a person must sacrifice a cow. It was optional for a Muslim to do so. The fact of an option seems to run counter to the notion of an obligatory duty. Many Muslims do not sacrifice a cow on the *Id* day. As it was not proved that the sacrifice of a cow on a particular day was an obligatory overt act for a Mussalman for the performance of his religious beliefs and ideas, it could not be held that a total ban on the slaughter of cows ran counter to Article 25 of the Constitution.

49. In *State of Bombay* v. *Narasu Appa Mali*[20] the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) was challenged on the ground of violation of Articles 14, 15 and 25 of the Constitution. A Division Bench, consisting of Chief Justice Chagla and Justice Gajendragadkar (as His Lordship then was), held: (AIR p. 86, para 5)

> "[A] sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole."

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50. Their Lordships quoted from American decisions that the laws are made for the governance of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices. Their Lordships found it difficult to accept the proposition that polygamy is an integral part of Hindu religion though Hindu religion recognizes the necessity of a son for religious efficacy and spiritual salvation. However, proceeding on an assumption that polygamy is a recognized institution according to Hindu religious practice, Their Lordships stated in no uncertain terms: (AIR p. 86, para 7)

> "[T]he right of the State to legislate on questions relating to marriage cannot be disputed. Marriage is undoubtedly a social institution an institution in which the State is vitally interested. Although there may not be universal recognition of the fact, still a very large volume of opinion in the world today admits that monogamy is a very desirable and praiseworthy institution. If, therefore, the State of Bombay compels Hindus to become monogamists, it is a measure of social reform, and if it is a measure of social reform then the State is empowered to legislate with regard to social reform under Article 25(2)(*b*) notwithstanding the fact that it may interfere with the right of a citizen freely to profess, practise and propagate religion."

51. What constitutes social reform? Is it for the legislature to decide the same? Their Lordships held in *Narasu Appa Mali case*[20] that the will expressed by the legislature, constituted by the chosen representatives of the people in a democracy, who are supposed to be responsible for the welfare of the State, is the will of the people and if they lay down the policy which a State should pursue such as when the legislature in its wisdom has come to

the conclusion that monogamy tends to the welfare of the State, then it is not for the courts of law to sit in judgment upon that decision. Such legislation does not contravene Article 25(1) of the Constitution.

52. We find ourselves in entire agreement with the view so taken by the learned Judges whose eminence as jurists concerned with social welfare and social justice is recognized without any demur. Divorce, unknown to ancient Hindu law, rather considered abominable to Hindu religious belief, has been statutorily provided for Hindus and the Hindu marriage which was considered indissoluble is now capable of being dissolved or annulled by a decree of divorce or annulment. The reasoning adopted by the High Court of Bombay, in our opinion, applies fully to repel the contention of the petitioners even when we are examining the case from the point of view of Muslim personal law.

53. The Division Bench of the Bombay High Court in *Narasu Appa Mali*[20] also had an occasion to examine the validity of the legislation when it was sought to be implemented not in one go, but gradually. Their Lordships held: (AIR p. 87, para 10)

> "... Article 14 does not lay down that any legislation that the State may embark upon must necessarily be of an all-embracing character. The State may rightly decide to bring about social reform by stages and the stages may be territorial or they may be communitywise."

54. Rule 21 of the Central Civil Services (Conduct) Rules, 1964 restrains any government servant having a living spouse from entering into or contracting a marriage with any person. A similar provision is to be found in several service rules framed by the States governing the conduct of their civil servants. No decided case of

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this Court has been brought to our notice wherein the constitutional validity of such provisions may have been put in issue on the ground of violating the freedom of religion under Article 25 or the freedom of personal life and liberty under Article 21. Such a challenge was never laid before this Court apparently because of its futility. However, a few decisions by the High Courts may be noticed.

55. In *Badruddin* v. *Aisha Begum*[21] the Allahabad High Court ruled that though the personal law of Muslims permitted having as many as four wives but it could not be said that having more than one wife is a part of religion. Neither is it made obligatory by religion nor is it a matter of freedom of conscience. Any law in favour of monogamy does not interfere with the right to profess, practise and propagate religion and does not involve any violation of Article 25 of the Constitution.

56. In *R.A. Pathan* v. *Director of Technical Education*[22] having analysed in depth the tenets of Muslim personal law and their base in religion, a Division Bench of the Gujarat High Court held that a religious practice ordinarily connotes a mandate which a faithful must carry out. What is permissive under the scripture cannot be equated with a mandate which may

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amount to a religious practice. Therefore, there is nothing in the extract of the Quaranic text (cited before the Court) that contracting plural marriages is a matter of religious practice amongst Muslims. A bigamous marriage amongst Muslims is neither a religious practice nor a religious belief and certainly not a religious injunction or mandate. The question of attracting Articles 15(1), 25(1) or 26(*b*) to protect a bigamous marriage and in the name of religion does not arise.

57. In *Ram Prasad Seth* v. *State of U.P.*[23] a learned Single Judge held that the act of performing a second marriage during the lifetime of one's wife cannot be regarded as an integral part of Hindu religion nor could it be regarded as practising or professing or propagating Hindu religion. Even if bigamy be regarded as an integral part of Hindu religion, Rule 27 of the U.P. Government Servants' Conduct Rules requiring permission of the Government before contracting such marriage must be held to come under the protection of Article 25(2)(*b*) of the Constitution.

58. The law has been correctly stated by the High Courts of Allahabad, Bombay and Gujarat, in the cases cited hereinabove and we record our respectful approval thereof. The principles stated therein are applicable to all religions practised by whichever religious groups and sects in India.

59. In our view, a statutory provision casting disqualification on contesting for, or holding, an elective office is not violative of Article 25 of the Constitution.

60. Looked at from any angle, the challenge to the constitutional validity of Section 175(1)(*q*) and Section 177(1) must fail. The right to contest an election for any office in Panchayat is neither fundamental nor a common law right. It is the creature of a statute and is obviously subject to qualifications and disqualifications enacted by legislation. It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more wives than one or procreating more children than one is a practice followed by

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any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.

61. If anyone chooses to have more living children than two, he is free to do so under the law as it stands now but then he should pay a little price and that is of depriving himself from holding an office in Panchayat in the State of Haryana. There is nothing illegal about it and certainly no unconstitutionality attaches to it.

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Some incidental questions

62. It was submitted that the enactment has created serious problems in the rural population as couples desirous of contesting an election but having living children more than two, are feeling compelled to give them in adoption. Subject to what has already been stated hereinabove, we may add that disqualification is attracted no sooner a third child is born and is living after two living children. Merely because the couple has parted with one child by giving the child away in adoption, the disqualification does not come to an end. While interpreting the scope of disqualification we shall have to keep in view the evil sought to be cured and purpose sought to be achieved by the enactment. If the person sought to be disqualified is responsible for or has given birth to children more than two who are living then merely because one or more of them are given in adoption the disqualification is not wiped out.

63. It was also submitted that the impugned disqualification would hit the women worst, inasmuch as in the Indian society they have no independence and they almost helplessly bear a third child if their husbands want them to do so. This contention need not detain us any longer. A male who compels his wife to bear a third child would disqualify not only his wife but himself as well. We do not think that with the awareness which is arising in Indian womenfolk, they are so helpless as to be compelled to bear a third child even though they do not wish to do so. At the end, suffice it to say that if the legislature chooses to carve out an exception in favour of females it is free to do so but merely because women are not excepted from the operation of the disqualification it does not render it unconstitutional.

64. Hypothetical examples were tried to be floated across the Bar by submitting that there may be cases where triplets are born or twins are born on the second pregnancy and consequently both of the parents would incur disqualification for reasons beyond their control or just by freak of divinity. Such are not normal cases and the validity of the law cannot be tested by applying it to abnormal situations. Exceptions do not make the rule nor render the rule irrelevant. One swallow does not make a summer; a single instance or indicator of something is not necessarily significant.

Conclusion

65. The challenge to the constitutional validity of Sections 175(1)(*q*) and 177(1) fails on all the counts. Both the provisions are held intra vires the Constitution. The provisions are salutary and in public interest. All the petitions which challenge the constitutional validity of the abovesaid provisions are held liable to be dismissed.

66. Certain consequential orders would be needed. The matters in this batch of hundreds of petitions can broadly be divided into a few categories. There are writ petitions under Article 32 of the Constitution directly filed in this Court wherein the

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only question arising for decision is the constitutional validity of the impugned provisions of the Haryana Act. There were many a writ petition filed in the High Court of Punjab and Haryana under

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Articles 226/227 of the Constitution which have been dismissed and appeals by special leave have been filed in this Court against the decisions of the High Court. The writ petitions, whether in this Court or in the High Court, were filed at different stages of the proceedings. In some of the matters the High Court had refused to stay by interim order the disqualification or the proceedings relating to disqualification pending before the Director under Section 177(2) of the Act. With the decision in these writ petitions and the appeals arising out of SLPs the proceedings shall stand revived at the stage at which they were, excepting in those matters where they stand already concluded. The proceedings under Section 177(2) of the Act before the Director or the hearing in the appeals, as the case may be, shall now be concluded. In such of the cases where the persons proceeded against have not filed their replies or have not appealed against the decision of the Director in view of the interim order of this Court or the High Court having been secured by them they would be entitled to file reply or appeal, as the case may be, within 15 days from the date of this judgment if the time had not already expired before their initiating proceedings in the High Court or this Court. Such of the cases where defence in the proceedings under Section 177 (2) of the Act was raised on the ground that the disqualification was not attracted on account of a child or more having been given in adoption, need not be reopened as we have held that such a defence is not available.

67. Subject to the abovesaid directions all the writ petitions and civil appeals arising out of SLPs are dismissed.

———

† Under Article 32 of the Constitution of India

[1] AIR 1955 SC 191 : (1955) 1 SCR 1045 : 1955 Cri LJ 371

[2] AIR 1954 SC 493 : (1955) 1 SCR 599

[3] (1973) 1 SCC 261

[4] (1995) 1 SCC 519

[5] (1987) 4 SCC 238

[6] (1988) 2 SCC 433 : 1988 SCC (L&S) 577

[7] (1996) 2 SCC 498

[8] (1952) 1 SCC 94 : AIR 1952 SC 64 : 1952 SCR 218

[9] AIR 1954 SC 210 : 1954 SCR 892

[10] (1982) 1 SCC 691

[11] AIR 1954 SC 686 : (1955) 1 SCR 608

[12] AIR 1955 SC 166 : (1955) 1 SCR 1004

[13] (1978) 1 SCC 248

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[14] (1980) 4 SCC 1

[15] (1981) 4 SCC 335 : 1981 SCC (L&S) 599

[16] (1994) 6 SCC 360

[17] (1995) 3 SCC 635 : 1995 SCC (Cri) 569

[18] (1985) 2 SCC 556 : 1985 SCC (Cri) 245

[19] AIR 1958 SC 731 : 1959 SCR 629

[20] AIR 1952 Bom 84 : 53 Cri LJ 354

[21] 1957 All LJ 300

[22] (1981) 22 Guj LR 289

[23] (1957) 2 LLJ 172 : AIR 1957 All 411 and AIR 1961 All 334 : (1961) 2 LLJ 247

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IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI
CMA NO. _____ OF 2025
WRIT PETITION (CIVIL) NO. _____ OF 2025
(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ANJALI AND ANR. …PETITIONERS

VERSUS

UNIVERSITY OF DELHI AND ORS. …RESPONDENTS

INTERIM APPLICATION UNDER SECTION 151 CPC, 1908, ON BEHALF OF THE PETITIONERS SEEKING STAY OF OPERATION OF CLAUSE V OF THE NOTIFICATION DATED 08.08.2025 AND FOR DIRECTIONS PERMITTING THE PETITIONERS TO FILE THEIR NOMINATIONS FOR DUSU ELECTION, 2025, WITHOUT FURNISHING THE 1 LAKH RUPEES BOND.

TO,
THE HON'BLE CHIEF JUSTICE AND
HIS COMPANION JUSTICES OF
THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI.

THE HUMBLE APPLICATION
OF THE PETITIONERS ABOVE-NAMED:

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners have filed the accompanying writ petition under Article 226 of the Constitution of India challenging Clause V of the Notification dated 08.08.2025, issued by the Registrar, University of Delhi, mandating every candidate for the Delhi University Students' Union (DUSU) Elections 2025 to furnish a bond of ₹1,00,000/- as a precondition to contest elections to the Delhi University Students' Union (DUSU) 2025 towards prevention of defacement of property, in addition to a ₹500 Demand Draft.

2. That as per the aforesaid Notification, the last date for submission of nomination papers, accompanied by the mandatory ₹1,00,000/- bond and the ₹500/- Demand Draft, is 10th September 2025. Unless the operation of the impugned Clause V is stayed forthwith,

the Petitioners, both bona fide students of modest financial means, will stand effectively and irreversibly precluded from contesting the forthcoming elections. Such exclusion would visit upon them grave and irreparable prejudice by denying them their democratic right to participate in the representative process of the University, in a manner that is both arbitrary and disproportionate.

3. That the Petitioners respectfully submit that each of them incurs an annual educational expenditure of approximately ₹14,000–15,000, has no independent source of income, and remains entirely dependent upon family support. Yet, under the impugned Notification, such a student, whose entire yearly fee is a mere fraction of the amount required to furnish a bond of ₹1,00,000/- as a precondition to contest elections. Such a stipulation is prima facie disproportionate, exclusionary, and violative of the constitutional safeguards of equality enshrined under Article 14 of the Constitution of India. The inevitable effect of this policy is to restrain students of modest means and to filter out the less affluent at the very threshold of the democratic process.

4. That it is settled law that any restriction on participation in democratic processes must be proportionate and minimally intrusive as held by the Hon'ble Supreme Court in ***Justice K.S. Puttaswamy v. Union of India, 2019(1) SCC 1; Association for Democratic Reforms v. Union of India, W.P.(C) No. 880 of 2017.*** Clause V fails this constitutional test, as less intrusive alternatives are readily available.

5. That the balance of convenience is overwhelmingly in favour of the Petitioners. If interim relief is not granted, the Petitioners will be permanently excluded from filing nominations. Even if this Hon'ble Court ultimately strikes down Clause V, the damage will be irretrievable, as the opportunity to contest DUSU Elections 2025 will be lost forever.

6. That conversely, no prejudice will be caused to the Respondents if the operation of Clause V is stayed. The University retains ample authority to recover costs for defacement under Lyngdoh Guidelines (Clause 6.7.8) and under the Delhi Prevention of Defacement of Property Act, 2007. Thus, the University's legitimate objective can be fully secured without requiring students to part with ₹1,00,000 at the nomination stage.

7. That this Hon'ble Court, in *W.P.(C) 7824/2017* (order dated 26.09.2024, para 16), has already recognised post-facto recovery as the constitutionally appropriate mechanism, underscoring that preventive pre-deposits are excessive and contrary to law.

8. That the urgency of this Application is underscored by the approaching deadline of 10 September 2025. Unless immediate interim protection is granted, the Petitioners' right to contest elections will be extinguished.

INTERIM PRAYER

In light of the foregoing, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

a) Stay the operation and implementation of Clause V of the Notification dated 08.08.2025 issued by the Registrar, University of Delhi, pending final disposal of the present writ petition;

b) Direct the Respondents to accept the Petitioners' nomination papers for DUSU Elections 2025 without insisting upon the deposit of ₹1,00,000/- as a security bond;

c) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the interests of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:



[Raja Choudhary]
Advocate for the Petitioner
Office: Second Floor, C-15B, Jungpura Extension, 110014.
Mb. 8826075914
Email: adv.rajachoudhary@gmail.com]

Filed on: 23.08.2025
New Delhi

IN THE DELHI HIGH COURT AT NEW DELHI

WRIT PETITION (CIVIL) NO _____ OF 2025

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ANJALI & ANR. ....PETITIONER

VERSUS

UNIVERSITY OF DELHI & ORS. .....RESPONDENT

AFFIDAVIT

I, Anjali, D/O Sh. Abhay Kumar, Aged 24 R/O Village Tajpur, Tajpur, Gaya, Bihar - 804407. Do hereby solemnly affirm and declare as under:

1. That the deponent is petitioner in the above noted case and is well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the content of accompanying petition and interim application, has been drafted by my counsel under my instruction and same have been read over to me in my vernacular language and contents of the same are understood by me and the same are true and correct to my knowledge and belief.
3. That contents of the accompanying petition are not repeated here for the sake of brevity and same may kindly be read as part and parcel of this affidavit.

Anjali

DEPONENT

NOTARY
RAMZAN AHMAD ANSARI
(DELHI)
Regn. No. 16940
Expiry Date 30-01-2030
GOVT. OF INDIA

VERIFICATION

I, the above Deponent, hereby verify that the contents of the above affidavit are true to my knowledge. No part of it is wrong and nothing has been kept concealed. Verified at on this 22nd Day of August 2025.

Raja Chowhan D/26/04/21
I Identify the Deponent who has Signed/Put T.I. Before me

Anjali
DEPONENT

NOTARY GOVT. OF INDIA
RAIZAN AHMAD
(DELHI)
Regn. No. 10940
Expiry Date
30.01.2030

CERTIFIED THAT THE DEPONENT has solemnly affirmed before me that the contents of the above which have been read & explained to him/her are true and correct to his/her knowledge.
NOTARY GOVT. OF INDIA

23 AUG 2025

IN THE DELHI HIGH COURT AT NEW DELHI

WRIT PETITION (CIVIL) NO _____ OF 2025

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ANJALI & ANR. ....PETITIONER

VERSUS

UNIVERSITY OF DELHI & ORS. .....RESPONDENT

AFFIDAVIT

I, Abhishek Kumar, S/O Sh. Amit Kumar, Aged 19 R/O Village Bari Manjhgany (Bind Tola), Post- Bari Manjhgany, Thana – Haweli Kharagpur, Munger, Bihar- 811213. Do hereby solemnly affirm and declare as under:

1. That the deponent is petitioner in the above noted case and is well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the content of accompanying petition and interim application, has been drafted by my counsel under my instruction and same have been read over to me in my vernacular language and contents of the same are understood by me and the same are true and correct to my knowledge and belief.
3. That contents of the accompanying petition are not repeated here for the sake of brevity and same may kindly be read as part and parcel of this affidavit.

NOTARY
RAMZAN AHMAD ANSARI
(DELHI)
Regn. No. 16940
Expiry Date 30-01-2030
GOVT. OF INDIA

Abhishek Kumar

DEPONENT

VERIFICATION

I, the above Deponent, hereby verify that the contents of the above affidavit are true to my knowledge. No part of it is wrong and nothing has been kept concealed. Verified at _____ on this 22nd Day of August 2025.

Raja Choudhary D/26/04/21
I Identify the Deponent who has Signed/Put T.I. Before me

Abhishek Kumar

DEPONENT

NOTARY GOVT. OF INDIA

CERTIFIED THAT THE DEPONENT has solemnly affirmed before me that the contents of the above which have been read & explained to him/her are true and correct to his/her knowledge.

NOTARY GOVT. OF INDIA

23 AUG 2025

₹5
NCT OF DELHI COURT FEE
DLCT1215386F2519R
12-JUN-2025

IN THE DELHI HIGH COURT AT NEW DELHI

(CIVIL/CRIMINAL/ORIGINAL/APPELLATE / JURISDICTION)

Writ Petition (Civil) No. 2025

Anjali & Anr. Appellant(s) / Petitioner(s)

Versus

University of Delhi & Ors. Respondents(s)

₹25 2292834 ADVOCATES' WELFARE FUND STAMP

VAKALATNAMA

I/We Anjali

Appellants(s)/Petitioner(s)/Respondent(s) /Opposite party in the above Suit/ Appeal Petition/Reference do hereby appoint and retain Mr. Raja Choudhary Advocate to act and appear for me/us in the above Suit/ Appeal/ Petition/Reference and or my /our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of my application connected with the same of any decree order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents, and to deposit and receive money on my/ or behalf in the said Suit Appeal/ Petition Reference and in application of Review, and to represent me/us and to take all necessary steps on my/our behalf in the above matter, I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 22nd day of August 2025

Anjali

Accepted APPELLANTS(s) (Signed) PETITIONER

Raja Choudhary

RAJA CHOUDHARY INTERVENOR(s) RESPONDENTS(s)

ADVOCATE DELHI HIGH COURT

MEMO OF APPEARANCE

To,
The Registrar,
Delhi High Court at New Delhi
Sir,
Please enter my appearance on behalf on Petitioner(s)/Appellant(s)/Respondent(s)/ Intervenor in the matter above mentioned.
Dated this 22nd day of August 2025

Yours faithfully,

Raja Choudhary

RAJA CHOUDHARY
Advocate for Petitioner(s)/Appellant(s)/Respondent(s)
Enrollment No.: D/2604/2021

₹5 NCT OF DELHI COURT FEE DLGT1215392025196 12-JUN-2025

IN THE DELHI HIGH COURT AT NEW DELHI

(CIVIL/CRIMINAL/ORIGINAL/APPELLATE / JURISDICTION)

Writ Petition (Civil) No. , 2025

Anjali & Anr. Appellant(s) / Petitioner(s)

Versus

University of Delhi & Ors. Respondents(s)

₹25 ADVOCATES' WELFARE FUND STAMP TWENTY FIVE RUPEES DELHI 2292840 ₹25

VAKALATNAMA

I/We Abhishek Kumar

Appellants(s)/Petitioner(s)/Respondent(s) /Opposite party in the above Suit/ Appeal Petition/Reference do hereby appoint and retain Mr. Raja Choudhary Advocate to act and appear for me/us in the above Suit/ Appeal/ Petition/Reference and or my /our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of my application connected with the same of any decree order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents, and to deposit and receive money on my/ or behalf in the said Suit Appeal/ Petition Reference and in application of Review, and to represent me/us and to take all necessary steps on my/our behalf in the above matter, I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 22nd day of August 2025

Abhishek Kumar

Accepted APPELLANTS(s) (Signed) PETITIONER

Raja Choudhary

RAJA CHOUDHARY INTERVENOR(s) RESPONDENTS(s)

ADVOCATE DELHI HIGH COURT

MEMO OF APPEARANCE

To,
The Registrar,
Delhi High Court at New Delhi
Sir,
Please enter my appearance on behalf on Petitioner(s)/Appellant(s)/Respondent(s)/ Intervenor in the matter above mentioned.
Dated this 22nd day of August 2025

Yours faithfully,

Raja Choudhary

RAJA CHOUDHARY
Advocate for Petitioner(s)/Appellant(s)/Respondent(s)
Enrollment No.: D/2604/2021

TAKE NOTICE: ADVANCE SERVICE: ANJALI AND ANR. V. UNIVERSITY OF DELHI AND ANR.

1 message

Raja Choudhary <adv.rajachoudhary@gmail.com>
To: rupalmohinder@gmail.com, uoidhc@gmail.com, secy.dhe@nic.in

Sat, 23 Aug, 2025 at 11:48 am

Dear Sir/Madam, please find attached - ANJALI AND ANR. V. UNIVERSITY OF DELHI AND ANR.

Raja Choudhary
Advocate, Supreme Court of India
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