

**WAGES AND OTHER SERVICE CONDITIONS  
OF PRIVATE UNAIDED SCHOOL TEACHERS  
IN KERALA**

**Thesis Submitted to the  
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY  
for the award of the degree of  
DOCTOR OF PHILOSOPHY  
in the Faculty of Law**

**By  
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**August 2017**

## **DECLARATION**

I hereby declare that the thesis entitled, “**Wages and Other Service Conditions of Private Unaided School Teachers in Kerala**” for the award of the Degree of **Doctor of Philosophy in Law** is the record of bonafide research work carried out by me under the guidance and supervision of **Dr. V.S. Sebastian**, Former Director, School of Legal Studies, Cochin University of Science and Technology, Kochi - 22. I further declare that this thesis or any part of this thesis did not form part of any dissertation and has not been submitted by me in any other University / Institution for any other Degree, Diploma, Associateship or any other title or recognition.

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30<sup>th</sup> August, 2017

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# Certificate

This is to certify that the important research findings included in the thesis entitled, “**Wages and Other Service Conditions of Private Unaided School Teachers in Kerala**” have been presented in a research seminar held at School of Legal Studies, Cochin University of Science and Technology on 14<sup>th</sup> July, 2017.

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## Certificate

This is to certify that this thesis entitled “**Wages and Other Service Conditions of Private Unaided School Teachers in Kerala**” submitted by Sri. Regi Joseph, for the award of the Degree of Doctor of Philosophy in Law is the record of bonafide research work carried out by him under my guidance and supervision in the School of Legal Studies, Cochin University of Science and Technology, Kochi – 22. All the relevant corrections and modifications suggested by the audience during the Pre-Synopsis Seminar and recommended by the Doctoral Committee have been incorporated by Sri. Regi Joseph in this thesis.

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Kochi,  
30<sup>th</sup> August, 2017.

**Dr. V.S. Sebastian**  
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## **PREFACE**

Under the Constitution of India, it is a fundamental right of every child below the age of fourteen years to get education free and compulsory. Therefore, it becomes the duty of the State to provide school education to the children at State's expense. This constitutional duty of the State in Kerala is seen shared by the Government with Private School Managements. To some of these private schools, the Government provides financial assistance by way of maintenance grants and payment of salary and allowances at Government rates to the teaching and non-teaching staff. These schools are called Aided schools, the employees of which stand almost equal to that of Government school staff.

There is yet another set of schools established and run by the private managements over which the Government exercise very little control. The entire expenses in running those institutions are met out of the funds raised by the managements themselves through the fees collected by them from students. The number of those schools are fast increasing and there seems to be a preference by parents and students to get educated in these unaided schools because of the excellent performance of these schools during the last few decades.

However, the primary functionaries viz., the teachers working in these unaided schools, who are the real reason for the shining performance of these schools are seen discarded in terms of their wages and other conditions of service and are often the victims of financial exploitation from the managements. There exists a wide disparity in their pay and allowances compared to teachers working in Government and Aided schools. The winners quite often are not given the rewards mainly due to lack of proper rules governing their pay and allowances including retiral benefits. Their counterparts ironically get everything from the Government and the Unaided school teachers are denied most of the rights enjoyed by the Aided and Government school teachers.

Wages and other service conditions undoubtedly play a significant role in the performance of employees in their work. It can be generally stated that irrespective of the employer or place of employment, employees deserve a dignified life in the society. Whether it is in the Government service or in private employment, they require a reasonable income to satisfy the basic necessities of life. Since wages are the principal often the only source of revenue, it shall be fair and reasonable. It is not possible for employees to lead a decent life in the society without proper income. Requirement of fair wages and reasonable conditions of service is a universally accepted principle and it is well recognised by the international instruments as well as by the Constitution of India and other social welfare legislations in the country. As a welfare State, it is the duty of the Government to ensure payment of fair and reasonable wages to the employed so as to protect them from economic exploitation. This study is an earnest endeavour to find out the actual salary and other benefits received by the private unaided school teachers in the State and to suggest methods to improve their precarious conditions.

The thesis is divided into seven chapters. The first chapter is introduction. The second chapter examines the wages and service conditions in the national and international perspectives. Laws governing the wages and service conditions of private unaided school teachers are examined in chapter three. How far the provisions of Minimum Wages act and other welfare legislations are applicable to private unaided school teachers is the main focus of study in chapter four. An analysis of the field study conducted is discussed in chapter five. A comparison of Government / Aided and Private Unaided School teachers regarding their pay and service conditions is the theme of chapter six. Last chapter highlight the important findings of the study and suggestions for the better protection of private unaided school teachers in the State.

For the completion of this research work, I have received immense support from many persons. I am deeply indebted to Dr. V.S. Sebastian, Former Director, School of Legal Studies, Cochin University of Science and Technology for giving proper guidance and constant inspiration to me in completing this work. I am also indebted to Dr. A.M. Varkey, Dr. D. Rajeev, Dr. N.S. Gopalakrishnan, Dr. N.S.

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I express my sincere thanks for the cooperation extended to me by the Library and Office staff of School of Legal Studies, Cochin University of Science and Technology. Visits made to Central Library, Kerala High Court Library and Government Law College Library, Ernakulam were very helpful in locating much of the materials necessary for my research. I express my thanks to all librarians and other persons in these institutions who helped me by opening their files on my request. I gratefully acknowledge the help extended to me by the private unaided school teachers in the State especially those who have participated in the field survey and provided valuable suggestions.

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## ABBREVIATIONS

A.I.R.	:	All India Reporter
All.	:	Allahabad
anr.	:	another
Art.	:	Article
C.A.	:	Court of Appeal
Cal.	:	Calcutta
CBSE	:	Central Board of Secondary Education
CISCE	:	Council of Indian School Certificate Examination
<i>et. al.</i>	:	and others
F.L.R.	:	Indian Factories and Labour Reports
I.L.R.	:	Indian Law Report
<i>ibid.</i>	:	exact same location (page number/ Article/ Section is same)
ICCPR	:	International Covenant on Civil & Political Rights
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
ICSE	:	Indian Certificate of Secondary Education
<i>id.</i>	:	the same
ILO	:	International Labour Organisation
JJ.	:	Judges
K.H.C.	:	Kerala High Court Cases
Edn.	:	Edition
Guj.	:	Gujarat
K.L.J.	:	Kerala Law Journal
KER	:	Kerala Educational Rules
Ker.	:	Kerala
KSR	:	Kerala Service Rules
KSSR	:	Kerala State and Subordinate Service Rules

L.L.J	:	Labour Law Journal
L.L.R.	:	Labour Law Reports
Ltd.	:	Limited
PIL	:	Public Interest Litigation
Mad.	:	Madras
HC	:	High Court
MANU.	:	Manupatra
n.	:	Number
NOC	:	No Objection Certificate
O.P.	:	Original Petition
p.	:	page
PFRDA	:	Pension Fund Regulatory and Development Authority
pp.	:	pages
PSC	:	Public Service Commission
Pvt.	:	Private
S.C.C.	:	Supreme Court Cases
Sec.	:	Section
SPL	:	Special Leave Petition
<i>supra.</i>	:	above, over
u/s	:	Under section
UDHR	:	Universal Declaration of Human Rights
UGC	:	University Grants Commission
UN	:	United Nations
UNESCO	:	United Nations Educational, Scientific and Cultural Organization
v.	:	Versus
Viz.	:	Visualising
Vol.	:	Volume

w.e.f. : with effect from  
W.P. : Writ Petition  
www : World Wide Web.

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*State of H.P. v. H.P. State Recognised and Aided Schools Managing Committees and Others* (1995) 4 S.C.C. 507.

*State of Kerala and Others v. M. Padmanabhan Nair*, A.I.R. 1985, S.C. 356.

*State of Kerala v. The Mythri Vidya Bhavan English Medium School.* I.L.R. 2012 (4) Kerala 387.

*State of Maharashtra v. Chandra Bhan* (1983) 3 S.C.C. 387.

*State of Punjab and Others v. Kailash Nath etc.* A.I.R. 1989 S.C. 558.

*Sushmita Basu and Others. v. Ballygunge Siksha Samity and Others.*(2006) 7 S.C.C. 680.

*T.M.A.Pai Foundation & Others v. State of Karnataka & Others*, A.I.R. 2003 S.C.C. 355

*The Kamani Metals and Alloys Ltd. v. The Workmen* A.I.R. 1967 S.C. 1175.

*The Standard Vacuum Refining Co.of India v. Its Workmen*, A.I.R. 1961 S.C. 895.

*The Workmen represented by Secretary v. The Management of Reptakos Brett & Co. Ltd. and Another*, A.I.R. 1992 S.C. 504.

*Titaghur Paper Mills Co. Ltd. v. Its Workmen* A.I.R. 1959 S.C. 1095.

*Unaided Teachers Association v. State of Kerala*, O.P. No. 8063/1998.

*Unichoyi and Others v. State of Kerala* A.I.R. 1962 S.C. 12.

*University of Delhi v. Ram Nath* A.I.R. 1963 S.C. 1873.

*Williams (India) Pvt. Ltd. v. Employees State Insurance Corporation*, 1994 L.L.R. 1 (S.C.)

*Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate* A.I.R. 1958 S.C. 353.

*Workmen v. Management of Reptakos Brett & Co. Ltd.*, A.I.R. 1992 S.C. 504.

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# **Chapter 1**

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## **INTRODUCTION**

## Chapter 1

# INTRODUCTION

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Indian society is a combination of different religions, castes, culture and languages. Though people enjoy complete political freedom, majority are illiterates. The most powerful tool for the development of such diverse communities is education.<sup>1</sup> Successive Five-Year plans of Government of India have accorded high priority to education.<sup>2</sup>

The Constitution of India initially entrusted the responsibility of providing elementary education to the State governments rather than to the Central Government. However, the 42<sup>nd</sup> amendment of the Constitution in 1976 transferred the subject 'education'<sup>3</sup> from the state list to the concurrent list<sup>4</sup> to provide for the legislative and executive action by the Central and State governments.<sup>5</sup>

Article 21A<sup>6</sup> of the Indian Constitution assures free and compulsory education for all children in the age group of six to fourteen years. The Right of Children to Free and Compulsory Education Act, 2009 enables every child between

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<sup>1</sup> This was the observation made by the Supreme Court of India in *T.M.A.Pai Foundation & Others v. State of Karnataka & Others*, A.I.R. 2003 S.C. 355.

<sup>2</sup> Prof. K. Ramachandran, *Education for All Towards Quality with Equity INDIA*, National University of Educational Planning and Administration, New Delhi, 1<sup>st</sup> edn. 2014, p.3. available at [unesdoc.unesco.org/images/0022/002298/229873E.pdf](http://unesdoc.unesco.org/images/0022/002298/229873E.pdf) (accessed on 15/07/2015).

<sup>3</sup> Education including technical education, medical education and universities, vocational and technical training of labour. (Substituted by the Constitution 42<sup>nd</sup> Amendment Act, 1976).

<sup>4</sup> Constitution of India 1950, Schedule VII, List III, Concurrent List, Entry 25.

<sup>5</sup> Vimala Ramachandran and Madhumita Pal. *et. al.*, "Teacher Motivation in India", 30/04/2005, p.5, available at [www.esocialsciences.org/Download/repecDownload.aspx?fname..02.doc](http://www.esocialsciences.org/Download/repecDownload.aspx?fname..02.doc). (accessed on 20/04/2015).

<sup>6</sup> Inserted by the Constitution (Eighty-sixth Amendment) Act 2002.

the age of six to fourteen years with the right to free<sup>7</sup> and compulsory education<sup>8</sup> in a neighbourhood school till completion of elementary education.

There is substantial diversity in the school education system in India. This is also true in the case of ownership and management of schools. On the basis of its ownership, management and administrative control there are various types of schools in India. As per an all India statistics of school education,<sup>9</sup> about 45 per cent of schools in India are owned and managed by the Central and State governments, 14 per cent by the local bodies and the remaining 41 per cent are under the ownership and control of aided and unaided school managements.

With the introduction of decentralised system in India,<sup>10</sup> all Government primary schools up to upper primary are under the control of the Grama Panchayats and high schools under the control of District Panchayats, Municipalities and Corporations as the case may be. Even though decentralisation exists in this sector, the key control is still vested in the State Government particularly with regard to the appointment, payment of salary, etc., of the employees employed therein.<sup>11</sup>

The schools owned and managed by private persons or organisations are called as private schools. Private aided schools are recognised and financially supported by the Government. The salary disbursement in such schools is strictly in conformity with the rules and directions issued by the Government. Private unaided schools are functioning without any financial support from the Government. All

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<sup>7</sup> The Right of Children to Free and Compulsory Education Act 2009, Sec. 3(2). No child shall be liable to give any school fee or other expenses.

<sup>8</sup> *id.* Sec. 8 (a) (ii). It is the duty of the appropriate Government to make sure the admission, attendance and completion of education of every child between the age group of six to fourteen years.

<sup>9</sup> *Statistics of School Education 2010-2011*, Ministry of Human Resources Development, Government of India, 2012, available at [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/SES-School\\_201011\\_0.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/SES-School_201011_0.pdf). (accessed on 18/06/2015).

<sup>10</sup> The 73<sup>rd</sup> and 74<sup>th</sup> Amendments of the Constitution of India 1992.

<sup>11</sup> K.K. George and Parvathy Sunaina, "Dynamics of Change in Kerala's Education System: The Socio-economic and Political Dimensions" (paper presented at the national seminar on strategies and dynamics of change in Indian education, New Delhi, India, November, 2004) available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.575.6869&rep=rep1&type=pdf> (accessed on 18/06/2015).

administrative decisions including the appointment and payment of salary to the staff are within the domain of the respective school management.<sup>12</sup>

The primary, upper primary, secondary and higher secondary are the different stages of school education in India. But there is no uniformity among States and Union Territories regarding the organisational set up for the first ten years of school education. Some States are having a four-year primary, three-year upper primary and three-year secondary education structure and others have five years of primary, three years of upper primary, two years of secondary education.<sup>13</sup>

Thus, education has all the time been given a privileged position in India. The same is true in the State of Kerala which is located in the southern most part of India with Western Ghats in the east and Arabian Sea in the west. It was reorganised into the present physical form on 1<sup>st</sup> November 1956 by incorporating the princely states of Travancore, Cochin and the Malabar district of the Madras State. Highland, midland and lowland are the three major geographical regions of the State.<sup>14</sup>

## 1.1. Early Education in Kerala

Kerala has a splendid history in the field of culture and education. Ancient education in the State was individualistic. It was mainly instructed in the teacher's household or in small schools. Native religions such as Jainism and Buddhism were present in Kerala even before the Christian era.<sup>15</sup> Traditional education was fundamentally spiritual in its character based on the principles of Jainism, Buddhism and Hinduism.<sup>16</sup>

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<sup>12</sup> *supra* n.5, p.8.

<sup>13</sup> *supra* n.2, p.3.

<sup>14</sup> A. Sreedhara Menon, *Social and Cultural History of Kerala*, Sterling Publishers Pvt. Ltd., New Delhi, (1<sup>st</sup> edn., 1979), p.4.

<sup>15</sup> A. Sreedhara Menon, *A Survey of Kerala History*, Sahitya Pravarthaka Co-operative Society Ltd., Kottayam, (1<sup>st</sup> edn., 1967), p. 87.

<sup>16</sup> *ibid.*

The Buddhist monks in the ancient period were regarded as visionaries in the education sector. ‘Viharas’ started by the Buddhist Monks offered education to children.<sup>17</sup> Buddhists’ system of operating educational institutions in temples was imitated in Kerala, particularly in the case of ‘Ezhuthupallies.’<sup>18</sup> Gradually, in the 8<sup>th</sup> Century AD, the Nampoothiris have started to control the social life of Kerala, which resulted in the fading of Buddhism in the State.

### 1.1.1. Education during the Early Sangam Age

The initial political and educational history of Kerala begins with the Sangam Age.<sup>19</sup> During this period Kerala was under the rule of the large Tamil Kingdom called ‘Tamilakam.’<sup>20</sup> The standard of literacy and education was very high in the early Sangam Age. Universal education was the peculiarity of that period. Female education was also appeared to have received special attention. Members of backward communities such as the Panas, Parayas, Kuravas, Vetas, etc. were renowned for their great achievements in the domain of knowledge. Auvvaiyar, the great poetess and Paranar and Kapilar, the two great poets of that Age, are said to have been Panas.<sup>21</sup>

Meanwhile, ‘Matilakom’ near Muziris<sup>22</sup> was emerged as a main hub of learning in this Age. Many poets and scholars<sup>23</sup> accepted Matilakom as their home and lived there which resulted in the enrichment of the academic life of the place.<sup>24</sup> Thus the universal education, learning process and various forms of Arts prospered and became common in the ancient Kerala.

<sup>17</sup> *id.* at p.94.

<sup>18</sup> *ibid.*

<sup>19</sup> The first five Centuries of the Christian Era.

<sup>20</sup> *supra* n. 15, p. 64.

<sup>21</sup> Kunjan Pillai, Elamkulam, *Education in Ancient Kerala - Studies in Kerala History*, National Book Stall, Kottayam, (1<sup>st</sup> edn.,1970), p.267.

<sup>22</sup> Presently known as Kodungalloor, Thrissur District, Kerala.

<sup>23</sup> Sanskrit and Tamil poets, Buddhist and Jain scholars and many other men of learning adopted Mathilakom as their place of residence.

<sup>24</sup> A. Sreedhara Menon, *Cultural Heritage of Kerala: An Introduction*, East West Publishers Pvt. Ltd., Cochin, (1978), p.158.

### 1.1.2. Education in the Post Sangam Age

However, the system of universal education had received a major setback in the later Sangam and Post-Sangam period. This was mainly due to the growth of Aryanisation and the increasing influence of Chaturvarnya or the caste system which piloted a new social order in which the backward communities and the members of the female sex were denied the benefits of education. Thus the high castes, especially Brahmins, established supremacy in this field.<sup>25</sup> Unfortunately, there is no information available regarding the political history of the State after the third Century AD. Similarly, the period that comes after the Sangam Age, i.e, from 6<sup>th</sup> to 8<sup>th</sup> Century AD, also does not have any kind of historical authentications.<sup>26</sup>

### 1.1.3. Educational Growth during Chera Dynasty (800-1102 A.D.)

Chera Dynasty under Kulasekhara Varma was restored in Kerala in 800 AD. Cultural and academic revitalisations were started during this period.<sup>27</sup> The rulers in the 9<sup>th</sup> and 10<sup>th</sup> centuries also made great contributions in this area. Educational endeavours have received a great impetus throughout the Age of Kulasekharas of Mahodayapuram. A great number of temples were constructed in many places of the State and educational establishments were also started in such temples.<sup>28</sup> Schools and Colleges were established in all major temples and centres of higher learning in some selected places.<sup>29</sup>

### 1.1.4. System of Education and Curriculum

#### 1.1.4.1. Salais

The educational institutions attached to the temples were known as Salais. In ancient Malayalam the word 'salai' commonly denote Kalasala (college) and

<sup>25</sup> *supra* n.14, p. 280.

<sup>26</sup> *supra* n.15, p. 85.

<sup>27</sup> *id.* at p.123.

<sup>28</sup> *id.* at p.153.

<sup>29</sup> *supra* n. 21, p.267.

Padasala (school).<sup>30</sup> Kandalur, Parthivasekharapuram, Tiruvalla and Muzhikulam were the prominent salais of those days. Among these salais, Kandalur salai had occupied a notable position in the educational institutions of that period.<sup>31</sup> Kandalur and Parthivasekharapuram salais offered only limited seats of higher education and admission was strictly on the basis of pure merit. Salais functioned as boarding schools entirely for the higher education of the Brahmin youths. The students of salais had enjoyed the privilege of free boarding, lodging and tuition. They also received a detailed course of instruction in the Vedas, Sastras and other branches of learning.<sup>32</sup>

Recitation and exposition of puranic stories in temples were the other methods adopted for the promotion of social education during that period.<sup>33</sup> Libraries with number of books were common in almost all temples.<sup>34</sup> The Era of Kulasekharas witnessed the development of both formal and non-formal education.

#### 1.1.4.2. Decline of Salais

The social disorder developed due to the Chola-Chera war in the eleventh Century led to the decline of the Salais. In fact, there is hardly any reference found related to Salai in the inscriptional records after the twelfth Century. Decline in the character and calibre of the young ones is considered to be the main reason for the disappearance of Salais. Students lost their interest in academic pursuits and moved to other areas of entertainment.<sup>35</sup>

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<sup>30</sup> *ibid.*

<sup>31</sup> *supra* n.14, p.281.

<sup>32</sup> *id.* at p.282.

<sup>33</sup> *supra* n.15, p.153.

<sup>34</sup> *id.* at p. 154.

<sup>35</sup> *supra* n.14, p.284.

### 1.1.4.3. Sabha Mutts

Sabha Mutts or Temple Universities were developed in Kerala in the early medieval period.<sup>36</sup> These educational institutions functioned largely in the central and northern Kerala. The first of its kind was founded by Sankaracharya at Thrissur and later on, many Mutts were established in other places. It was oriented towards the teaching of young Brahmins in Vedas and Sastras.<sup>37</sup> The total duration of the course was twelve years and the students had to stay in the Mutt for the entire period. The first nine years were assigned for intellectual and religious study and the last three years dedicated for authorship of books as well as participation in discussions, debates and other intellectual pursuits.

### 1.1.4.4. Proficiency Tests

Literary meetings and aptitude examinations were common in the academic life of medieval Kerala. Anyonyam held in the Sri Rama Temple, Katavallur and the Revati Pattathanam held in the Tali Temple, Calicut were some of the popular intellectual exercises of that time. The Nampoothiri students from various parts of Kerala usually joined together at Katavallur to appear for the examination.<sup>38</sup>

### 1.1.4.5. Village Schools

For the education of Non-Brahmin youths, village schools popularly known as Ezhuthupallis were established in each Kara or Village under the leadership of an Ezhuthasan. It was a mixed school. The students were imparted skills in reading, writing, arithmetic, kavyas and the basics of astronomy and astrology. Thorough study in Kavyas, Alankaras, Natakas, Logic, Grammar and Ayurveda were the higher branches of learning in these schools.<sup>39</sup> The Ezhuthasan was remunerated

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Id.* at p.285.

<sup>38</sup> *Id.* at p.286.

<sup>39</sup> *Id.* at p.287.

usually in kind. Thus, this system of education was mainly intended for the moral, intellectual and physical upliftment of the youth.

The system of Ezhuthupalli had made an unparalleled progress during the 17<sup>th</sup> Century. This was mainly due to the determined efforts of Thunchath Ezhuthachan, ‘the Father of Malayalam Language.’ He was totally against the Brahmin monopoly in Sanskrit learning and always advocated for the education of masses. He started a Vedic school and Guru Madham at Chittur for the public. Ultimately, the Brahmins lost their domination in this field and members of other communities got enough opportunities for learning. This system of education was prevalent till the beginning of English education in the 19<sup>th</sup> Century and it is still existing in the rural parts of Kerala.<sup>40</sup>

#### **1.1.4.6. Kalaris and Physical Culture**

The Kalari is an indigenous educational institution peculiar to Kerala. Earlier, kalaris were common in each kara or village of Kerala under the guidance of a Panikkar or Kurup. Intense coaching classes for the youth especially in the usage of arms, fencing, boxing and wrestling were conducted in such gymnasiums. It developed a system of physical education and exercise appropriate to the requirements of young boys and girls. The so-called Kalaripayattu was very popular in the medieval period and its popularity declined in the 18<sup>th</sup> Century due to the increased usage of guns.<sup>41</sup>

#### **1.1.4.7. Gurukulam Specialisation**

Gurukulam form of education is a specialisation in the advanced courses of learning. In this system, the students who required to continue their further studies attached themselves to renowned pundits, physicians and astrologers for the

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<sup>40</sup> *id.* at p.288.

<sup>41</sup> *ibid.*

effective transmission of knowledge.<sup>42</sup> They can definitely learn more from their association with the ‘Gurus’ as well as from his personal experiences. The major drawback of this method of education is the dearth of seats in the Gurukulas.

Thus, it is clear from the above discussion that the spiritual and material growth of the people were the main goals of the traditional education in Kerala.<sup>43</sup>

## **1.2. Introduction of Western Education**

The innovative work done by the Christian missionaries in introducing western education paved the way for the State to enter into the modern educational field. The missionaries who arrived from Portugal, Netherlands and Great Britain introduced the formal education in Kerala. Gradually, the native forms of instruction such as Gurukulam, Padasala, Ezhuthupally etc. were replaced by the western education system.<sup>44</sup>

### **1.2.1. Educational Progress under the Portuguese, Dutch and the British Regime**

The efforts made by the Portuguese, Dutch and the British for the development of education and learning in Kerala deserve special attention. The educational progress in this period was mainly associated with Christian theological studies

In Kerala, there were institutions in the early period to impart religious education. The Salais and Sabha Mutts served the needs of theological education as far as the Hindus are concerned and the Muslims had their Madrasas and Arabic

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<sup>42</sup> Devendra Thakur and D.N. Thakur, *Studies in Educational Development, Education and Manpower Development*, Deep and Deep Publications, New Delhi (1<sup>st</sup> edn.,1996), Vol.5, p.4.

<sup>43</sup> N. Sam, *Keralathile Samoohika Navodhanavum Sahithyavum(Mal.)*, Sahithya Padana Kendram, Trivandrum, (1998), p.74.

<sup>44</sup> *supra* n.14, p.299.

Colleges.<sup>45</sup> Before the advent of Portuguese and Dutch, religious studies of Christians were individualistic in nature.

In 1545, a Franciscan priest, Vincent started a college at Cranganore for the education of Syrian youths in Latin rites and language.<sup>46</sup> The Portuguese founded seminaries and colleges at Cochin, Cranganore and Vaipikotta for liturgical and theological education.<sup>47</sup> They also started printing presses and several educational institutions in Kerala during the 16<sup>th</sup> Century.<sup>48</sup> The Carmelites began a Seminary at Varapuzha in the 17<sup>th</sup> century.<sup>49</sup> Later on the Churches in Kerala continued the work of the Portuguese in the field of education.

The Portuguese reign in Kerala came to an end in 1663 and the Dutch took over that position.<sup>50</sup> They were not interested in starting new educational institutions. But they permitted the existing institutions to continue. They also gave remarkable contribution to Indological studies. Moreover, the Dutch has compiled the *Hortus Malabaricus*, which deals with the medicinal properties of Indian plants.<sup>51</sup>

The British attained power in Kerala during the 17<sup>th</sup> Century and it has continued till independence. The pace of educational growth in Malabar was relatively lower than that of Travancore and Cochin during this period.<sup>52</sup> The British rule had brought transformation in the social and cultural system of Kerala. The part performed by the English missionaries in raising the standard of living of the people and in the establishment of educational institutions and hospitals during

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<sup>45</sup> *id.* at p.290.

<sup>46</sup> C.M Agur, *Church History of Travancore*, S.P.S. Press, Madras, (1903), p.43.

<sup>47</sup> *supra* n.15, p. 227.

<sup>48</sup> *supra* n.14, p. 291.

<sup>49</sup> *id.* at p. 292.

<sup>50</sup> *supra* n.15, p.247.

<sup>51</sup> *id.* at p.259.

<sup>52</sup> P. R. Gopinathan Nair, "Educational and Socio-economic Change in Kerala 1793-1947", Vol. 4(No.8), *The Social Scientist*, March 1976, p.31, available at <http://www.jstor.org/stable/3516378> (accessed on 21/07/2015).

this time are also to be noted. The Macaulay's Minutes of 1835, which recommended the spreading of western education in India through English language, framed the scheme of education more decorative.<sup>53</sup> Thus, the Portuguese, Dutch and the British had made instrumental changes in the educational system of Kerala.

### 1.2.2. Further Developments

During the 18<sup>th</sup> Century, many places in Kerala were transformed into centres of learning and attracted scholars from far and near. Kozhikode emerged as a centre of Sanskrit learning and studies under the rule of Zamorins. Taliparambu in North Kerala was converted as a prominent centre of education and culture under Kolathiri Rajas.<sup>54</sup> Thiruvananthapuram became popular as a centre of learning and culture under the reigns of Marthanda Varma (1729- 1758) and his successor Dharma Raja (1758-1798). Cochin and Trippunithura also emerged as the cultural centres by the patronage of the rulers of Cochin.<sup>55</sup> Moreover, Ambalapuzha, the capital of the Chempakasseri Rajas, emerged as a great centre of learning during this period.

### 1.3. Educational Developments in Kerala from 19<sup>th</sup> Century till Independence

In spite of the inspirations from various centres, the educational scenario in Kerala was very pathetic at the commencement of the 19<sup>th</sup> Century. The reason was the absence of a planned system of formal education in the State. The major developments in the field of education in Travancore, Cochin and Malabar during this period are also to be noted.

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<sup>53</sup> *ibid.*

<sup>54</sup> *supra* n.14, p.295.

<sup>55</sup> *id.* at p. 296.

### 1.3.1. Educational Progress in Travancore

The rulers of Travancore were greatly interested in the propagation of knowledge and culture. The Sanskrit Padasalas and the Arabic Madrasas were the only educational institutions in those days. With the arrival of western missionaries in the region, the education scenario has changed.<sup>56</sup> W.T. Ringletaube, a Prussian missionary established a school at Thiruvananthapuram in 1810 to give education to all children irrespective of caste, creed and religion.<sup>57</sup> He was given land free of cost by Rani Gouri Lakshmi Bai (1810-1815), the then ruler of Travancore.

The direct entry of the Travancore State in the field of modern education started in 1817, when Rani Gouri Parvati Bai with the help of Diwan Colonel Munro introduced free and compulsory education in Travancore under State control.<sup>58</sup> This was the first official recognition by the State to the right of education from public revenue. Further, Rev. Mead, another protestant missionary started many institutions including schools for the education of girls. He devoted several years (1817-1873) for educational activity in Travancore and he is considered as the pioneer of female education in Kerala.<sup>59</sup>

The expansion of education in Travancore was in a quick pace during the second half of the 19<sup>th</sup> Century. Rulers' interest in education, social transformation policy of the State and increasing need for education were the important factors for the sudden growth.<sup>60</sup> A Vernacular Education Department was also created during this period for the promotion of vernacular languages. The scheme of grant-in-aid to

<sup>56</sup> George Woodcock, *A Portrait of the Malabar Coast*, Faber and Faber, London (1967), p.80.

<sup>57</sup> *supra* n.14, p.297.

<sup>58</sup> A. Mathew, *A History of Educational Development in Kerala*, UNESDOC, NIEPA, New Delhi, (1987), p.30 available at [http://unesdoc.unesco.org/Ulis/cgi-bin/ulis.pl?catno=169482&set=0056B4CC14\\_2\\_52&database=ged&gp=0Use%20of%20uninitialized%20value%20in%20concatenation%20\(.\)%20or%20string%20at%20D:%5CWeb-Root%5CUlis%5Ccgi-bin%5Culis.pl%20line%204225.&lin=1&ll=a](http://unesdoc.unesco.org/Ulis/cgi-bin/ulis.pl?catno=169482&set=0056B4CC14_2_52&database=ged&gp=0Use%20of%20uninitialized%20value%20in%20concatenation%20(.)%20or%20string%20at%20D:%5CWeb-Root%5CUlis%5Ccgi-bin%5Culis.pl%20line%204225.&lin=1&ll=a) (accessed on 22/08/2015).

<sup>59</sup> *supra* n.14, p. 298.

<sup>60</sup> *supra* n.58, p. 95.

private educational institutions was initiated in 1869 to inspire private managements to begin English educational institutions in Travancore.

The reign of Sree Mulam Tirunal Rama Varma (1885-1924) was an era of tremendous developments in the educational field. Education in the primary section was made free for all and introduced a comprehensive Education Code<sup>61</sup> to coordinate the educational activities of the State during his period.<sup>62</sup> Rules framed under the code also laid down provisions for the introduction of new curriculum, organisation and management of schools, qualification of teachers, buildings and accommodation etc.<sup>63</sup> A revised grant-in-aid code was also introduced during this period.

Primary education was made free for girls in Travancore in 1896. By 1908, the entire lower primary stage was made free.<sup>64</sup> The scarcity of Government/aided schools led to the situation of students moving to unrecognised schools. The predominance of unrecognised schools forced the Government to enact an Educational Code in the year 1910.<sup>65</sup>

The Code effected great changes in all the important areas related with the functioning of schools, viz., admission, attendance, qualification of teachers, fee, discipline and infrastructure facilities. The education for the deprived backward classes obtained special attention under the Code. Consequently, it strengthened the overall educational scenario.

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<sup>61</sup> Travancore Education Code of 1070 ME (1894-95AD).

<sup>62</sup> *supra* n.15, p.333.

<sup>63</sup> *Administration Report Education for the year 1070 ME*, Govt. Press, Trivandrum, 1896, p.141.

<sup>64</sup> R.V.G. Menon, "Educational Scenario in Kerala", in J.V. Vilanilam *et. al.*(Eds.), *An Introduction to Kerala Studies*, International Institute for Scientific and Academic Collaboration, Inc.(IISAC),New Jersey, USA, (2012), p.621.

<sup>65</sup> *id.* at p.622.

### 1.3.2. Educational Growth in Cochin

In the beginning, Christian missionaries were the major stakeholders in the field of education in Cochin. The establishment of large number of private management schools compelled the Government to frame a grant-in-aid rule in 1889<sup>66</sup> and the provisions of the same were liberalised through an Educational Code in 1911. This resulted the mushrooming of large number of private management schools in Cochin. Later on, the Education Code was revised in 1921. Thus the combined efforts of the State and the private school managements made the education widespread in the State.

### 1.3.3. Educational Growth in Malabar

The Malabar region had witnessed a slower progress in education than Cochin and Travancore. It was the efforts of Christian missionaries, especially Herman Gundert and his Basel Mission that paved the way for educational awareness in Malabar. Basel Mission started the first primary school at Kallayi in 1847. They promoted education among all the communities in Malabar. Irrespective of caste and creed, admission was open to all the students. Some schools started in Malabar during this period had later transformed to become prestigious higher education institutions in Kerala. Zamorin's Guruvayurappan College, Calicut, Victoria College, Palakkad and Brennan College, Tellicherry are some of the examples.<sup>67</sup>

If any kind of empowerment and enlightenment of people have been brought about in the State during this period, it is undoubtedly through education. People began to understand their rights and duties as citizens and recognised their individual role in the overall contribution towards the social, cultural and economic progress of the Country. Governments from time to time have also done

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<sup>66</sup> P.R. Gopinathan Nair, *Educational and Economic Change in Kerala*, Centre for Development Studies, Trivandrum, (1978), p.40.

<sup>67</sup> *supra* n.14, p.299.

commendable work not only as a provider of education but also as a facilitator to build platforms for external agencies to contribute towards it.

#### **1.4. School Education in the Post-Independent Era**

In the Post-Independent era, the school education in Kerala had a progressive development in terms of literacy, student enrolment in schools, number of teachers and the general ambience of schools etc.

Independence led to resurgence in the educational sector and it paved the way for popular movements to develop educational facilities. The social organisations such as the Nair Service Society and the Sree Narayana Dharma Paripalana Yogam took a leading role in founding new schools and colleges with people's involvement. Minority social organisations like the Muslim Educational Society and various Christian organisations also played a vital role in the growth of the educational sector in Kerala.

##### **1.4.1. The Scheme of 1950**

In order to improve the service and working conditions of teachers of private schools, the Government introduced a new scheme, Private Secondary School (PSS) Scheme,<sup>68</sup> in the year 1950. The management guild of private schools strongly came against the scheme and later on the Government revised the scheme and it came into force in December 1951. The scheme introduced rules for the collection of fees from students, maintenance of school buildings and the constitution of a contributory provident fund for the teachers. The formation of the State of Kerala in 1956 undoubtedly accelerated the development of education and literacy in Kerala.

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<sup>68</sup> Available at <http://www.sietkerala.gov.in/stateEducationalScenario.html> (accessed on 19/06/2015).

### 1.4.2. Kerala Education Act and Rules

The major initiative taken by the first elected Government formed in Kerala<sup>69</sup> for the reformation of educational system was the enactment of the Kerala Educational Act and Rules.<sup>70</sup> The Rules passed in 1959, aimed to curb the mismanagement and corruption in the private management schools. The Kerala Education Act 1958 contains the provisions for the appointment, salary and other service conditions of teachers.<sup>71</sup> The Act also facilitates provisions for fee collection, infrastructural development and withdrawal of recognition of schools.

The corruption free education system envisaged through the provisions of Kerala Education Rules remained as a dream of the Government as they surrendered themselves to the huge pressure of the managements and amended some important provisions of the Education Act especially those regarding the appointment and service conditions of teachers in aided schools.<sup>72</sup>

The great leap Kerala has made in the field of education since the beginning of the missionary enterprise in 1817 and especially after India got independence in 1947 is marvellous. The Government of Kerala created a framework for the establishment and running of educational institutions in the State. The Government established and controlled educational institutions of its own and also provide

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<sup>69</sup> The first democratic government in Kerala was established in 1957.

<sup>70</sup> Kerala Education Rules of 1959 is the outcome of the Kerala Education Act of 1958.

<sup>71</sup> The major provisions included in the Act are: (a) the government may regulate the primary and other stages of education in government and private schools (b) the government shall pay the salary of all teachers and non-teaching staff in aided schools direct or through the headmaster of the school (c) all fees collected should be deposited with the government (d) government may pay grants to the management for maintenance and purchase of land, building, equipment etc. (e) the managers of private schools shall be deemed to have been appointed by the Act and they have to appoint teachers from the list of candidates prepared by the State Public Service Commission (f) *the conditions of service of aided school teachers shall be the same as those of teachers in government schools* (g) the government may take over the management of private schools or withdraw recognition on reasons of mismanagement, on payment of rent or compensation and (h) the government may appoint local educational authorities to satisfy local needs and constitute a State Education Advisory Board to advise the government.

<sup>72</sup> A. Abdul Saleem and P. R. Gopinathan Nair, *Educational Development in India: The Kerala Experience Since 1800*, Anmol Publication Pvt. Ltd., New Delhi, (2002), p. 69.

funds to the private educational institutions for their effective functioning. This policy initiative transformed the Kerala educational scenario to a good position and thereby the State could acquire a high level of literacy rate. As per 2011 Census,<sup>73</sup> the literacy rate of Kerala was 93.91% whereas in all India level it was only 64.8%. People of Kerala are conscious about the importance of education. They are always taking much care in providing good education to their young ones even in economic difficulties.

## **1.5. School Education in Kerala – The Current Scenario**

### **1.5.1. Number, Type and Curriculum of Schools**

The educational development of Kerala is almost corresponding to that of advanced Nations in the World. The schools in Kerala include Government, private aided and private unaided schools. They are affiliated to Council for Indian School Certificate Examination (CISCE) or the Central Board for Secondary Education (CBSE) or the Kerala State Education Board. English and Malayalam are offered as medium of instruction by the State owned schools whereas most of the private schools resort to English as their language of instruction. Teacher training institutes, Special schools for the differently abled persons and Anglo Indian Schools<sup>74</sup> are the other types of schools in Kerala. The growth in the number of educational institutions in the State is rapid.

As per the 2011 statistics,<sup>75</sup> there were 12644 schools following the State syllabus up to high school in Kerala, out of which 4503 were Government schools, 7278 were private aided schools and 863 were private unaided schools. There were 797 schools following CBSE syllabus and 108 schools in the ICSE stream in Kerala. In the higher secondary section, there were 2297 schools in the State

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<sup>73</sup> Available at [http://censusindia.gov.in/Census\\_And\\_You/literacy\\_and\\_level\\_of\\_education.aspx](http://censusindia.gov.in/Census_And_You/literacy_and_level_of_education.aspx), (accessed on 20th June, 2015).

<sup>74</sup> Director of Public Instruction, Statistics division, Government of Kerala, 2011, available at <http://education.kerala.gov.in/Downloads2011/Notifications/statitics/selected%20educational%20statistics%202010-11.pdf>. (accessed on 01/11/2015).

<sup>75</sup> *ibid.*

syllabus, out of which 1908 were higher secondary schools and 389 were vocational higher secondary schools. Apart from these, 27 Kendriya Vidyalayas and 14 Jawahar Navodaya Vidyalayas were also functioning in the State.

The school education scenario has been changing considerably in every year. There were 12615 schools following state syllabus (up to high school) functioning in Kerala in 2015.<sup>76</sup> Among this, 4619 were in the Government sector, 7145 were aided schools and the remaining 851 were in the unaided sector. Aided schools have the major share in the number of schools in all sections. There were also 1178 CBSE schools, 148 ICSE schools, 33 Kendriya Vidhyalayas and 14 Jawahar Navodayas in Kerala. A considerable number of CBSE and ICSE private unaided schools obtained recognition and started functioning during this period.

Later on, the Government of Kerala had given recognition to 308<sup>77</sup> private unaided State syllabus schools in the wake of Right to Education Act, 2009 and applications of another 150 schools are stated to be pending. About 300 private unaided CBSE and ICSE schools are also awaiting recognition from the Government. At present, around 3000 recognised private unaided schools are functioning in the State following various syllabi of instruction.<sup>78</sup>

### 1.5.2. Enrolment of Students

As per the Educational Statistics of 2011,<sup>79</sup> the total student enrolment in the academic year 2010-11 was 51.29 lakhs. Among them 43.51lakhs students were

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<sup>76</sup> *The Kerala Economic Review- Education*, Kerala State Planning Board, 2015, available at [pb.kerala.gov.in/index.php/about-us/14-sample-data-articles/569-economic-review-2015.html](http://pb.kerala.gov.in/index.php/about-us/14-sample-data-articles/569-economic-review-2015.html). (accessed on 03/07/2016).

<sup>77</sup> G.O. No. 114/2015/G. Edn. (F) dt. 14-05-2015.

<sup>78</sup> *The Kerala Economic Review- Education*, Kerala State Planning Board, 2016, p.181, available at <https://kerala.gov.in/documents/10180/ad430667-ade5-4c62-8cb8-a89d27d396f1> (accessed on 03/01/2017). There were 12882 schools following state syllabus (up to high school) functioning in Kerala in 2016. Among this, 4619 were in the Government sector, 7140 were aided schools and the remaining 1123 were in the unaided sector. There were also 1210 CBSE schools, 148 ICSE schools, 36 Kendriya Vidhyalayas and 14 Jawahar Navodayas in Kerala. Apart from these, 386 private unaided higher secondary schools were also functioning in the State.

<sup>79</sup> *supra* n.74.

enrolled in State syllabus schools, 6.36 lakhs in CBSE schools, 92416 in ICSE schools, 42110 in Kendriya Vidyalayas and 6736 in Jawahar Navodaya Vidyalayas. In the academic year 2001-2002, there were 51.02 lakhs students enrolled in various schools that follow State syllabus and this figure has reduced to 38.01 lakhs in the year 2015 and it has further reduced to 37.01 lakhs in 2016.<sup>80</sup>

### 1.5.3. Strength of Teachers

Availability of qualified teachers are another advantage of Kerala. Educational expansion anywhere requires more number of teachers. Employment opportunities in the field of school teaching are a means of livelihood for a large number of educated unemployed youths (especially women) in Kerala.

There were 168062 teachers working in different schools following State syllabus in 2011, out of which, 52405 were working in Government schools, 101965 were aided school teachers and 41764 belonged to the unaided stream inclusive of those working in the private unaided CBSE and ICSE Schools.<sup>81</sup> But the total strength of teachers in the State syllabus schools had reduced to 164154 in the year 2015.<sup>82</sup> This is mainly due to the decline in the number of State syllabus schools. It is also to be noted that 71.85 % of the school teachers in the State are women.<sup>83</sup>

Among the schools in various states of India, Kerala stands at the leading position in the general educational standards, judged on the basis of such accepted norms such as percentage of literacy, number of educational institutions, enrolment ratio, number of teachers etc. Kerala's achievement in the field of education is impressive. There has been a phenomenal expansion of schooling facilities in Kerala in recent decades.

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<sup>80</sup> *supra* n.78.

<sup>81</sup> *supra* n.74.

<sup>82</sup> *supra* n.76.

<sup>83</sup> *ibid.*

## 1.6. Private School Education in Kerala

The schools in Kerala are mainly governed by Government and private managements. The private schools are either Government-aided or unaided institutions. The unaided schools are either recognised or unrecognised. When compared to unaided schools, aided schools have a long working history in Kerala. Private unaided educational institutions are relatively new to the Kerala society.

The private sector pre-dominates the school education in Kerala.<sup>84</sup> During the initial stages of the development of private schools, the service conditions of teachers and other employees working there were very pathetic and horrible. In 1950, the Government of Kerala started the direct payment scheme for the employees in these schools, which put an end to the tyranny of the management. By this process of direct payment, the private schools were designated as aided schools

### 1.6.1. Growth of Private Unaided Schools

The growth rate of private schools in Kerala has been at a rapid pace. Studies also show that even rural children have started their enrolment in private schools.<sup>85</sup> The new economic policies of globalisation, liberalisation and privatisation have considerably changed the educational scenario of the State. From 1980 onwards the number of unaided schools and enrolment of students<sup>86</sup> have been increasing considerably. Presently, majority of parents in Kerala choose unaided schools for the education of their children. Even low income group also highly depend on the unaided private schools. Studies reveal that the depletion of

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<sup>84</sup> *supra* n. 78. There were 12882 schools following state syllabus (up to high school level) functioning in Kerala in 2016. Among this, 4619 were in the Government sector and 8263 in the private sector. In addition to this, there were 1210 CBSE schools and 148 ICSE schools in the private sector. Apart from these, 386 private unaided higher secondary schools were also functioning in the State.

<sup>85</sup> Swaleha Sindhi, "The Plight of Non-Government Teachers in India", Vol.1, International Journal of Humanities and Social Science Invention, December (2012), p.45, available at [www.ijhssi.org/papers/v1\(1\)/Version-1/H114549.pdf](http://www.ijhssi.org/papers/v1(1)/Version-1/H114549.pdf) (accessed on 23/01/2015).

<sup>86</sup> *supra* n.74. In 2011, there were 362752 students studying in unaided schools under the State syllabus. Apart from students following the state syllabus schools, another 729082 students were enrolled in the recognised CBSE/ICSE unaided schools in Kerala.

quality education in Government and aided sector, the fascination of parents for the English medium education and the growth of household income are the major reasons cited for the increase in the number of the private unaided schools in Kerala.<sup>87</sup> There has been a corresponding decline in the number of Government and Government aided schools.

### 1.6.2. Number of Unaided Schools

In 1991, there were only 317 recognised unaided schools in the State,<sup>88</sup> which was 2.61% of the total number of schools following State syllabus. In 2011, the total number of recognised unaided schools following State syllabus increased to 863 which amounts to 6.82% of the total number of schools in Kerala.<sup>89</sup> Apart from this, 797 CBSE and 108 ICSE schools were also working under the unaided sector. In 2015, the total number of recognised unaided schools in the State (all streams put together) increased to 2177<sup>90</sup> and it has been further increased to 2867<sup>91</sup> in the same year.<sup>92</sup> This clearly indicates the gradual and steady growth of recognised unaided schools in Kerala.

### 1.6.3. Student Enrolment

The student enrolment rate in the unaided schools is growing day by day whereas the rate of students taking admission in the aided and Government sectors has been decreasing. (In 1991, 22.94 lakhs students in Government schools, 34.45 lakhs in aided schools and 1.43 lakhs in unaided schools that follow State syllabus

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<sup>87</sup> Sindhu Krishnadas T, "Privatisation of Education- A Study in Kerala Context", Vol.3(No. 6), International Journal of Scientific Research, June 2014, p.102, available at <https://www.worldwidejournals.com/international-journal.../articles.php?> (accessed on 15/12/2015).

<sup>88</sup> *The Kerala Economic Review – Education*, Kerala State Planning Board, 1991, p.95, available at [spb.kerala.gov.in/index.php/economic-review/archives-er-59-09.html](http://spb.kerala.gov.in/index.php/economic-review/archives-er-59-09.html) (accessed on 12/10/2015).

<sup>89</sup> *supra* n.74.

<sup>90</sup> *supra* n. 76.

<sup>91</sup> G.O. No. 114/2015/G. Edn. (F) dt. 14-05-2015, G.O. No. (K), 282/2015, G. Edn. dated, Thiruvananthapuram, 9<sup>th</sup> November, 2015.

<sup>92</sup> *supra* n. 78.

were enrolled in the State.) In 2011, the enrolment rate was decreased to 13.01 lakhs and 26.87 lakhs respectively with respect to Government and aided schools. On the other hand, the rate of student enrolment in private unaided schools has increased to 3.63 lakhs from 1.43 lakhs. Apart from this, another 7.29 lakhs students were also enrolled in the recognised CBSE/ICSE unaided schools in Kerala during the year 2011.<sup>93</sup> Thus, the student enrolment rate is fast progressing in the private unaided schools.<sup>94</sup>

#### **1.6.4. Strength of Teachers**

The number of teachers working in unaided schools is also increasing every year. There were 41764 teachers working in the recognised State, CBSE and ICSE unaided schools in 2011<sup>95</sup> and by 2016, it has increased to 50000. Moreover, there are many teachers who are working in unrecognised schools but their exact number cannot be estimated due to non-availability of data.

It is clear from the facts stated above that the number of unaided schools is fast growing in Kerala. Its growth is gradual and steady with respect to the number of schools, number of teachers and enrolment of students as well. There are many reasons for parents to prefer private unaided schools for the education of their children. It may vary from person to person and region to region, depending on their social and economic backgrounds.

#### **1.6.5. Reasons for the Growth of Unaided Private Schools**

Generally, the parents in Kerala prefer private unaided schools for the education of their children for the following reasons:

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<sup>93</sup> *supra* n. 74.

<sup>94</sup> *supra* n.78.

<sup>95</sup> *supra* n. 74.

- (i) The private unaided schools are giving more individual care and attention to each and every student enrolled in their institution as compared to Government and Government aided schools.<sup>96</sup>
- (ii) Imparting education in private unaided English medium schools is considered as highly essential for the employment purposes and higher education and it is also treated as a social status symbol.<sup>97</sup>
- (iii) Unaided schools are providing high standard infrastructural facilities in their institutions whereas schools in the Government and aided sectors lack such facilities.<sup>98</sup>
- (iv) Lack of commitment on the part of teachers and authorities of the Government and aided schools make the unaided schools more attractive.<sup>99</sup>
- (v) Syllabus is another attraction. The syllabus of CBSE (Central Board of Secondary Education), NCERT (National Council of Educational Research and Training) or ICSE (Indian Certificate for Secondary Education) etc., are very helpful to the students to crack most of the competitive examinations.<sup>100</sup>
- (vi) Teachers of the Government and aided schools are said to be highly politicised. On the other hand the private unaided schools are free from

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<sup>96</sup> Reena Cheruvalath, "Is the Right of Children to Free and Compulsory Education Act Really Beneficial to the Poorer Children in India? An Analysis With Special Reference to the Admission of Poorer Children in Public Unaided Schools", *International Journal of Primary, Elementary and Early Years Education*, 2014, p.4, available at <http://www.tandfonline.com/loi/rett20> (accessed on 26/05/2014).

<sup>97</sup> B. Hrudayakumari, "Schools in Kerala", in J.V. Vilanilam *et. al.*(Eds.), *An Introduction to Kerala Studies*, International Institute for Scientific and Academic Collaboration, Inc.(IISAC), New Jersey, USA, (2012), p.633.

<sup>98</sup> *supra* n. 96, p.4.

<sup>99</sup> *id.* at p.5.

<sup>100</sup> *supra* n.97, p.633.

the clutches of the political activities. It also hiked the popularity of unaided private schools.<sup>101</sup>

Hence, increased per capita income of the people, parental demand for high standard English education and the alleged decline in quality of education in Government and private aided schools led to the mushroom growth of private unaided schools in Kerala. Both the Central and State Governments have adopted a policy of giving much priority to the development of private sector including educational institutions which has helped the growth of private unaided schools.

In short, the phenomenon of unaided schools in Kerala is fast growing than the Government and aided schools in all respects. Parents prefer to send their children to private unaided schools. This is mainly due to the better performance shown by the students educated in those schools in the academic as well as non-academic activities. The credit of the successful functioning of private unaided schools must in fact go to the employees working there. The hard working and sincere teachers are the real backbone of the private unaided schools.

However, many committees, national dailies and other media have reported that the service in private unaided schools is one of those types of employments where labour exploitation is rampant.<sup>102</sup> The teachers who are working there are not given adequate wages. Quite often, it is far below than that of a last grade servant in the Government service. In this context, it is necessary to examine the role and significance of teachers, the state of wages and other service conditions provided to them by the private unaided schools in Kerala.

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<sup>101</sup> *id.* at p. 636.

<sup>102</sup> Girish Mneon, "State to Monitor Unaided Schools", *The Hindu*, October 15, 2007. A.A. Baby and K.G. Sukumara Pillai, *A Report on Recognised Unaided Schools in Kerala*, The Committee appointed by the Government of Kerala, 2007, it was submitted that the wages and working conditions of the unaided school employees are so pathetic and government will have to take adequate measures to assure better working conditions and wages in this sector.

## 1.7. Role and significance of Teachers

Teachers, the most respected among different groups in the society, play a vital role through their dedicated service in rebuilding the nation. They give light to several generations and stand as role models to the people who live around them. They are assets for every nation and also play a significant role in its development by educating and equipping the young generation to become good citizens of tomorrow.<sup>103</sup>

It is only through the teacher one can experience the heat of learning. Teaching is a job that requires huge amount of responsibility and dedication. Regarding the role of teachers, former President of India, Dr. A.P.J Abdul Kalam remarked:

“A teacher is a beacon light that acts as a lighthouse to guide the stranded students in the sea of life and they should work as the role model for their students in order to achieve the all round development of the children.”<sup>104</sup>

The National Policy on Education, 1986 highlighted the significance of a Teacher in the following words:

“The status of the teacher reflects the socio - cultural ethos of a society; it is said that no people can rise above the level of their teachers. The government and the community should endeavour to create conditions that will help, motivate and inspire teachers on constructive and creative lines. Teachers should have the freedom to innovate, and to devise appropriate methods of communication and activities relevant to the needs, capabilities and concerns of the community. The methods of recruiting teachers will be reorganised to ensure merit, objectivity and

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<sup>103</sup> Available at <http://www.essayandletters.com/essay-importance-teachers-importance-teachers-life-essay/> (accessed on 29/10/ 2016)

<sup>104</sup> Available at <http://www.dnaindia.com/india/report-apj-abdul-kalam-urges-teachers-to-be-role-model-for-students-2014708> (accessed on 30/10/2016)

conformity with spatial and functional requirements. The pay and service conditions of teachers have to be commensurate with their social and professional responsibilities and with the need to attract talent to the profession. Efforts will be made to reach the desirable objective of uniform emoluments, service conditions and grievance-removal mechanisms for teachers throughout the country. Guidelines will be formulated to ensure objectivity in the posting and transfers of teachers. Systems for teachers' evaluation – open, participative and data based – will be created and reasonable opportunities of promotion to higher grades provided. Norms of accountability will be laid down with incentives for good performance and disincentives for non-performance. Teachers will continue to play a crucial role in the formulation and implementation of educational programmes.”<sup>105</sup>

The most important factor which affects the status of a teacher is salary.<sup>106</sup> It should provide the teacher with the means to ensure a reasonable standard of living for himself and his family as well as to invest in further education or in the pursuit of cultural activities.<sup>107</sup> The efficiency of a teacher largely depends upon his working environment and the terms of service. Thus, it is the duty of the Government to consider this dignified community properly and ensure payment of reasonable emoluments and facilities to deliver their best for the development of the nation by imparting standard education to the younger generations.

## 1.8. Objectives of the Study

The wages and service benefits of teaching staff play a significant part in the successful performance of an excellent education system. Employment protection,

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<sup>105</sup> *National Policy on Education*- 1986, Department of Education, Ministry of Human Resource Development, New Delhi, 1998, p.31- 32 available at [www.acedamics-india.com/npe86-mod92.pdf](http://www.acedamics-india.com/npe86-mod92.pdf) (accessed on 20/12/2014).

<sup>106</sup> *Recommendation Concerning the Status of Teachers- Recommendation 114*, United Nations Educational, Scientific and Cultural Organisation and International Labour Organisation, 1966, p.40, available at [unesdoc.unesco.org/images/0016/001604/160495e.pdf](http://unesdoc.unesco.org/images/0016/001604/160495e.pdf) (accessed on 10/01/2016).

<sup>107</sup> *id.* Recommendation 115 (c).

reasonable salary, annual increment, maternity leave etc., are some of the perks essential for an employee in any type of employment. Adequate salary will definitely motivate the employees and encourage them to perform well. Meagre salary is one of the major factors that distract talent flow from the education sector.<sup>108</sup>

It is true that Kerala is a model state in India in the educational scenario. In Kerala, the schools are working in three streams – Government, aided and unaided. Appointments in Government schools are done through Public Service Commission<sup>109</sup> and that in aided schools done by the manager of the school in accordance with the Kerala Education Rules.<sup>110</sup> Teachers thus appointed have the guarantee in their tenure, salary and service benefits. However, the performance of Government schools is stated to be unsatisfactory<sup>111</sup> in the academic and other co-curricular activities.<sup>112</sup> It has also been stated that Government is not providing enough facilities to Government schools presumably on the ground of financial stringency.

In aided schools, the salary of the teachers is paid by the Government.<sup>113</sup> The working conditions, service benefits etc., of the teachers are the same as that of the teachers of Government schools. Most of the aided schools in Kerala are consistently maintaining a good record in academic and extracurricular activities. They are also having good infrastructural facilities.

But, if we look into the unaided sector, we can see that they are having outstanding performance compared to the other two sectors in the academic and

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<sup>108</sup> *supra* n.85.

<sup>109</sup> Kerala Public Service Commission, Rules of Procedure 1976, Part I, Rule 4(i), (ii).

<sup>110</sup> Kerala Education Act 1958, Sec. 11.

<sup>111</sup> Santosh Mehrotra *et. al.*, “Private Provision of Elementary Education in India: Findings of a Survey in Eight States”, Vol. 36, *Journal of Comparative and International Education*, (2006), p.424, available at [www.tandfonline.com/doi/abs/10.1080/03057920601024883](http://www.tandfonline.com/doi/abs/10.1080/03057920601024883) (accessed on 29/05/2014).

<sup>112</sup> *supra* n.96, p.4.

<sup>113</sup> *supra* n. 110, Sec. 9.

extra-curricular activities. But the pay and allowances given to the teaching staff in those schools are stated to be very low. There are no specific rules regarding their pay and working conditions. Since these unaided schools produce good results, parents show great interest in sending their children to these schools. While making appointment of teachers in unaided schools, qualification equal to that of Government and aided sector is insisted.<sup>114</sup> However, they do not have any pay parity with the Government school teachers. Still they come to teach because of the massive rate of educated unemployment in the State.<sup>115</sup>

The main reason behind the good performance of unaided schools is due to the hard work of the teaching and non-teaching staff working there. Considering the growing<sup>116</sup> number of schools in the unaided sector<sup>117</sup> and also the number of teachers employed there,<sup>118</sup> it is necessary to look into their structure of wages and service conditions. It has been stated that there exists high discrepancy regarding the salary, staff pattern and other employment conditions in unaided schools compared to Government and aided schools.

Irrespective of their employer or place of employment, teachers deserve a dignified life in the society. They should be a model and mentor for others. Right to live in a dignified manner is a fundamental right guaranteed under Article 21 of the Indian Constitution. But it is considered as a mirage for a teacher of a private unaided school.

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<sup>114</sup> Kerala Education Rules 1959, Chapter XIVAA, Rule 1.

<sup>115</sup> *supra* n.111, p.424.

<sup>116</sup> *id.* at p. 423. The growing global influence of neo-liberalism has reached education, including elementary education. As part of its global efforts to promote the private sector the biggest lender in education, the World Bank group (including its International Finance Corporation, IFC), has been promoting the private sector in education.

<sup>117</sup> *supra* n. 78. In 2014, the total number of recognised unaided schools in the State (all syllabus) was 1977 and it has increased to around 3000 in 2016.

<sup>118</sup> There were 41764 teachers working in the recognised State, CBSE and ICSE unaided schools in 2011 and by 2016, it has been increased to 50000. Moreover, there are many thousands of teachers working in the unrecognised schools and their exact number cannot be estimated due to non-availability of data.

Is there any obstacle in passing an appropriate legislation for the welfare of employees in this sector? Though unorganised, their rights as human beings are to be recognised. Can we justify the act of the Government in closing their eyes against the violation of human rights of these teachers? Is it a violation of the right against human exploitation guaranteed under Article 23 of the Constitution?

In the unorganised sector we find the interference of Government by fixing and revising minimum wages of employees employed in scheduled employments under the Minimum Wages Act, 1948. Can we make applicable the provisions of this law to the teaching staff of private unaided schools?

All the above questions require an integrated and in depth study. The appointment, workload, salary and other service benefits of the teachers of unaided schools require a closer scrutiny and evaluation. A survey is to be conducted among the teachers of private unaided schools for getting information regarding their present service conditions. A comparative study is also proposed between the private unaided school teachers and their counterparts in the Government and aided schools with respect to their service conditions.

## **1.9. Organisation of Chapters**

The thesis is divided into **seven** chapters. The **first chapter** is introduction. It narrates the development of school education in Kerala from the early period to the current phase. The evolution, reasons for the growth and current position of private unaided schools in the State are examined in this chapter. The chapter highlights the deprived condition of teachers working in the private unaided schools. The importance of education of children, the role and significance of teachers in moulding the future citizens of the country and the need for giving fair and reasonable service benefits, particularly wages, to the teachers in the private unaided schools to ensure social justice and better quality in education is also explored. Finally, the chapter emphasises the main objectives of the study and

underlines the need for a comprehensive study on wages and other service conditions of private unaided school teachers in Kerala.

The **second chapter** examines the national and international perspectives on wages and service conditions. Meaning and scope of ‘wages’ and ‘service conditions’ and the significance of ‘wages’ as the most important condition of service are also examined in this chapter. It scrutinises the international norms regarding wages and service conditions, particularly the ILO conventions and recommendations on this area. The efforts made by the International Labour Organisation towards the attainment of decent salary and working conditions to workers and how wages and service conditions are placed in the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights are also discussed in this chapter. It discusses the interpretation of wages under the Constitution of India. It also enquires into the obligation of the State to make provisions for the payment of fair wages and the important legislative provisions for ensuring social justice to all sections of the society. It analyses the definition and components of wages under the different labour legislations in the country. Lastly, this chapter examines the different categories of wages and the important judicial interpretations in India on wages and service conditions.

**Chapter three** analyses the laws and regulations governing the wages and service conditions of private unaided school teachers. The provisions in the Kerala Education Act, 1958, Kerala Education Rules, 1959 and relevant provisions in the Right of Children to Free and Compulsory Education Act, 2009 relating to the wages and service conditions of the teachers working in the private unaided schools are discussed in this chapter. Interventions from the part of the State Government in the form of Government Orders issued particularly for prescribing minimum salary, appointing committees to study the issues in this sector, prescribing conditions for granting No Objection Certificate to CBSE and ICSE schools in the State etc., are examined here. The provisions in the affiliation bye-laws of various school boards like CBSE, CISCE etc., with respect to the payment

of wages and other service conditions such as provident fund, gratuity, maternity benefit, pension etc., to the teachers and other staff working in these schools are also scrutinised in this chapter. It also analyses in detail the major judicial responses in India towards the issues of private unaided school teachers particularly with regard to their wages, pay parity with their counterparts in Government schools, applicability of the Kerala Education Act and the Right of Children to Free and Compulsory Education Act. It also highlights the inadequacy of proper Governmental and judicial interventions for improving the pathetic condition of teachers working in the private unaided schools.

Minimum Wages and Welfare Legislations and the Private Unaided School Teachers are the core topics of discussion in **Chapter four**. How far the provisions of the social welfare legislations particularly relating to wages and other conditions of service are applicable to the teachers of private unaided schools is the major enquiry in this chapter. The introductory part of the chapter considers the meaning and development of the term ‘minimum wage’ as well as the objectives and applicability of the Minimum Wages Act, 1948. It analyses the important provisions in the Act such as, definition of wage, components of minimum rate of wages, procedure for the fixation and revision of minimum wages, power of the Government to add employment in to the schedule etc. It also enquires the applicability of Minimum Wages Act to the private unaided school teachers by analysing the leading Supreme Court judgements in this area.

This chapter also examines the scope and applicability of the Industrial Disputes Act, 1947 to the teachers. Whether education is an ‘industry’ and teachers and other employees working in educational institutions are ‘workmen’ within the meaning of the definition of the term ‘workman’ under the Act are investigated here. The chapter enquires into the applicability of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 to private unaided school teachers by analysing the definitions of ‘employee’ and ‘establishment’ under the Act. Whether the provisions of the Employees State Insurance Act, 1948 can be extended to educational institutions for providing benefits under the Act to teachers

and other employees are examined in this chapter. The chapter also looks into the scope of application of the provisions of the Payment of Gratuity Act, 1972 and the Maternity Benefit Act, 1961 to teachers of private unaided schools in the State.

Wages and Service Conditions of Private Unaided School Teachers: An Empirical Study is the substance of **Chapter Five**. It is based on a field survey conducted to find out the current wages and other conditions of service of private unaided school teachers in Kerala. The survey was conducted with the help of unaided school teachers associations. The sample size for the population was identified as 593 for a confidence rate of '4' at 95 % confidence level. Simple random sampling method was followed for the study. Random numbers were generated against the list of private unaided school teachers using M.S. Office Excel. The first '593' samples were selected and used the same for the study. A total of '593' questionnaires were prepared and handed over to the private unaided school teachers who were selected by simple random sampling. All of them responded and provided information in this regard. This chapter is based on the primary data collected through questionnaire.

The chapter analyses the responses of 593 respondents from different parts of the State. It discusses the demographic profile of the respondents in its first part such as location, gender, age, qualification, years of service, teaching section etc. Provisions relating to workload, staff strength, weekly holidays and duration of annual and terminal vacations of unaided school employees are scrutinised in this chapter. Details of bond executed by the teachers with the management, types and duration of leave available including maternity, enjoyment of benefits like provident fund, gratuity and pension are also examined here. It enquires in detail the salary structure, mode of payment of salary and the rate of increment available to the private unaided school teachers. It also attempts to understand the job satisfaction as well as job security of teachers working in this sector. The attitude of teaching staff towards the interventions made by the Government and judiciary in this sector is also discussed here.

**Chapter six** is a comparative study between the Government and private unaided school teachers with respect to their wages and service conditions. It discusses the general service conditions of teaching staff in the Government and aided schools with respect to their terms of appointment, qualification, promotion, workload, students' strength and staff fixation, salary, increment, dearness allowance etc. This chapter also examines and compares the mode of appointment, workload, staff fixation and qualification of Government and private unaided school teachers. Provisions relating to pay and other allowances, promotion, increment and mode of payment of salary applicable to them are also discussed in this chapter. Disparity with regard to the terms for granting maternity leave, paternity leave, study leave, half pay leave, medical leave and casual leave to teachers of Government and private unaided schools are also examined here. How far the benefits of social welfare legislations like provident fund, gratuity, insurance protection, pension etc., as well as the Constitutional rights to form associations or unions guaranteed under the Article 19 (1) (c) of the Constitution, enjoyed by the teachers of Government and private unaided schools are also discussed in this chapter. It also scrutinises the execution of bond between the management and the teachers of private unaided schools. Finally, it compares the current position and status of private unaided school teachers with their counterparts in the Government schools.

**Chapter seven** is the conclusion. This chapter discusses the following findings of the study:

- (i) More than 72% of the private unaided school teachers are women who are paid less and given hardly any other service benefits.
- (ii) Their workload is heavy and there exists no proper rules for the fixation of staff strength.
- (iii) They have no freedom to associate with trade union activities and the fruits of social welfare legislations are rarely available to them.

- (iv) Even mandatory and essential service benefits like, provident fund, increment, vacation salary etc., are available only to a small section of the employees in this sector.
- (v) Privileges or benefits like pension, gratuity, earned leave, half pay leave, commuted leave, maternity leave with full wages etc., are totally denied to the private unaided school teachers.
- (vi) Formal appointment orders and promotion orders are generally unknown to them.
- (vii) Provisions of the Industrial Disputes Act, 1947 and the Minimum Wages Act, 1948 are not applicable to the private unaided school teachers.
- (viii) Right of Children to Free and Compulsory Education Act, 2009 is not applicable to unaided schools belonging to minority communities.
- (ix) The Kerala Education Act and Rules do not contain any specific provision mandating a scale of pay or other service benefits to private unaided school teachers.
- (x) Compulsory execution of bond exists between the private unaided school management and teachers.

The study concludes by recommending amendments in the Industrial Disputes Act, 1947 and the Minimum Wages Act, 1948 including teachers within the ambit of the above said legislations for the purpose of making benefits available for them. It suggests for proper enforcement of the provisions in the affiliation bye-laws of CBSE and CISCE for the better protection of teachers in these schools. The chapter recommends for providing grants to the private unaided schools on the basis of their overall performance. A comprehensive legislation, resolving the issues of private unaided school teachers is also proposed in this chapter. It suggests to extend the provisions of the Right of Children to Free And Compulsory

Act 2009 dealing with the service conditions of the teachers to private unaided minority schools also. The chapter proposes to incorporate necessary provisions in chapter XIVAA of the Kerala Education Rules relating to scale of pay, appointment order, promotion, other service benefits etc., for the better protection of private unaided school teachers. It also recommends an effective implementation of social welfare legislations mandating the right to get proper maternity leave, provision for provident fund, pension, gratuity and freedom to associate with trade unions etc., to teachers employed in private unaided schools in Kerala.

## **Chapter 2**

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# **WAGES AND SERVICE CONDITIONS: NATIONAL AND INTERNATIONAL PERSPECTIVES**

## Chapter 2

# WAGES AND SERVICE CONDITIONS: NATIONAL AND INTERNATIONAL PERSPECTIVES

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In olden days the duties and responsibilities of the State were very limited. The Government exercised mainly police function.<sup>1</sup> Later, with the emergence of modern welfare State, the scope and significance of the term 'State' got widened. The function of the State increased in leaps and bounds and it tried to provide social, economic, and political justice to the citizens regardless of their sex, religion and status.<sup>2</sup>

Nowadays, the State exists for the welfare of all sections of citizens particularly, the downtrodden classes such as workers and agriculturists. Thus, every modern civilised State in the world wishes to call them 'Welfare State' and it exists as a provider of social justice.<sup>3</sup> Social justice requires the Government to ensure job security, humane conditions of work, payment of living wage which may provide an employee the opportunity to live as a human being, with a standard of life that ensures dignity and leisure for the employee and his family members.<sup>4</sup>

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<sup>1</sup> B. Kuppaswamy, *Social Change in India*, Vikas Publications, Delhi, (1972), p.83.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.* Social justice, in the opinion of the author, relates more to moral rules which encourage the exercise of benevolence and mutual kindness conducive to harmonious social relations. It could be regarded as a means to remove the imbalances in the social, economic and political life of the people, since these three are intertwined. Social justice involves progress in all these three fields.

<sup>4</sup> S. N. Johri, *Industrial Jurisprudence*, Metropolitan Book Co. Pvt. Ltd., New Delhi, (1<sup>st</sup> edn., 1984), p.138.

Thus, it has become the duty of the State to provide proper conditions of service to the employees.

## 2.1. Service Conditions

Conditions of Service means the terms agreed upon between the employer and the employee with regard to an employment. The terms relating to wages, working hours, holidays, leave, vacation, duties of employees, leave with wages etc., are generally included in such conditions. Benefits like provident fund, gratuity, health insurance, life insurance, pension etc., also have a place in the terms of service.<sup>5</sup>

The Industrial Employment (Standing Orders) Act, 1946 insists the employers of industrial establishments to define the conditions of employment and make known the same to the employees working under him.<sup>6</sup> Matters that have to be provided in the standing orders issued under this Act include classification of workmen, manner of intimating to workmen periods and hours of work, wage rates, shift working, attendance and late coming, procedure for the application and grant of leave and holidays, termination of employment etc.<sup>7</sup>

The conditions of service prescribed under the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act 1955 include wages, gratuity, hours of work, leave, retrenchment compensation etc.<sup>8</sup> The Supreme Court of India considered the meaning of the term 'conditions of service' in *State of Punjab and Others v. Kailash Nath*<sup>9</sup> and observed that it means all those conditions which regulate the holding of a post by

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<sup>5</sup> Available at: <http://www.investopedia.com/terms/t/terms-of-employment.asp> (accessed on 01/12/2016).

<sup>6</sup> Industrial Employment (Standing Orders) Act 1946, Preamble.

<sup>7</sup> See, the schedule to the Industrial Employment (Standing Orders) Act 1946.

<sup>8</sup> The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act 1955.

<sup>9</sup> A.I.R. 1989 S.C. 558.

a person right from the time of his appointment till his retirement and even beyond it, in matters of pension etc.

Thus, the service conditions of an employee play an important role in the successful performance of the employment. Fair and reasonable wages, provident fund, maternity benefit, proper appointment order, gratuity, insurance protection, proper mechanism to redress the grievances, reasonable workload, adequate leave and rest time etc., are some of the basic terms of service essential for the preservation of decent and dignified life of the employees in the society. The conditions of service should be fair and reasonable. Wages paid to employees is considered as the most important condition of employment because it largely determines their efficiency and status. Therefore, a detailed study regarding the development, meaning, concept and fixation of wages is imperative. The national as well as international standards on wages and the question as to what is a fair and reasonable wage are also to be ascertained.

## 2.2. Wages during the Ancient Period

Work for others to earn a living has been a normal tradition in every community from the early period. In ancient days, majority of workers were engaged in agriculture and other rural employments. The method of payment for work was not generally in the form of cash but in kind.<sup>10</sup> Slavery was prevalent in some communities and much of the work was executed by them without any 'wages'. But they were supplied with food and basic necessities by their masters.<sup>11</sup> Moreover, a great number of workers were hired as 'serfs'.<sup>12</sup>

During the time of industrial revolution, large number of tribal and village workers left their native homes and migrated to urban regions. This is imputable to

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<sup>10</sup> Purushottam Chandra Jain, *Labour in Ancient India: From the Vedic Age up to the Gupta Period*, Motilal Banarsidass, Delhi, (1971), p. 228.

<sup>11</sup> *Wages: A Workers Education Manual*, International Labour Office, Geneva, 1968, p.10.

<sup>12</sup> *ibid.* Serfs are those who worked on a share basis, accepting a portion of the crop produced in consideration for their labour.

the attraction of higher wages and larger freedom for factory works.<sup>13</sup> But employers introduced ‘truck system’ among factory workers in which they were entitled to obtain limited quantities of goods produced by them on the basis of coupons issued. Since this system prevented the workers from earning their wages in cash, laws have been passed in many countries to protect the workers from this system and to regulate the payment of wages in kind.<sup>14</sup>

### **2.3. Wages in the Modern Era**

With the introduction of currency, work was remunerated with disbursement in cash and also in kind. Later on, the payment in kind was almost transformed to remuneration in terms of money.<sup>15</sup> Whether it is in the form of money or in kind, the sum rewarded to an employee for his work is commonly called as ‘wages’ in almost all civilised social groups. In modern times, wages are mostly paid in cash and therefore workers became free to buy goods which would satisfy their necessities.<sup>16</sup>

### **2.4. Meaning of Wages**

Wages means the remuneration paid by the employers for the efforts put in by the employees in production.<sup>17</sup> Wages are generally paid periodically in current coin and without any illegal deductions.<sup>18</sup> But it should be adequate for the employees and their family to run a dignified life.<sup>19</sup>

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<sup>13</sup> *id.* at p.11.

<sup>14</sup> *ibid.*

<sup>15</sup> *id.* at p.10.

<sup>16</sup> *ibid.*

<sup>17</sup> R. C. Saxena, *Labour Problems and Social Welfare*, K. Nath and Company, Meerut, India (13<sup>th</sup> edn., 1974), p. 562.

<sup>18</sup> G.B. Pai, *Labour Law in India*, Butterworth’s India, New Delhi, (vol. 2, 2001), p. 154.

<sup>19</sup> *ibid.*

The *Oxford English Dictionary*<sup>20</sup> describes the term ‘wages’ as an amount paid periodically for the time during which a worker or a servant is at the disposal of the employer. In the *New International Webster’s Comprehensive Dictionary of the English Language*<sup>21</sup> the term ‘wages’ is defined as “payment for services rendered, especially the pay of artisans or labourers receiving a fixed sum by the day, week or month or for a certain amount of work”.

The expression ‘wages’ defined by the United States Congress for their Internal Revenue Code is the remuneration for services performed by an employee for his employer including the cash value of any amenities given in any medium other than cash.<sup>22</sup>

The British Ministry of Labour and National Service defined the term ‘wages’ as “the payment made to workers for placing their skill and energy at the disposal of an employer, the method of use of that skill and energy being at the employer’s discretion and the amount of the payment being in accordance with the terms stipulated in a contract of service.”<sup>23</sup>

Economists consider that the term ‘wages’ has many dimensions. First of all, it has to satisfy the needs, desires and dreams of the worker and his family, who in turn in the capacity of consumer creates demand. Then the employer has to recover the wages paid by him by including it in the cost of goods and services offered to his customers. So the wage reflects itself in the price of the goods and services rendered. Thus, the wage acts as a limiting factor both in creating demand and supply and plays an important role of catalyst in a country’s economy.<sup>24</sup> Mahatma Gandhi, the father of our nation declared that “In order to do justice to

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<sup>20</sup> *The Concise Oxford Dictionary*, Clarendon Press, Oxford (5<sup>th</sup> edn., 1964), p. 1462.

<sup>21</sup> *The New International Webster’s Comprehensive Dictionary of the English Language*, Trident Press International, (1996), p. 1412.

<sup>22</sup> Available at <https://www.law.cornell.edu/uscode/text/26/3401> (accessed on 30/10/2016)

<sup>23</sup> G. L. Kothari, *Wages, Dearness Allowance and Bonus*, N. M. Tripathi Pvt. Ltd., Bombay, (1968), p. 62.

<sup>24</sup> Bhaskar, “Wages Determination in Private Industry”, Vol. 10, F.L.R., 1965, p. 1.

the toiling millions we must pay them a wage that will sustain them and must not take advantage of their helplessness.”<sup>25</sup>

The term ‘wages’ has also been employed for explaining various concepts such as wage rates, straight time average hourly wages, gross average hourly earnings, weekly pay, annual earnings etc.<sup>26</sup> In the past, only money paid to workers were considered as their wages. All other types of benefits were viewed as fringe benefits which were remunerated in addition to wages though included in the total labour costs. Nowadays, the term ‘wages’ is regarded as payments including fringe benefits.<sup>27</sup>

Thus, it is clear that wages are the payment received by a person, whose services are availed by the other for a definite period in accordance with a contract of employment. It is generally determined on a long term basis and not depending on the profit earned by the employer in a specific year.<sup>28</sup> In short, the wage is based on an express or implied contract between the employer and the employee and it includes all remunerations capable of being expressed in terms of money.

## 2.5. Wages and Salary

In the common parlance, salary and wages denote the same meaning viz., the payment for the work done or services rendered. Professor Dickinson has defined the term salary as under:

“...payment to hired workers, most of whom do “white collar” or non-manual work of some sort.”<sup>29</sup>

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<sup>25</sup> Mahatma Gandhi, *Harijan*, 13<sup>th</sup> July 1935, Available at: <https://www.gandhiheritageportal.org/journals-by-gandhiji/harijan>, (accessed on 1<sup>st</sup> November 2016).

<sup>26</sup> *supra* n.23, p. 62.

<sup>27</sup> *ibid.*

<sup>28</sup> *M/S. Lipton Ltd. and Another v. Employees*, A.I.R.1959 S.C. 676.

<sup>29</sup> Z. C. Dickinson, *Collective Wage Determination in Problems and Principles in Bargaining, Arbitration and Legislation*, Ronald Press, New York, (1941), p. 10.

The *Webster's New World College Dictionary*<sup>30</sup> made a distinction between the concepts of wages and salary as follows:

Wage applies to money paid to an employee at relatively short intervals, often daily or weekly especially for manual or physical labour; salary applies to fixed compensation usually paid at longer intervals, often monthly or semi-monthly especially to clerical or professional workers.

The meaning of salary and wages were discussed by the Supreme Court of India in *Mohammedalli and others v. Union of India and another*.<sup>31</sup> In this case, the Court has given the status of 'salaried employees' to persons who are permanent employees and not belong to the category of manual or unskilled labourers. Here, the Court observed that:

'Salary'... is the remuneration paid to an employee whose period of engagement is more or less permanent in character, for other than manual or relatively unskilled labour.

The Court further elaborated that:

Both 'salary' and 'wages' are emoluments paid to an employee by way of recompense for his labour... both may be paid weekly, fortnightly or monthly; though remuneration for the day's work is not ordinarily termed 'salary'.<sup>32</sup>

In this case, the Court reversed the decisions of different High Courts by declaring that there is no basic distinction between wages and salary and held that the monthly salary received by a skilled worker is wage.<sup>33</sup>

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<sup>30</sup> *Webster's New World College Dictionary*, IDG Books India (P) Ltd., New Millennium, (4<sup>th</sup> edn. January 2001), p. 1607.

<sup>31</sup> A.I.R. 1964 S.C. 980.

<sup>32</sup> *id.* at p.985.

<sup>33</sup> *ibid.*

This view is reiterated by the Supreme Court in *Gestetner Duplicators(P) Ltd. v. The Commissioner of Income Tax, West Bengal*.<sup>34</sup>

The Court observed that:

Conceptually, there is no difference between salary and wages both being a recompense for work done or services rendered, though ordinarily the former expression is used in connection with services of non-manual type. While the latter is used in connection with manual services.<sup>35</sup>

The Court further said that:

The expression 'wages' does not imply that the compensation is to be determined solely upon the basis of time spent in service; it may be determined by the work done; it could be estimated in either way...in the case of salary the recompense could be determined wholly on the basis of time spent on service or wholly by the work done or partly by the time spent in service and partly by the work done.<sup>36</sup>

Thus, there is no fundamental difference between the expressions Salary and Wages. Salary is generally used to mention the pay of workers engaged in non-manual work or services and wages is used to indicate the earnings of workers employed in manual operations.

## **2.6. Wage Fixation**

The main principle behind wage fixation is to ensure an equitable wage to the working class. A wage, which provides only subsistence for a worker and his

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<sup>34</sup> A.I.R. 1979 S.C. 607.

<sup>35</sup> *id.* at p.613.

<sup>36</sup> *id.* at p. 614.

family, is not “an adequate living wage.”<sup>37</sup> Generally, wages are fixed in the following manner:

### 2.6.1. Decision by the Employer and Individual Agreements

During the ancient period, the employer who needs workers usually announces his rate of wage for the skilled and unskilled workers. Before fixing the rate of wage, he will also consider the market rate of wages, his capacity to pay and the contribution that the worker would make to him.<sup>38</sup>

Thus, the wage is an outcome of a bargain between the employer and the employee in this case. Here the agreement arrived at is in effect a labour contract.<sup>39</sup> By this method only skilled workers, if they are in short supply, are in a position to get considerably high wage than the employer had actually intended to pay to workers.

### 2.6.2. Collective Agreements

Generally individual workers are incapable of bargaining with their employers. Thus, in order to bargain with greater intensity, they usually form trade unions and other associations.<sup>40</sup> Unions are generally formed by the workers of a single industry or a group of industries or companies in a particular area.

The scope of collective agreements is mainly based on the strength of the trade union movement and employers’ organisations. Normally, collective agreements may fix wages in a single craft or a group of related crafts or for workers hired by different firms in a region or even across the country.<sup>41</sup> In many countries, the system of collective agreements is not having any support of law and is called as “gentlemen’s agreements.” The observance of such agreements can be

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<sup>37</sup> See Preamble to the Constitution of the International Labour Organisation.

<sup>38</sup> *Supra* n.11, p.98.

<sup>39</sup> *ibid.*

<sup>40</sup> *id.* at p.99.

<sup>41</sup> *ibid.*

ensured only through trade union action. But these agreements are lawfully enforceable in some other countries.<sup>42</sup>

### **2.6.3. Voluntary or Compulsory Arbitration**

If both employers and employees have agreed to submit the dispute relating to wages for arbitration, it is called voluntary arbitration. In this method, they generally agree to accept the award of the arbitrator. The arbitrator announces his decision, after considering various aspects of the dispute presented before him at the time of hearing, and it is binding on both the parties. If either of the parties is not agreeing to admit the award, then it is open to them to seek other alternatives for resolving the issue.<sup>43</sup>

If it is mandatory for employers and employees to present their case of wage fixation before the arbitrator, it is called compulsory arbitration.<sup>44</sup> Both workers and employers generally are not allowed to call strike or declare lockout as the case may be, during the period of arbitration. The award pronounced by the arbitrator is binding on both the parties. Penalties can be inflicted for strikes and lockouts if any, conducted during the period of compulsory arbitration and also for not complying the terms of the award.<sup>45</sup>

### **2.6.4. Wage Boards**

In order to prevent exploitation and to guarantee reasonable wages to the working class, many states particularly where trade union movement and collective bargaining system are not much developed to provide adequate methods for wage fixation, have enacted suitable legislations for the fixation of minimum wage. But this system of wage fixation is applicable only to a limited section of workers.<sup>46</sup>

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<sup>42</sup> *id.* at p.100.

<sup>43</sup> *id.* at p. 102.

<sup>44</sup> *id.* at p.103.

<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*

For the purpose of wage fixation, governments usually constitute wage boards or wage councils to make a thorough enquiry. On the basis of the investigation, the wage board submits a report containing its recommendations to the Government. After considering the report submitted by the wage board, the Government fixes the minimum rate of wages to the workers.<sup>47</sup>

### **2.6.5. National Minimum Wage**

Many countries in the world have enacted legislations to fix national minimum wage for their workers. But in effect, it is applicable only to unskilled workers.<sup>48</sup> Wages of other workers are normally determined by individual contracts, collective bargaining or statutory wage boards. This method is quite effective for unskilled workers of those states with low rates of wages.<sup>49</sup>

### **2.6.6. Fair Wage Clauses in Government Contracts**

The wages of the Government employees are generally determined by the Government after negotiating with the representatives of employees. It is mandatory in several states that contractors doing work for the Government have to pay fair wages to their workers. The enforcement of the above said provision is ensured by placing into the contracts a provision that 'fair wages shall be paid.'<sup>50</sup> Fair wages means that the rate of the wage should be same as the rate of the present wage paid by good employers in the regions in which the contract work is done.<sup>51</sup> Thus, it is the duty of the Government contractors to pay wages to their workers not below the rate fixed by this system.

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<sup>47</sup> *id.* at p 104.

<sup>48</sup> *id.* at p.105.

<sup>49</sup> *supra* n.11, p.106.

<sup>50</sup> *ibid.*

<sup>51</sup> *ibid.*

## 2.7. International Norms Regarding Wages and Service Conditions

Being the principal source of earning for the workers and the major expenditure of production for the employers, wages have always been a central point of conflict between the employers and workmen.<sup>52</sup> Hence, it happens to be the main focus of collective bargaining. Thus, for securing a level playing area for workers and employers all over the world, an international consensus regarding the wage policy, structure and other service conditions has been formulated.

### 2.7.1. International Labour Organisation

The International Labour Organisation,<sup>53</sup> which is founded in 1919<sup>54</sup> after the First World War, is the pioneer in the field of structuring and codifying labour policies. It influences the enactment of important labour legislations in different countries. The responsibility of prescribing international labour standards, its implementation and supervision are entirely with the ILO.<sup>55</sup> It offers a system where the representatives of governments, employers and workmen can mutually discuss and formulate plans and policies for the promotion of decent wages and working conditions for all.<sup>56</sup> Thus, the formation of ILO undoubtedly improved the working and living conditions of workers across the borders.

### 2.7.2. Objectives of ILO

Wages and working conditions are the most important concerns that affect the everyday life of workers. The ILO identified these aspects since its establishment. It promoted various measures to assure and safeguard these rights of workers. The Constitution of the ILO has recognised adequate living wage and

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<sup>52</sup> V.V. Giri, *Labour Problems in Indian Industry*, Asia Publishing House, Bombay (3<sup>rd</sup> edn., 1972), p.240.

<sup>53</sup> Herein after referred to as ILO.

<sup>54</sup> Established in 1919, as Part XIII of the Peace Treaty of Versailles.

<sup>55</sup> It was part of the League of Nations in 1919 and United Nations since 1946.

<sup>56</sup> *Global Wage Report- Wages and Equitable Growth*, International Labour Office, Geneva, 2013, available at [www.ilo.org/global/research/global-reports/global-wagereport/2012/...en/index.htm](http://www.ilo.org/global/research/global-reports/global-wagereport/2012/...en/index.htm) (accessed on 24/04/2015).

other basic conditions of service such as provisions for old age and injury, equal remuneration for work of equal value, freedom of association etc.,<sup>57</sup> as the main areas in which improvements are urgently required to promote universal peace and to combat the social unrest, hardship and privation affecting large number of people.

The 1944 Declaration of Philadelphia,<sup>58</sup> stating the aims and purposes of the International Labour Organization, reiterate that poverty anywhere constitutes a danger to prosperity everywhere<sup>59</sup> and underlines the need for formulation of programmes which will attain “policies in regard to wages, earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection.”<sup>60</sup> Thus, the Declaration requires that the national and international policy should be framed in such a way that all people have the right to pursue their material comfort and spiritual development with dignity, freedom, economic security and equal opportunity.<sup>61</sup>

ILO in its report, ‘Employment Growth and Basic Needs’, emphasised that the real wage standards should be based on the basic needs which includes two components. Firstly, it should take into account certain minimum requirements of a family like adequate food, protection, clothing etc. Secondly, it shall also take into account certain essential services provided by and for the community at large like safe drinking water, sanitation, public transport, health and educational facilities.<sup>62</sup>

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<sup>57</sup> Preamble to the Constitution of the International Labour Organization 1919.

<sup>58</sup> Which is a part of the ILO Constitution, was adopted at the twenty sixth session of the International Labour Conference held in May 1944 at Philadelphia.

<sup>59</sup> ILO, Philadelphia Declaration, Art. I (c).

<sup>60</sup> *id.* Art. III (d).

<sup>61</sup> V. K. R. Menon, “India and the International Labour Organisation”, in V.B. Singh (Ed.), *Industrial Labour in India*, Asia Publishing House, Bombay, (1960), p.634.

<sup>62</sup> Employment, Growth and Basic Needs, International Labour Office, Geneva, 1978, pp. 31- 32, available at <https://www.jstor.org/stable/160156> (accessed on 20/03/2014).

Further in 2008, the provisions regarding minimum living wage were incorporated into the ILO Declaration on Social Justice for a Fair Globalisation.<sup>63</sup> Thus, the main objective of ILO's wage policy is to eliminate the exceptionally low wages and to assure 'fair' labour standards for the protection of wage earners from the effects of rising prices. The wage policy of ILO also aims at enhancing the economic wellbeing of the society as a whole.

### **2.7.3. ILO Conventions and Recommendations on Wages and Service Conditions**

The ILO adopted a number of Conventions and Recommendations stating the principles and scheme of quantum of wages and mode of wage payment etc. They are regarded as the embodiment of social justice to the working class all over the world.<sup>64</sup> Hence, almost all the countries in the World, irrespective of their political, economic and social disparities, have ratified these conventions in one form or the other. India, one of the founder members of ILO, has also enacted various labour welfare legislations based on the standards prescribed by the ILO.

### **2.7.4. The Hours of Work Convention, 1919**

The ILO adopted the Hours of Work Convention<sup>65</sup> with the objective of restricting the hours of work in industrial establishments to eight hours in a day and forty eight hours in a week.<sup>66</sup> India has ratified this Convention in 1921. As a result, the Factories Act, 1948 has fixed nine hours per day and forty eight hours per week as the maximum working hours for workers employed in factories. The Indian Railways Act, 1930 and the Mines Act, 1935 were also amended to adopt the provisions of the Convention relating to working hours

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<sup>63</sup> ILO, Declaration on Social Justice for a Fair Globalization 2008, Sec. I. A. (ii).

<sup>64</sup> S. N. Dhyani, *The International Labour Organisation and India*, National Publishing House, New Delhi, (1<sup>st</sup> edn., 1977), p. 138.

<sup>65</sup> The Hours of Work (Industry) Convention (No.1) 1919.

<sup>66</sup> *id.* Art. 2.

### 2.7.5. Minimum Wage – Fixing Machinery Convention, 1928

The General Conference of the ILO adopted the Minimum Wage Fixing-Machinery Convention in 1928.<sup>67</sup> It is intended mainly for the creation of minimum wage fixing machinery in certain trades including manufacturing and commerce. The Convention emphasizes that every member of the ILO which ratifies this Convention shall establish machinery for wage fixation in their state. The mandate of this Convention is specifically applicable to workers employed in trades where the wages are very low and exists no criterion for the effective regulation of wages.<sup>68</sup> It is open to the countries which ratify the convention to decide, after making consultation with organisations of workers and employers, the trades or parts of trades in which minimum wage fixation is applicable<sup>69</sup> and the nature and form of the machinery.<sup>70</sup> This Convention requires the workers and employers to associate in the operation of the minimum wage fixing machinery.<sup>71</sup> It also mandates that the minimum wages so fixed shall be binding on the employers and workers alike.<sup>72</sup>

This Convention was ratified by India in 1955.<sup>73</sup> Prior to that, in 1948 the Government of India had passed the Minimum Wages Act by incorporating the main principles of the ILO Convention. The Act applies to all employments that are listed in the schedule of the Act which includes forest, farm and agriculture labour. Minimum wages can be fixed on time or piece rate basis, only for such industries where more than 1000 employees are working in the State. Provisions for the constitution of Advisory Boards and Committees by the Government to

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<sup>67</sup> Minimum Wage- Fixing Machinery Convention 1928 (No. 26), adopted on 16<sup>th</sup> June 1928 at Geneva.

<sup>68</sup> *id.* Art. 1.

<sup>69</sup> *id.* Art. 2.

<sup>70</sup> *id.* Art. 3(1).

<sup>71</sup> *id.* Art. 3(2) (2).

<sup>72</sup> *id.* Art. 3(2) (3).

<sup>73</sup> *supra* n.64, p.172.

conduct enquiry and advise the Government in the matter of minimum wage fixation are also prescribed in the minimum wage legislation.

India has also ratified the Minimum Wage Fixing Machinery Recommendation<sup>74</sup> which was adopted by the ILO in 1928. However, the Minimum Wages Fixing Machinery (Agriculture) Convention of 1951<sup>75</sup> and Recommendation<sup>76</sup> regarding the fixation of minimum wages for agricultural labour has not been ratified.<sup>77</sup> But this inadequacy has been resolved to a great extent by the Minimum Wages Act, 1948 since it is applicable to farm, horticulture and agriculture labour.

### 2.7.6. Protection of Wages Convention, 1949

The ILO adopted the Protection of Wages Convention<sup>78</sup> in 1949 with the objective of protecting the earnings of workers by ensuring payment of wages without unauthorised deductions. This Convention is applicable to all persons to whom wages are paid or payable<sup>79</sup> and deductions from wages are not allowed except under conditions prescribed by laws or regulations of the nation or in accordance with the terms of collective agreement or arbitration award.<sup>80</sup> It also underlines the importance of disbursing wages regularly<sup>81</sup> to workers at their workplace and that too in cash on normal working days.<sup>82</sup>

In order to supplement the provisions in the Protection of Wages Convention, the ILO adopted the Protection of Wages Recommendation<sup>83</sup> in 1949. It has provided provisions regarding deductions from wages, periodicity of wage

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<sup>74</sup> Recommendation 30 of 1928.

<sup>75</sup> Minimum Wages Fixing Machinery (Agriculture) Convention 1951 (No.99).

<sup>76</sup> Recommendation 89 of 1951.

<sup>77</sup> *supra* n.64, p. 173.

<sup>78</sup> Protection of Wages Convention 1949, (No. 95).

<sup>79</sup> *id.* Art. 2.

<sup>80</sup> *id.* Art. 8.

<sup>81</sup> *id.* Art. 12.

<sup>82</sup> *id.* Art. 13.

<sup>83</sup> Protection of Wages Recommendation 1949 (No.85).

payments etc. The Recommendation requires that while making deductions from wages due regard must be given to the necessities for the maintenance of the worker and his family.<sup>84</sup> Before making deductions from wages of workers for the reimbursement of loss or damage to employer's goods, the worker concerned must be given a reasonable opportunity to defend the case.<sup>85</sup> The deduction, if made, should be fair, reasonable and must not exceed the actual amount of loss.<sup>86</sup> The workers are also to be informed about the wage conditions particularly, the rates of wages, calculation of wages, periodicity and place of wage payment etc.<sup>87</sup>

However, these Conventions and Recommendations have not yet been ratified by India. The Government of India had enacted the Payment of Wages Act in 1936 to protect the wages of industrial labour against unauthorised deductions. Since the Act was passed before the adoption of 1949 Convention, it was not possible for the Government to incorporate the requirements of the Convention entirely into the Payment of Wages Act, 1936. Later on, the Act was amended in 1957 to fix the maximum wage period as one month and to require the employer to pay wages on working days in current legal tender of money.<sup>88</sup>

### 2.7.7. The Minimum Wage Fixing Convention, 1970

The Minimum Wage Fixing Convention,<sup>89</sup> 1970 aims at providing protection for wage earners against unduly low wages. It is the duty of each member country that ratifies the convention to establish a proper system of minimum wage<sup>90</sup> and to decide the groups of wage earners to whom it is applicable.<sup>91</sup> The minimum wages so fixed by each country shall have the force of law and are not subject to abatement. Penalties can be imposed on those employers

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<sup>84</sup> *id.* Art.1.

<sup>85</sup> *id.* Art. 2(3).

<sup>86</sup> *id.* Art. 2(2).

<sup>87</sup> *id.* Art. 6.

<sup>88</sup> *supra* n.64 p. 173.

<sup>89</sup> Minimum Wage Fixing Convention 1970 (No.131) adopted on 22<sup>nd</sup> June 1970.

<sup>90</sup> *id.* Art. 1(1).

<sup>91</sup> *id.* Art. 1(2).

who are not paying the required minimum wage.<sup>92</sup> While determining the level of minimum wages, the needs of the workers and their families, general level of wages in the country, the cost of living, social security benefits, relative living standards of other social groups, requirements of economic development etc., should be taken into consideration.<sup>93</sup>

The Minimum Wage Fixing Recommendation<sup>94</sup> adopted by ILO in 1970 also contains similar provisions<sup>95</sup> for determining the level of minimum wages. Each member country is required to make an attempt to include almost all wage earners within the ambit of minimum wages.<sup>96</sup> Various methods for the fixation of minimum wages are also prescribed such as by legislation, decisions of the competent authority, decisions of wage boards, labour courts, collective agreements etc.<sup>97</sup> The recommendation also envisages periodic review of the minimum wage rates regard being given to the cost of living and other economic conditions.<sup>98</sup>

India has not ratified the Minimum Wage Fixing Convention and Recommendation of 1970. However, the Minimum Wages Act has already found a place in the statute book since 1948, which had incorporated the main principles of the ILO Convention and Recommendation.

India has ratified only a few Conventions and Recommendations of ILO. But the impact of ILO on the labour legislations enacted in India is incredible. Most of the basic objectives and principles embodied in the Conventions and Recommendations of ILO, including the unratified ones, have received recognition in India by incorporating the same in various labour legislations of the country.

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<sup>92</sup> *id.* Art. 2(1).

<sup>93</sup> *id.* Art.3 (a), (b).

<sup>94</sup> Minimum Wage Fixing Recommendation 1970 (R 135).

<sup>95</sup> *id.* Art. 3.

<sup>96</sup> *id.* Art. 4.

<sup>97</sup> *id.* Art. 6.

<sup>98</sup> *id.* Art. 12.

### **2.7.8. Wages and Service Conditions under Universal Declaration of Human Rights**

The Universal Declaration of Human Rights<sup>99</sup> approached the problem of wage and other conditions of work in a very reasonable manner. Its humanitarian attitude towards the problems of working class is evident from the contents of the Declaration. Article 23 of the Declaration states the rights of workers as:

1. Every worker has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone without any discrimination has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social security.
4. Everyone has the right to form and join trade unions for the protection of his interest.

Further, it declares that “Everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay.”<sup>100</sup>

### **2.7.9. International Covenant on Economic Social and Cultural Rights**

This Covenant<sup>101</sup> underlines the importance of human rights and social and economic welfare of the working community. The right to work, social security of

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<sup>99</sup> Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of United Nations on 10<sup>th</sup> December 1948.

<sup>100</sup> *id.* Art. 24.

<sup>101</sup> International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly on 16<sup>th</sup> December, 1966.

every employee, the freedom of choice of work by every person, the duty of the State to take steps for the full realisation of the right of a workman and the right of everyone to have an adequate standard of living for himself and his family have also been emphasised in this Covenant.<sup>102</sup>

Just and favourable conditions of work and fair and reasonable wages for workers to lead a decent standard of living is recognised as a basic human right by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Thus, the International instruments recognised the responsibility of governments to fix and provide a scheme of wages and conditions of work to the working class, which supports them to lead a dignified life.

## **2.8. Wages and Service Conditions in the Indian perspective**

Most of the countries in the World have enacted various social security and social welfare legislations for providing fair wages and reasonable service conditions to the working class. A good number of legislations in this regard have been framed in India also, like the Minimum Wages Act, 1948, the Employees State Insurance Act, 1948 etc.<sup>103</sup> Besides, the preamble of the Indian Constitution aims to provide social, economic and political justice to all citizens in the country.

### **2.8.1. Wages and Service Conditions under the Indian Constitution**

The Constitution of India solemnly promised to all its citizens, justice – social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all

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<sup>102</sup> *id.* Arts. 6, 9, 10 & 11.

<sup>103</sup> The Minimum Wages Act 1948 ensures minimum wages to workers engaged in scheduled employments. The Workmen's Compensation Act 1923 provides the payment of compensation to injured workmen. The Employees State Insurance Act 1948 mainly assures six types of benefits to workers. The Payment of Wages Act 1936 regularises the payment of wages to workers and ensure that no illegal deductions are made from the wages. Payment of gratuity to the workers for their long meritorious service and the rate of gratuity are provided in the Payment of Gratuity Act 1972.

fraternity, assuring the dignity of individual and the unity of nation.<sup>104</sup> The concern and the commitment of the people to establish a truly welfare state for the well being of all citizens in the country can be perceived from these social goals appearing in the preamble.<sup>105</sup> The Supreme Court of India, in *Air India Statutory Corporation v. United Labour Union*,<sup>106</sup> observed that:

The Constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity.<sup>107</sup>

Thus, the Constitution of India is undoubtedly a social document that provides justice to all sections in the society through various provisions incorporated in it. Part III<sup>108</sup> and Part IV<sup>109</sup> of the Constitution embodies a good number of Articles that ensure equality, freedom, dignity of individual, social as well as economic justice etc. to the citizens. The fundamental rights enshrined in the Constitution are enforceable and available to all citizens and some rights even to non-citizens.

Right to life and personal liberty as guaranteed under Article 21 of the Constitution<sup>110</sup> is regarded as one of the most significant among the fundamental rights which assures livelihood and human dignity to all people. The Supreme Court of India considered the scope of Article 21 in several cases and interpreted

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<sup>104</sup> Constitution of India 1950, Preamble.

<sup>105</sup> *supra* n. 64, p. 214.

<sup>106</sup> A.I.R. 1997 S.C. 645.

<sup>107</sup> *id.* at p.670.

<sup>108</sup> Fundamental Rights.

<sup>109</sup> Directive Principles of State Policy.

<sup>110</sup> No person shall be deprived of his life or personal liberty except according to procedure established by law.

constructively for the protection of the people particularly the poor and the working class. The Supreme Court of India reiterated in many cases that the expression ‘right to life’ includes right to livelihood<sup>111</sup> and right to live with human dignity.<sup>112</sup> This interpretation largely widened the scope of this fundamental right ensuring better protection of the working class in the country.

Regarding the dignity of life of human beings, the Supreme Court in *Maneka Gandhi v. Union of India*,<sup>113</sup> while providing a new dimension to Article 21 held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. While elaborating this view, the Apex Court in *Francis Coralie v. Union Territory of Delhi*,<sup>114</sup> observed that:

The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings...but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.<sup>115</sup>

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<sup>111</sup> *Olga Tellis v. Bombay Municipal Corporation*, A.I.R. 1986 S.C. 180. ‘Right to livelihood’ is borne out of the ‘right to life’, as no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

<sup>112</sup> *Francis Coralie v. Union Territory of Delhi*, A.I.R. 1981 S.C. 746; *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 802.

<sup>113</sup> A.I.R. 1978 S.C. 597.

<sup>114</sup> A.I.R. 1981 S.C. 746.

<sup>115</sup> *id.* at p.753.

The Supreme Court, in *Peoples Union for Democratic Rights v. Union of India*,<sup>116</sup> held that non-payment of minimum wages to the workers employed in various Asian Games projects in Delhi was a denial of their right to live with basic human dignity and violative of Article 21 of the Constitution. The rights and benefits conferred on workmen employed by a contractor under various labour laws are clearly intended to ensure basic human dignity to workmen. The Court further held that the non-implementation of these laws by the private contractors engaged for constructing building for holding Asian games in Delhi and non-enforcement by the State authorities was held to be violative of fundamental right of workers to live with human dignity contained in Article 21.

Again, the Supreme Court of India, in *State of Maharashtra v. Chandra Bhan*,<sup>117</sup> considered the constitutionality of a provision in the Bombay Civil Service Rules, 1959 which provides for payment of a minimal amount of Re.1 as subsistence allowance to a suspended Government servant upon his conviction during the pendency of his appeal. In this case, the Court declared the provision as unconstitutional on the ground that a subsistence allowance of Re. 1 is an amount so inadequate for his sustenance in a civilized society and therefore violative of Article 21 of the Constitution.

Finally, relying on its previous decisions, in *Bandhua Mukti Morcha v. Union of India*,<sup>118</sup> the Supreme Court gave an expanded interpretation to Article 21. In this case Court observed that:

It is the fundamental right of everyone in this country... to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include

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<sup>116</sup> A.I.R. 1982 S.C.1473.

<sup>117</sup> (1983) 3 S.C.C. 387.

<sup>118</sup> A.I.R. 1984 S.C.802.

protection of health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State-neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.<sup>119</sup>

With respect to right to livelihood of human beings, the Apex Court in *Olga Tellis v. Bombay Municipal Corporation*,<sup>120</sup> popularly known as the “*Pavement Dwellers Case*,” held that:

The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean, merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood.... The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law can challenge the deprivation as offending the right to life conferred by Art. 21.<sup>121</sup>

Thus, it is established by the Supreme Court in the above cases that right to life includes right to live with human dignity free from exploitation and right to

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<sup>119</sup> *id.* at p.811, 812.

<sup>120</sup> A.I.R. 1986 S.C. 180.

<sup>121</sup> *id.* at p.193, 194.

livelihood. The Court recognised the rights of workers to get reasonable remuneration and to have just and humane conditions of work as fundamental rights within the scope of Article 21 of the Constitution of India. Hence, it is the obligation of the Government to ensure fair and reasonable wages and better working conditions to workers. This positive action from the part of the Supreme Court of India not only increases the confidence of workforce in this country but also acts as a stimulus to them for their effort for better wages and living conditions.

The Constitution of India also provides guarantee against the exploitation of workers. Article 23 of the Constitution<sup>122</sup> prohibits trafficking in human beings and other forms of forced labour. The Supreme Court examined the scope of this Article in *People Union for Democratic Rights v. Union of India*<sup>123</sup> and held that the range of Article 23 is wide enough and unlimited to prohibit trafficking in human beings, begar and other kinds of forced labour. In *Sanjit Roy v. State of Rajasthan*,<sup>124</sup> the Supreme Court held that payment of wages less than the minimum rate of wages fixed to a person employed on famine relief work is violative of Article 23 of the Constitution and observed that:

The State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions...<sup>125</sup>

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<sup>122</sup> “Trafficking in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

<sup>123</sup> A.I.R. 1982 S.C. 1943.

<sup>124</sup> A.I.R.1983 S.C. 328.

<sup>125</sup> *id.* at p.333.

Employing children below the age of 14 in factories, mines or in other hazardous occupations is forbidden by Article 24 of the Constitution. Further, Article 19 (1) (c) provides the freedom to form associations or unions in the country, which helps the working class to seek the assistance of registered trade unions and other associations in their struggle for better working conditions.

The Directive Principles of State Policy contained in Part IV of the Indian Constitution are considered as moral principles or directives to the State with respect to the way in which it should exercise its power. Though they are not enforceable, yet their absorption in the Constitution makes the Government accountable to the people, especially, in the matter of promoting the welfare of ordinary citizens.<sup>126</sup> Thus, in India, labour laws have been largely codified in consonance with the Directive Principles of State Policy.

The Directives underline the principles to be followed by the State for securing its citizens adequate means of livelihood,<sup>127</sup> equal pay for equal work for both men and women,<sup>128</sup> just and humane conditions of work, maternity relief<sup>129</sup> etc. While interpreting Articles 14 and 16 of the Constitution in the light of the Preamble and Article 39(d), the Supreme Court in *Randhir Singh v. Union of India*<sup>130</sup> held that the principle 'equal pay for equal work' is deducible from those Articles and can be applied to cases where unequal scale of pay based on no classification or irrational classification is made.

Article 43 of the Constitution<sup>131</sup> necessitates the State to ensure living wage<sup>132</sup> and decent standard of living to all workers. The Directive Principles also

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<sup>126</sup> *supra* n.64, p. 217.

<sup>127</sup> The Constitution of India 1950, Art. 39 (a).

<sup>128</sup> *id.* Art. 39 (d).

<sup>129</sup> *id.* Art. 42.

<sup>130</sup> A.I.R. 1982 S.C. 879.

<sup>131</sup> "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and ..."

oblige the State to enhance the level of nutrition, standard of living and public health of people in the country.<sup>133</sup> The specific provisions regarding social security are also seen in these divine proclamations and various entries of social security are clearly enumerated in the concurrent list of the Constitution<sup>134</sup> for the good governance of the country.

Thus, the Constitutional obligation to labour is evident from the various beneficial provisions discussed above. Moreover, the philosophy of social justice enshrined in the Constitution of India has given a sweeping content of social justice to Indian Labour Legislation. Its sweep is comprehensive based on the ideal of socio - economic equality and its purpose is to assist the removal of disparities and inequalities by the creation of a new social order through law for the benefit of the common and needy people.<sup>135</sup>

The following analysis of the Indian Constitution made by the eminent jurist Prof. Granville Austin and the position he assigns to part III and IV of the Constitution has clearly revealed the commitment of the Constitution to the labour community. It has also received judicial approbation in several leading judgements of the Supreme Court. He said:

The Indian Constitution is first and foremost a social document. The bulk of its provisions is either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievements. Yet, despite the permeation of the entire Constitution by the aim of national renaissance, the core of the

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<sup>132</sup> A wage which will maintain the workman in the highest state of industrial efficiency which will enable him to provide his family with all the material things which are needed for their health and physical wellbeing, enough to enable him to qualify to discharge his duties as a citizen. See for details, *Hindustan Times Ltd. v. Their Workmen*, A.I.R. 1963 S.C. 1332.

<sup>133</sup> The Constitution of India 1950, Art. 47.

<sup>134</sup> Constitution of India 1950, VII<sup>th</sup> Schedule, List III, Item No. 23 Reads: "Social Security and Insurance, Employment and Unemployment." Item No. 24 Reads: "Welfare of labour including conditions of work, provident funds, employer's liability, work men's compensation, invalidity and old age pension and maternity benefits."

<sup>135</sup> *supra* n.64, p. 215.

commitment to the social revolution lies in part III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution.<sup>136</sup>

## **2.9. Definition of Wages under Different Indian Legislations**

The term 'wages' has been defined by various statutes enacted before and after Independence, which incorporated the noble principles laid down by international instruments and provisions of the Constitution. In order to find out how different enactments look up on wages, it is imperative to discuss some of the important statutory definitions.

### **2.9.1. The Employees Compensation Act, 1923**

The Act is intended to pay compensation to the workmen for injury caused to them by accident arising out of and in the course of employment. Section 2 (1) (m) of the Act defines wages as follows:

"wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

This definition of wages does not actually purport to give a meaning to the expression 'wages.' It merely seeks to include what ordinarily may not be admitted in the concept of wages and leaves the meaning at large. What is included, however, gives an indication to what was actually intended to be expressed by the term wages.

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<sup>136</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University press, (12<sup>th</sup> edn., 2008), p.50.

### 2.9.2. The Payment of Wages Act, 1936

The Payment of wages Act was passed to regulate the payment of wages to workers. Until then, there was no proper legislation to regulate wage payment. The Act aims to provide wages<sup>137</sup> to workers in a particular form and at regular intervals without any unauthorised deductions. Thus, under the Payment of Wages Act, wages are the amount which becomes legally payable to an employee on fulfilment of conditions in the contract of employment.

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<sup>137</sup> The Payment of Wages Act 1936, Sec. 2(vi) defines the term “wages” means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

- (a) any remuneration payable under any award or settlement between the parties or order of a Court; (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include—
  - (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
  - (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of 1 [the appropriate Government];
  - (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
  - (4) any travelling allowance or the value of any travelling concession;
  - (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
  - (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)].

### 2.9.3. The Industrial Disputes Act, 1947

The term 'wages' as contained in the Act means, all remuneration which can be expressed in terms of money and paid to a workman in respect of his employment. The definition of the term 'wages'<sup>138</sup> under the Act is almost similar to that is given under the Payment of Wages Act.

Whether night shift allowance formed as a part of wages of a workman was the principal question that came for consideration before the Supreme Court of India in *Bharat Electronics Ltd. v. Industrial Tribunal, Karnataka*.<sup>139</sup> In this case, the drivers plying buses of the establishment on night shifts used to get a variable night shift allowance. On the question as to whether this allowance could be included in the term 'wages' as defined under the Industrial Disputes Act, the Supreme Court of India observed that the workman had to earn night shift allowance by actually working in the night shift and his claim to that allowance was contingent upon his reporting for duty and being put to that shift. Thus, it automatically did not form part of his wages and it was not such an allowance which flowed to him as his entitlement not restricted to his service. Accordingly, it was held to be not as a part of wages.

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<sup>138</sup> Sec. 2 (rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes—

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;
- (iii) any travelling concession;
- (iv) any commission payable on the promotion of sales or business or both; but does not include—
  - (a) any bonus;
  - (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
  - (c) any gratuity payable on the termination of his service;

<sup>139</sup> A.I.R. 1990 S. C. 1080.

### **2.9.4. The Minimum Wages Act, 1948**

The term ‘wages’ defined in Section 2 (h) of the Act is as follows:

“Wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, [and includes house rent allowance], but does not include-

- (i) the value of-
  - (a) any house-accommodation, supply of light, water, medical attendance, or
  - (b) any other amenity or any service excluded by general or special order of the appropriate Government;
- (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- (iii) any travelling allowance or the value of any travelling concession;
- (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (v) any gratuity payable on discharge.

The term wages has a composite meaning under the Minimum Wages Act and include all remunerations and other payments payable to an employee which are not expressly excluded by the provisions of the Act.

### 2.9.5. The Employees' State Insurance Act, 1948

This enactment defines the term 'wages' to mean:

all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes (any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and) other additional remuneration, if any, (paid at intervals not exceeding two months), but does not include;

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment or
- (d) any gratuity payable on discharge.<sup>140</sup>

The above definition of wages has inclusion and exclusion clauses. Both these clauses must be taken into consideration to decide whether some amount paid or payable can be included or not included within the expression 'wages' under the Act. The Supreme Court of India held in *Harihar Polyfibres v. Regional Director, Employees' State Insurance Corporation*,<sup>141</sup> that the term 'wages' under the Act includes house rent allowance, heat, gas, dust allowance and incentive allowance. The Court also declared that the attendance bonus payable to the workers in accordance with the terms of settlement is to be included in the term 'wages'<sup>142</sup>

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<sup>140</sup> Sec. 2 (22).

<sup>141</sup> A.I.R. 1984 S.C. 1680.

<sup>142</sup> *Williams (India) Pvt. Ltd. v. Employees State Insurance Corporation*, 1994 L.L.R. 1 (S.C.).

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

Section 2 (s) of the Act defines ‘wages’ as follows:

“wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

While analysing the above definition, it is clear that the Act defined the expression ‘wages’ liberally and it includes the emoluments earned by employees during the period of leave.

The term wages is seen defined differently in various labour enactments stated above. Almost all statutory definitions of wages contain three parts. The first part gives a general meaning, the second part includes certain payments and the third part excludes certain items from the purview of the definition.

Generally ‘wages’ are considered as the payment in return for the work or service rendered by an employee. However, depending up on the policy behind the various labour legislations, the statutory definitions of wages are also made different. Difference in definitions would certainly create ambiguity and complication among workers and employers. This issue was considered by the National Commission on Labour and they found it very difficult to resolve. But it was suggested by the Commission that as a measure of simplification, it is possible to integrate those enactments which cover subjects having a common objective.<sup>143</sup>

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<sup>143</sup> *Report of the National Commission on Labour*, Government of India, Ministry of Labour and Employment and Rehabilitation, 1969, pp. 316-318.

To conclude, the various definitions of ‘wages’ as contained in the above mentioned statutes are actually meant to regulate the rights of the employers and the workers for the specific purposes of those legislations. Hence, it may not be possible in the current scenario to form a single suitable definition for the term ‘wages’ that can be applicable to all circumstances.

However, the definitions discussed above provide certain components of wages. For a clear understanding of the term wages, it is necessary to examine the important components that constitute wages.

## **2.10. Components of Wages**

Usually, wages contain various essential factors. Broadly, the major constituents among them are the basic pay and dearness allowance.

### **2.10.1. Basic Pay**

Basic pay is the sum of money which every employer is required to pay to their workers and it does not include any kind of allowances including the dearness allowance.<sup>144</sup> It is generally determined after considering the basic requirements of workers. According to the Employees Provident Funds and Miscellaneous Provisions Act, the term ‘basic wage’ means:

all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include- (i) the cash value of any food concession; (ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living, house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in

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<sup>144</sup> *Muir Mills Co.Ltd. v. Workmen*, A.I.R. 1960 S.C. 985.

respect of his employment or of work done in such employment; (iii) any presents made by the employer.<sup>145</sup>

The rate of all other allowances may vary from time to time and according to the change in the cost of living, while the basic wages remain the same irrespective of such changes.

### **2.10.2. Dearness Allowance**

The payment of dearness allowance as a separate component of wages is a peculiar feature in India. During the First World War when the cost of living rose up, workers in India demanded compensation for the price rise. Mahatma Gandhi observed a fasting in Ahmadabad for protecting the real wages of workers in every instance of price increase of essential commodities and this demand has been finally accepted by the Government. The modern name of this compensation is known as Dearness Allowance. In certain places, it is called as dear-food allowance to emphasise its food component.

The Supreme Court of India, in *Hindustan Antibiotics v. Workmen*,<sup>146</sup> remarked about the concept of dearness allowance as:

Instead of increasing wage as it is done in other countries, dearness allowance is paid to neutralise the rise in costs. This process was adopted in expectation that one day or the other, we would go back to the original price levels. But when it was found that it was only a vain hope or at any rate, it could not be expected to fall below a particular mark, a part of the dearness allowance was added to the basic wages.<sup>147</sup>

Thus, dearness allowance is not a static concept. It is a dynamic one varying with the change in the cost of living of workers and it is mainly used to neutralise the price increase.

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<sup>145</sup> The Employees Provident Funds and Miscellaneous Provisions Act 1925, Sec. 2 (b).

<sup>146</sup> A.I.R. 1967 S.C. 948.

<sup>147</sup> *id.* at p. 960.

## 2.11. Classification of Wages

Generally speaking, wages have been divided into three broad categories, viz. (i) the basic minimum wage, (ii) the fair wage and (iii) the living wage.<sup>148</sup> The Committee<sup>149</sup> on Fair Wages<sup>150</sup> developed the concepts of living wage, fair wage and minimum wage and the same has been accepted by the Supreme Court of India in a number of cases.<sup>151</sup> In a developing country like India, the components of these concepts are bound to expand.<sup>152</sup> Thus, these levels of wages obviously do not signify a rigid and motionless concept; they would vary and enlarge according to the financial growth and urges for social justice.<sup>153</sup>

A better explanation of these expressions is given in *Hindustan Times Ltd. v. Their Workmen*,<sup>154</sup> where Justice Das Gupta rightly remarked that:

At the bottom of the ladder, there is the basic minimum wage, which the employer of any industrial labour must pay, in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is adequate to cover the normal needs of the average employee regarded as a human being in a civilised society. Above the fair wage is the 'living wage'- a wage which will maintain the workman in the highest state of industrial efficiency which will enable him to provide his family with all the material things which are needed

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<sup>148</sup> *Express News Paper (Pvt.) Ltd. v. Union of India*, A.I.R. 1958 S.C. 578.

<sup>149</sup> The Central Advisory Council in its first session (November, 1948) appointed a Tripartite Committee on Fair Wages. The Committee consisted of representatives of employers, employees and the Government. Their task was to enquire into and report on the subject of fair wages to labour.

<sup>150</sup> *The Fair Wages Committee's Report*, Government of India, 1949.

<sup>151</sup> See, *Express News Paper (Pvt.) Ltd. v. Union of India*, A.I.R. 1958 S.C. 578., *Workmen v. Management of Reptakos Brett & Co. Ltd.*, A.I.R. 1992 S.C. 504. and *The Standard Vacuum Refining Co. of India v. Its Workmen*, A.I.R. 1961 S.C. 895.

<sup>152</sup> *Crown Aluminium Works v. Their Workmen* A.I.R. 1958 S.C. 30.

<sup>153</sup> *Report of the National Commission on Labour*, Government of India, 1969, Chapter 16, p. 236.

<sup>154</sup> A.I.R. 1963 S.C. 1332.

for their health and physical wellbeing, enough to enable him to qualify to discharge his duties as a citizen.<sup>155</sup>

The above statement has been reiterated by the Supreme Court in *The Workmen represented by Secretary v. The Management of Reptakos Brett & Co. Ltd. and Another*,<sup>156</sup> where Justice Kuldip Singh said:

Broadly, the wage structure can be divided into three categories - the basic “minimum wage” which provides bare subsistence is at poverty-line level, a little above is the ‘fair wage’ and finally, ‘the living wage’ which comes at a comfort level.<sup>157</sup>

The Court further observed that:

...it is not possible to demarcate these levels of the pay structure with any precision. There are, however, well accepted norms which broadly distinguish one category of pay structure from another...<sup>158</sup>

### **2.11.1. Living Wage**

The living wage, according to the Committee on Fair Wages,<sup>159</sup> represented the highest level of the wage which should enable the worker to provide for himself and his family not merely the basic essentials of food, clothing and shelter but a measure of comfort including education for children, protection against ill health, requirements of essential social needs and a measure of insurance against more important misfortunes including old age. But the Committee was of the opinion that when such a wage is to be determined, the considerations of national income and the capacity of the industry to pay has also to be taken into account.

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<sup>155</sup> *id.* at p. 1336.

<sup>156</sup> A.I.R. 1992 S.C. 504.

<sup>157</sup> *id.* at p.508.

<sup>158</sup> *ibid.*

<sup>159</sup> *supra* n.150, pp.5-7.

The concept of the living wage, which determines the wage fixation in most of the developed countries in the World, is an old and well established one but the majority of definitions are of recent origin. This notion of wage was first defined in 1907 by Justice Higgins of the Australian Commonwealth Court of Conciliation and Arbitration in the *Harvester* case.<sup>160</sup> According to him, living wage is a wage sufficient to ensure to the workmen food, shelter, clothing, frugal comfort and provision for evil days. According to the South Australian Act of 1912, a living wage means “ a sum sufficient for the normal and reasonable needs of the average employee living in a locality where work under consideration is done or is to be done.”<sup>161</sup>

In India, the same concept of living wage has been laid down. The United Provinces Labour Enquiry Committee classified levels of living standard in four categories namely, poverty level, minimum subsistence level, subsistence plus comfort level and comfort level and chose the subsistence plus comfort level as the basic of what it called the ‘minimum living wage.’<sup>162</sup>

The International Labour Organisation has summarised their views on living wages as follows:

In different countries estimates have been made to the amount of a living wage, but the estimates vary according to the point of view of the investigator. Estimates may be classified into at least three groups: (i). The amount necessary for mere subsistence. (ii). The amount necessary for health and decency (iii). The amount necessary to provide a standard of comfort.<sup>163</sup>

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<sup>160</sup> As cited in G.L. Kothari *Wages, Dearness Allowance and Bonus*, N. M. Tripathi Pvt. Ltd., Bombay, (1968), p. 95.

<sup>161</sup> As cited in S. N. Johri, *Industrial Jurisprudence*, Metropolitan Book Co. Pvt. Ltd., New Delhi, (1<sup>st</sup> edn., 1984), p.138.

<sup>162</sup> *supra* n.23, p.96.

<sup>163</sup> *supra* n.161, p.90.

In *All India Reserve Bank Employees Association and Another v. Reserve Bank of India and Another*,<sup>164</sup> the Supreme Court of India observed that:

Our political aim is living wage though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for some time to come. Our general wage structure has at best reached the lower level of fair wage though some employers are paying much higher wages than the general average.<sup>165</sup>

The same view has been expressed by the Apex Court in *The Workmen represented by Secretary v. The Management of Reptakos Brett & Co. Ltd. and Another*<sup>166</sup> that a living wage has been promised to the workers under the Constitution and the inclusion of the term 'socialist' in the Preamble enable the working class a decent standard of life. The workers are hopefully looking forward to achieve the said ideal.

In short, it is very difficult to define or even to describe accurately the content of the living wage. It may vary from country to country and place to place. It depends upon the price level of necessities of life and it is decided by the socio-economic conditions of a particular country. Thus in India, the concept of living wage is viewed as an ideal which is fast expanding.

### 2.11.2. Fair wage

According to Justice Higgins, "a fair and reasonable wage in the case of an unskilled labourer must be an amount adequate to cover the normal needs of an average employee regarded as a human being living in a civilised community."<sup>167</sup>

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<sup>164</sup> A.I.R.1966 S.C.305.

<sup>165</sup> *id.* at p.317.

<sup>166</sup> *supra* n.156.

<sup>167</sup> *The Standard Vacuum Refining Co. of India v. Its Workmen and Another*, A.I.R. 1961 S.C. 895 at p.900. Quoting Justice Higgins.

Report of the Committee on Fair Wages spelled out the concept of fair wage in the following words:

The payment of fair wages to labour is one of the cardinal recommendations of the Industrial Truce Resolution. Marshall would consider the rate of wages prevailing in an occupation as 'fair' if it is about on level with the average payment for tasks in other trades, which are of equal difficulty and disagreeableness, which require equally rare natural abilities and an equally expensive training.<sup>168</sup>

Thus, fair wage is a mean between the living wage and minimum wage. It is a wage which would provide besides the bare physical needs of the workers and his family, something for preservation of the efficiency of the worker and for some measure of education, medical requirements and amenities.<sup>169</sup> For the payment of fair wages, the financial capacity of the industry is undoubtedly a relevant consideration. In determining the capacity of an industry to pay, the criterion should be to take the capacity of a particular industry in a specified region, and as far as possible, the same wages should be prescribed to all units of that industry in that region. This is known as the industry-cum region basis for fixation of wages.<sup>170</sup>

The lower limit of the fair wage must obviously be the minimum wage; the upper limit is broadly set by what may be called, the capacity of industry to pay. This, of course, will depend on the current and future prospects of the industry. Between these two limits the actual wage shall depend on a consideration of following factors:

- (i) the productivity of labour
- (ii) the prevailing rates of wages in the same or similar occupations in the same or neighbouring localities.

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<sup>168</sup> *supra* n. 150, Paragraphs 11 to 15.

<sup>169</sup> *ibid.*

<sup>170</sup> *supra* n. 28.

- (iii) the level of national income and its distribution
- (iv) the place of the industry in the economy of the country.<sup>171</sup>

In brief, nothing short of a living wage can be a fair wage if under competitive conditions an industry can be shown to be capable of paying a full living wage. The minimum wage standards set the irreducible level, the lowest limit or the floor, below which no worker shall be paid. A fair wage has to be settled above the minimum wage and should go through the process of approximating towards a living wage.

### **2.11.3. Minimum Wage**

The fundamental objective of minimum wage fixation is to improve the standard of living of those sections of the working population whose wages are very low and whose conditions are materially unsatisfactory.<sup>172</sup>

In India, the level of the national income is so low that it is generally accepted that the country cannot afford to prescribe by law a minimum wage for the entire working class. But the wages of an industrial worker must be such as would enable him to have not merely the means of bare subsistence of life but also for preservation of his efficiency as a worker and the minimum needs he must satisfy, irrespective of the capacity of the industry to pay.<sup>173</sup>

However, there is a distinction between bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family. In this case, wage has to be paid to the workers irrespective of the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a bare minimum wage, it has no right to exist.<sup>174</sup> If the minimum wage is prescribed by law, it is known as statutory

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<sup>171</sup> *supra* n.150, pp. 9-11.

<sup>172</sup> *supra* n.64, p.250.

<sup>173</sup> *supra* n. 150, pp. 7-9.

<sup>174</sup> *Crown Aluminium Works v. Their Workmen*, A.I.R. 1958. S.C. 30 at p.34.

minimum wage. The Supreme Court defined the concept of statutory minimum wage in *Express Newspaper v. Union of India*<sup>175</sup> as the minimum which is prescribed by the statute and it must be higher than the bare subsistence. Minimum wage should provide for some measure of education, medical requirements and amenities.

Thus, the concept of minimum wage is in harmony with the advance of thought in civilised countries and approximates to statutory minimum wage which the State should strive to achieve having regard to the Directive Principles of State Policy enshrined in the Constitution of India.<sup>176</sup> With a similar objective in view, the Minimum wages Act was passed by the Parliament in 1948. It empowers the Government to fix different rates of minimum wages for different industries, for different classes of workers and for adults, adolescents, children and apprentices as well as for different areas.

It is clear that these three levels of wages cannot be described in definite terms because their contents are elastic and they are bound to vary from time to time and from country to country. Sometimes they are described as the poverty level, the subsistence level and the comfort or the decency level. It would be difficult and also inexpedient to attempt the task of making an adequate precision to these concepts.

## **2.12. The Supreme Court on Wages and Service Conditions**

The labour jurisprudence in India is redefined by the Supreme Court over the years through a good number of case laws on different aspects of labour legislations especially the right of workers for decent wages and reasonable living conditions. A detailed analysis of the various decisions of the Supreme Court regarding the concept of wage, significance of fair and reasonable wages, rights and welfare of workers etc., are discussed below.

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<sup>175</sup> A.I.R. 1958 S.C. 578 at p. 602.

<sup>176</sup> *ibid.*

*Crown Aluminium Works Ltd. v. Their Workmen*<sup>177</sup> is one of the notable cases that came up for consideration by the Supreme Court of India. The main question posed before the Court was that, Can the wage structure fixed in a given industry be revised to the prejudice of its workmen? In this case an industrial dispute arose between Crown aluminium works and their workmen on the question of wages. First of all, the case came before the adjudicator and his award did not satisfy either party. The question was therefore referred to Labour Appellate Tribunal. The Tribunal ruled against the company and hence the company approached the Supreme Court by questioning the validity of the revision of wage structure by the Tribunal. While considering this question the Supreme Court observed that:

It is essential to bear in mind that the main objectives which industrial adjudication in a modern democratic welfare state inevitably keeps in view in fixing wage structures. “It is well known” observes Sir Frank Tillyard, “that English Common Law still regards the wage bargain as contract between an individual employer and an individual worker, and that the general policy of the law has been and is to leave to the two contracting parties a general liberty of bargaining, so long as there are no terms against public policy.”<sup>178</sup>

The Court continued:

In India as well as in England and other democratic welfare States great inroad has been made on this view of the Common Law by labour welfare legislations such as the Minimum Wages Act and the Industrial Disputes Act. With the emergence of the concept of a welfare State, collective bargaining between trade unions and capital has come into its own and has received statutory recognition; the State is no longer content to play the part of a passive onlooker in an industrial dispute.

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<sup>177</sup> *supra* n. 174.

<sup>178</sup> *id.* at p. 33.

The old principle of the absolute freedom of contract and the doctrine of *laissez faire* have yielded place to new principles of social welfare and common good.<sup>179</sup>

The Court further added thus:

Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted co-operation in the task of production. It is obvious that co-operation between capital and labour would lead to more production and that naturally helps national economy and progress. In achieving this immediate objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay. The application of these and other relevant principles leads to the constitution of different categories of wage structures.<sup>180</sup>

Finally, after hearing both the parties, the court held that it would be possible to revise the wage structure to the prejudice of the workmen if the wage structure falls above the category of bare subsistence or minimum wage.

In *Express News Papers Pvt. Ltd. and Another v. Union of India and Others*,<sup>181</sup> the petitioners challenged the constitutionality<sup>182</sup> of the Working Journalist Act, 1955 and the decision of the wage board constituted under the Act.

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<sup>179</sup> *ibid.*

<sup>180</sup> *id.* at p.34.

<sup>181</sup> *supra* n. 148.

<sup>182</sup> The Petitioners challenged the constitutionality of the Act by saying that the provisions of the Act are violative of Articles 19 (1) (a), 19 (1) (g), 14 and 32 of the Indian Constitution.

Here, the Court at the outset examined the principles of wage fixation. In this context, the Court went deeply into the concepts of living wage, fair wage and minimum wage as evolved through years and developed by various authorities at the national and international levels. In this case the Court made the following important observation:

- (1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;
- (2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry; and
- (3) that the proper measure for gauging the capacity of the industry to pay, should take into account the elasticity of demand for the product, the possibility of tightening up the organization so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product-no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business.<sup>183</sup>

In *Standard Vacuum Refining Co. of India Ltd. v. Its Workmen and Another*<sup>184</sup> two cross-appeals arose from an industrial dispute between the Standard Vacuum Refining Co. of India Ltd. and its workmen. This dispute was related to a

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<sup>183</sup> *supra* n. 181, p. 605.

<sup>184</sup> A.I.R.1961 S.C.895.

claim for bonus made by the respondents against the appellant for the year commencing on January 1, 1956, and ending with December 31, 1956. The appellant resisted the claim on the ground that the respondents were not entitled to any bonus because the appellant was paying them a living wage and so one of the essential conditions for the payment of bonus, namely, the need to fill the gap between the actual wage and the living wage was absent in the present case.

The Court philosophically approached the subject and rightly noted that:

The employment of sweated labour which would be easily available to the employer in all undeveloped and even under-developed countries is ruled out on the ground that the principle of supply has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognized.<sup>185</sup>

In this case, the Court held that the employers had failed to prove that they were paying living wages to the workmen. Hence, they are held liable to pay bonus to the workers. In construing wage structure, the considerations of right and wrong, propriety and impropriety, fairness and unfairness are also taken to be into account to some extent. Further, the Court held that in an underdeveloped country no wage structure could be described as reaching the ideal of a living wage.

In *Unichoyi and Others v. State of Kerala*,<sup>186</sup> the petitioners, representing certain tile factories, challenged the validity of the Minimum Wages Act, 1948, as to the notification issued by the Kerala Government. The notification that prescribed the minimum rates of wages in respect of employment in the tile industry was based on the recommendation of a Committee constituted under the

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<sup>185</sup> *id.* at p. 899.

<sup>186</sup> A.I.R. 1962 S.C. 12.

Act. Both the employers and employees were adequately represented in the Committee and they reached in an agreement regarding the minimum wage. The petitioners have pointed out that the said notification had in effect fixed not the minimum wages but fair wages. While fixing the wages, neither the Committee nor the Government had considered the capacity of the employers to pay. Where considering the argument regarding the employers' inability to meet the burden of the minimum wage rates, the Court observed that:

The employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers on account of their poverty and helplessness are willing to work on lesser wages, and that if individual employers might find it difficult to carry on business on the basis of minimum wages fixed under the Act that cannot be the reason for striking down the law itself as unreasonable. The inability of the employers may in many cases be due entirely to the economic conditions of those employers.<sup>187</sup>

Hence, the Court eventually decided that the constitutional validity of the Act could no longer be in doubt and any hardship that may be caused to employers by the wages fixed under the Act or their incapacity to pay the same are irrelevant considerations in fixing such wages.

In *Novex Dry Cleaners v. Their workmen*,<sup>188</sup> an industrial dispute arose between Novex dry cleaners and their workers. The dispute was related to seven items of demands made by the workmen against the company. Similar demands were made by the workmen of twenty seven other drycleaner companies in New Delhi. These demands were referred to the industrial tribunal for adjudication. The tribunal pronounced its award on 3<sup>rd</sup> September, 1958. Against that award the company applied for special leave challenging the validity of the award.

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<sup>187</sup> *id.* at p.17.

<sup>188</sup> (1962) L.L.J. 271 (S.C).

In this case, the Supreme Court was of the view that, the tribunal addressed itself correctly to the true legal position governing the fixation of wage structure in industrial disputes and further held that in fixing a minimum wage, the capacity of the industry to pay is relevant, where as in fixing a fair wage, the capacity of the industry to pay is relevant factor. Therefore, before fixing the wage structure, it is necessary to examine the financial position of the employer.

The workmen and the employer filed two special leave appeals before the Supreme Court, in *Hindustan Times Ltd. New Delhi v. Their Workmen*<sup>189</sup> challenging the order of an industrial tribunal in Delhi. The employer challenged the award with respect to the terms as to scales of pay, dearness allowance, adjustments, leave rules, gratuity and the retrospective effect of the award. The workmen also challenged the award with regard to the scale of pay, dearness allowance, working hours, leave rules, night shift allowance, retirement age and procedure for taking disciplinary action.

Here the Court opined that:

The fixation of wage structure is among the most difficult tasks that industrial adjudication has to tackle. On the one hand not only the demands of social justice, but also the claims of national economy require that attempts should be made to secure to workmen a fair share of the national income which they help to produce; on the other hand, care has to be taken that the attempt at a fair distribution does not tend to dry up the source of the national income itself.<sup>190</sup>

Court further mentioned that:

While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic considerations make that only a dream for the future. That is why the

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<sup>189</sup> A.I.R. 1963 S.C. 1332.

<sup>190</sup> *id.* at p. 1336.

industrial tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-cum-region basis, and of giving careful consideration the ability of the industry to pay.<sup>191</sup>

In *All India Reserve Bank Employees Association and Another v. Reserve Bank of India and Another*,<sup>192</sup> Certain employees of the Reserve Bank of India through their association raised an industrial dispute with the Bank for need based minimum wage and it was referred by the Central Government to the National Tribunal. Dissatisfied with the award of the Tribunal, the workmen appealed to the Supreme Court by special leave. The Court held:

The concept of fair wage involves a rate sufficiently high to enable the worker to provide “a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned....the living wage concept is one or more steps higher than fair wage... it has now been generally accepted that living wage means that every male earner should be able to provide for his family not only the essentials but a fair measure of frugal comfort and an ability to provide for old age or evil days.<sup>193</sup>

Fair wage lies between the concept of minimum wage and that of living wage. The Court from there inferred that our political aim is ‘living wage’ though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for some time to come. Our general wage structure has at best reached the lower levels of fair wage.

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<sup>191</sup> *ibid.*

<sup>192</sup> A.I.R. 1966 S.C. 305.

<sup>193</sup> *id.* at p. 316.

In *Bandhu Mukti Morcha v. Union of India and others*,<sup>194</sup> the petitioners filed a public interest litigation alleging that certain workmen are living in bondage and under inhuman conditions. They contended that it is against Article 21 of the Constitution which assures right to live with human dignity and freedom from exploitation. The Supreme Court held that, it is the constitutional obligation of the State to ensure that there is no violation of fundamental rights of any person particularly weaker sections of society. State is also bound to assure observance of social welfare and labour laws enacted for securing workmen a basic human dignity.

The main question considered by the Supreme Court in *A.K. Bindal and Another v. Union of India and others*<sup>195</sup> was whether the financial capacity of an employer is a relevant consideration for the fixation of wage. While answering the question the Court observed that:

The economic validity or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to closedown which will inevitably have disastrous consequences for the employees themselves. The material on record clearly shows that both F.C.I and H.F.C had been suffering heavy losses for the last many years and the government had been giving considerable amount for meeting the expenses of the organisation. In such a situation the employees cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organisations in which they are working are making continuous losses and are deeply in red.<sup>196</sup>

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<sup>194</sup> A.I.R. 1984 S.C. 802.

<sup>195</sup> A.I.R. 2003 S.C. 2189.

<sup>196</sup> *id.* at p. 2200.

It is clear from a close perusal of the different decisions and observations of the Supreme Court that the Court has adopted a maternal approach towards the workers for protection of their rights and welfare. While analysing the different decisions, it is obvious that the court widened the scope of the right to life enshrined in Article 21 with the inclusion of the expressions “right to live with human dignity and livelihood.” Further, Court also stated that right to get a reasonable remuneration is a part of right to life and always asserts that the minimum wages are to be paid to the workers without considering the capacity of the employer to pay. But in *A.K. Bindal’s* case, the Court observed that the financial stability of the employer is an important factor, which cannot be ignored while fixing the wages other than minimum wages. Therefore, the judiciary in India construed wages and service conditions in a very liberal manner considering the social, economic and other basic needs of the workmen.

### **2.13 Conclusion**

Leading a dignified life is one of the basic human rights and ambition of every human being. People engage in different occupations such as agriculture, trade, business, employment in Government and private sectors etc. for their daily needs. They must have a reasonable income to meet their basic requirements like food, shelter, clothing, education for their children etc.

The income from employment is the major source - quite often the sole source - of revenue for employees to lead a respectable living. Thus, wages should be sufficient for them to ensure a fair standard of living. If it is inadequate to meet the essential requirements of life, it will definitely affect adversely their health, education and social needs of their family including education of their children.

The present day need of the employees is not the claim for bare subsistence wage. They require the assurance of a living wage or at the least a fair wage to enhance their living standards. Fair wages and reasonable conditions of service are the basic rights of employees and they are well recognised by the international

instruments, the Constitution of India and the Indian Judiciary as well. Thus, as a welfare State it is the duty of the Government to ensure payment of fair and reasonable wages and other conditions of service for the employees so as to enable them to live with human dignity.

## **Chapter 3**

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# **LAWS GOVERNING SALARY AND SERVICE CONDITIONS OF UNAIDED SCHOOL TEACHERS**

## Chapter 3

# LAWS GOVERNING SALARY AND SERVICE CONDITIONS OF UNAIDED SCHOOL TEACHERS

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The contribution of private educational institutions for the development of education in Kerala is remarkable. The private unaided educational sector has now become a new business model. Investment in this sector is very high and these institutions are accumulating huge profit from this business. The committed and the hardworking teachers working in this sector are the main cause of the success of these private institutions.<sup>1</sup> But the sad truth is that they are not paid adequately in accordance with their workload.<sup>2</sup> They are forced to enter into indemnity bonds and other agreements with the managements at the time of appointment.<sup>3</sup> This compels them to work in that institution even though they are not getting adequate salary and other service benefits properly. Sometimes, these private institutions are not giving proper experience certificates to the teachers while they are leaving the institution, which makes them difficult to get another well rewarded employment.

In a welfare state, it is the duty of the Government to ensure the welfare and security of all classes of citizens.<sup>4</sup> The Constitution of India guarantees justice, equality<sup>5</sup> and opportunity to all citizens and empowers the Government to

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<sup>1</sup> Swaleha Sindhi, "The Plight of Non-Government Teachers in India", Vol.1 (Issue 1), International Journal of Humanities and Social Science Invention, December 2012, p.45.

<sup>2</sup> *ibid.*

<sup>3</sup> *id.* at p.46.

<sup>4</sup> Constitution of India 1950, Part IV, Directive Principles of State Policy.

<sup>5</sup> Constitution of India 1950, Preamble.

safeguard the same. At this juncture, it is highly essential to examine the legal provisions governing the wages and service conditions of private unaided school teachers and enquire into the initiatives taken from the part of Government to help and protect their interests and rights.

### **3.1. The Kerala Education Act, 1958**

The Act was enacted with the objective of providing measures for the better organisation and development of educational institutions in Kerala. The Act is applicable to Government schools, aided and recognised private schools.<sup>6</sup> Section 3 of the Act empowers the State Government to establish and maintain schools and give recognition to schools established and maintained by any person or body of persons. The State Government is also authorised to prescribe the qualifications for appointment of teachers in Government and private schools.<sup>7</sup>

Managers of recognised private schools are required to maintain the records and accounts of schools<sup>8</sup> and bound to provide all assistance to officers of the Government for the inspection of schools and its records.<sup>9</sup> Rule making power under Section 36 of the Act entrusts the State Government to make rules, either retrospectively or prospectively with respect to the establishment and maintenance of schools,<sup>10</sup> grant of recognition to private schools<sup>11</sup> etc., for the purpose of carrying out the provisions of the Act. The Act makes it obligatory on the part of Government to pay salary to the teaching<sup>12</sup> and non-teaching staff in aided schools.<sup>13</sup> Service conditions of aided school teachers including their pay, pension,

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<sup>6</sup> Kerala Education Act 1958, Sec. 2(8). 'Recognised School' means a private school recognised by the Government under the Kerala Education Act. Private unaided schools are coming under this category.

<sup>7</sup> *id.* Sec.10.

<sup>8</sup> *id.* Sec. 7(4).

<sup>9</sup> *id.* Sec. 7(5).

<sup>10</sup> *id.* Sec. 36 (2) (a).

<sup>11</sup> *id.* Sec. 36 (2) (c).

<sup>12</sup> *id.* Sec. 9(1). Section reads as follows: The Government shall pay the salary of all teachers in aided schools direct or through the Headmaster of the school.

<sup>13</sup> *id.* Sec. 9(2).

provident fund, insurance and age of retirement are also prescribed by the Government.<sup>14</sup> But there exist no provisions in the Act mandating a scale of pay or other conditions of service for the private unaided school teachers.

### **3.2. The Kerala Education Rules, 1959**

In exercise of the powers given under section 36 of the Kerala Education Act, 1958, the Government of Kerala has framed the Kerala Education Rules for the effective implementation of the provisions of the Act. It is stated in the Rules that for starting a new recognised private unaided school or upgrading an existing one, apart from other documents needed along with the application, the applicant has to make a declaration that he shall not at any time apply to the Government for the conversion of the unaided recognised school into aided school.<sup>15</sup> This provision prevents the conversion of private unaided schools into aided schools. Every educational agency of a recognised unaided school shall also be required to furnish a financial guarantee to the concerned educational officer in the form of cash deposits in the postal or treasury savings bank.<sup>16</sup>

Rule 17 lays down certain conditions that have to be fulfilled by schools for getting the recognition from the Government. The conditions include, teachers must have been appointed and schools must be conducted in accordance with the provisions of the Kerala Education Act, Rules and the directions issued by the Government or the Department from time to time etc.<sup>17</sup> The recognition granted to

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<sup>14</sup> *id.* Sec. 12(1).

<sup>15</sup> Kerala Education Rules 1959, Chapter V, Rule 6 (vii).

<sup>16</sup> *id.* Rule 7(1).

<sup>17</sup> *id.* Rule 17. Rule reads as follows: Recognition shall be granted only to schools which satisfy the following conditions:- (i) The school must have been opened with permission under Rule 11; (ii) Its financial conditions must be satisfactory and no instalment of the financial guarantee specified in Rule 7 must be in default;

(iii) Teachers must have been appointed in accordance with the relevant provisions in the Kerala Education Act and the Rules under it;

(iv) The Educational Agency or the Manager that may be appointed by it must undertake in writing to have the school accounts annually audited by auditors approved by the Director or the auditors authorised by the Government;

a school or standard may be withdrawn, if it does not continue to conform to the conditions of recognition or the salary of any teacher in the school is not being paid to him in accordance with the terms etc.<sup>18</sup> But before withdrawing the same, the management of the school shall be given one month's notice.<sup>19</sup> Kerala Education Rules also have prescribed the scale of pay applicable to Government school teachers to the teachers in private aided schools.<sup>20</sup>

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- (v) The school must be necessary to meet educational needs of the locality; and
  - (vi) It must be conducted in accordance with the provisions of the Kerala Education Act, the Rules under it, and the directions issued by the Government or the Department from time to time.

<sup>18</sup> *id.* Rule 22 (a). Rule reads as follows: The recognition granted to a school or standard may be withdrawn:-

- (i) If it does not continue to conform to the conditions of recognition.
- (ii) If it commits any breach of the provisions of the Act and the Rules; and Departmental Rules and directions issued in conformity with the provisions of the Act and the Rules issued there under;
- (iii) If it fails to maintain a proper standard of efficiency and discipline;
- (iv) If the audited statements of accounts are not produced as required by the Department within six months of the close of the year to which the accounts relate; or if facilities are not given for audit by auditors appointed by the Director or by other auditors authorised by the Government;
- (v) If it has on its staff any teacher who has been declared by the Government or the Department to be unfit to be a teacher or a teacher whose license has been suspended or cancelled;
- (vi) If it is under management of a person who has been declared by the Department to be unfit to be a Manager of a recognised school;
- [(vii) x x x];
- (viii) If the salary of any teacher in the school is not being paid to him in accordance with the terms;
- [(ix) x x x];
- (x) If the management fails without adequate cause to depute the teachers for training as may be required by the Department;
- [(xi) If a person who is convicted of an offence involving moral turpitude continues to be member or an office bearer of the managing body of a school].
- [(xii) if donations, by whatever name called, are obtained, either directly or indirectly, in connection with the admission of a pupil to any standard in the school or the promotion of the pupil to a higher Standard at or before or after such admission or promotion, from any of the parents or other relatives or guardian of the pupil];

<sup>19</sup> *id.* Rule 22 (b).

<sup>20</sup> *id.* Chapter XXVI, Rule 1.

### 3.2.1. Chapter XIV (AA) of the Kerala Education Rules, 1959

The Government of Kerala has introduced certain regulatory measures with respect to unaided school service in 1990 by adding a new chapter into the Kerala Education Rules called 'Conditions of Service of Teaching and Non-Teaching Staff of Recognised Unaided Schools.'<sup>21</sup> The rules embodied in this chapter are:

- (i) (a) Managers of recognised unaided schools shall appoint only such candidates as teaching and non-teaching staff who possess the qualifications prescribed for the respective posts in Government Schools;
- (b) Whenever a vacancy occurs, the manager shall follow the directions issued by the Government from time to time, for ascertaining the availability of qualified hands and for filling up of that vacancy;
- (c) The age limit and the relaxation thereof for appointment as applicable to candidates for appointment under Government Schools/Aided Schools shall *mutatis mutandis* apply to the candidates for appointment as a member of the staff of these schools:

Provided that those teaching and non-teaching staff of recognised unaided schools in service at the commencement of the Kerala Education (Amendment) Rules 1990 and who do not possess the qualifications required under this sub-rule shall be given two years time to acquire such qualifications:

Provided further that the Government may for reasons to be recorded extend the said period for a further period not exceeding two years.

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<sup>21</sup> As per Government Order (P) 55/90/G.Edn. dt. 30/03/1990 published in Gazette dated 30/03/1990.

- (ii) The teaching and non-teaching staff of these schools shall be paid salary every month by cheques drawn on managements' accounts in Nationalised or Scheduled Banks.
- (iii) The services of any member of the teaching or non- teaching staff shall not be terminated by the management without conducting a domestic enquiry and without giving the member an opportunity of being heard in that enquiry.<sup>22</sup>

Ironically, the State Government itself stayed the implementation of this chapter soon after issuing the same due to objections raised by private unaided school managements. The stay has been remaining in operation for nine years without taking any decision on the implementation of the rules. Finally in 1999, the Division Bench of the Kerala High Court quashed the stay order pointing out that there is no justification for not implementing the rules.<sup>23</sup> In this case the Court said that, these rules do not constitute any infringement of the fundamental rights of a recognised unaided institution even if the institution be one established and run by a minority entitled to the protection of Article 30 of the Constitution of India. In view of the High Court judgement, the Government of Kerala issued a new Government order reinstating the provisions of chapter XIV (AA).<sup>24</sup>

How far the provisions of the Kerala Education Rules are applicable to private unaided schools particularly schools belonging to the minority community is a question of great importance and it was considered by the Courts in a number of cases.

Can the management of a recognised private unaided minority school have got the power to appoint a teacher against the provisions in the Kerala Education Rules? Whether such an action of the management is justified under Article 30 (1)

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<sup>22</sup> Kerala Education Rules 1959, Chapter XIV (AA).

<sup>23</sup> *Unaided Teachers Association v. State of Kerala*, O.P. No. 8063/1998 decided by the High Court of Kerala.

<sup>24</sup> G.O. (MS) No.82/2000. G.Edn. dt. 03-03-2000.

of the Constitution of India? These were the questions that arose for consideration before the Kerala High Court in the case of *Sr. Cleta v. State of Kerala*.<sup>25</sup> In this case the Kerala Government issued a notification which stipulating the age of retirement of teachers working in various recognised unaided schools as 60 years. Contrary to the above notification, Sr. Stella, Headmistress of Carmel Girls' High School, continued her service beyond 60 years of age. On the basis of a complaint received in the above matter, the District Educational Officer has given a direction to the manager not to allow the teacher to continue beyond 60 years of age. The manager was also requested to appoint another teacher as Headmaster of the school replacing Sr. Stella since she is more than 60 years of age.

The above direction of the Educational Officer was challenged before the High Court of Kerala by the school authorities and contended that petitioner-school is a minority school as defined under Section 2 (5) of the Kerala Education Act, 1958 and the management of the school has got the right to establish and administer the school by appointing persons of their choice as guaranteed under Article 30 of the Constitution of India. They also submitted that the action of the Government amounts to the violation of fundamental rights guaranteed to the petitioner under Article 30(1) of the Constitution of India. The petitioner also contended that the right guaranteed under Article 30(1) is a right which is absolute and any law or executive direction which infringes that right is void to the extent of infringement.

Respondents, on the other hand contended that the petitioner management is bound by the terms and conditions, laid down by the Government as well as under the Kerala Education Act and Rules for getting recognition to the school. They further contended that, if those conditions are not satisfied the educational authorities are not bound to grant recognition to those schools.

The Court held that, the Kerala Education Act and Rules itself deal with the case of unaided recognised schools. Petitioner is bound by those Rules. The State

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<sup>25</sup> 2001(1) K.L.J. 674.

has no legal obligation to recognise any unaided school whether minority or otherwise if the school has not satisfied the conditions laid down under the Kerala Education Act and Rules. Under such circumstance, the contention that being a minority institution they can appoint teachers of their choice even contrary to the provisions of Kerala Education Act and Rules cannot be sustained. Therefore the Court struck down the appointment of teachers above the age of 60 years, since it is against the Governmental directions.

From the above decision, it is obvious that every school is bound to satisfy the conditions laid down by the Kerala Education Act and Rules for getting recognition to schools. Even a recognised private unaided minority school has no exemption in this matter and therefore, they cannot appoint teachers of their choice contrary to the provisions of the Kerala Education Act and Rules.

Another case relating to the scope of Rule 2 of chapter XIV AA, KER<sup>26</sup> and implementation of the agreement between the management and employees with respect to the payment of salary came up for consideration before the High Court of Kerala in *Sebastian and Others v. State of Kerala*.<sup>27</sup> In this case, the Petitioners are members of teaching and non-teaching staff of a recognised unaided educational institution. School is recognised by the Government in accordance with the statutory provisions contained in the Kerala Education Act and Rules and no grant is paid from the Government. Petitioners contended that they are paid so poorly and they are not getting salary in tune with their counter parts working in Government and aided schools performing the same duties. It is upon the sanction granted by the State that recognised institutions are functioning. In such circumstances, all of them shall be paid equally accepting the principle of equal pay for equal work.

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<sup>26</sup> The teaching and non-teaching staff of these schools shall be paid salary every month by cheques drawn on managements' accounts in Nationalised or Scheduled Banks.

<sup>27</sup> O.P. No. 9342 of 1999, decided on 05.11.2001.

Here the management had agreed to pay all the teachers, the basic salary in the scales of pay fixed by State Government for aided school staff with 50% of the dearness allowance. They are also collecting huge fees from the students. Thus, huge profit is earned by the management. It is submitted by the petitioner that the management is bound to pay salary and dearness allowance to the petitioners as per the agreement. They further contended that, they should ensure payment of salary in accordance with Kerala Education Rules, 1959.<sup>28</sup>

The respondent contended that the writ petition is not maintainable against the manager of an educational institution by highlighting different decisions of the Kerala High Court. Respondent also argued that the contention of pay parity is not maintainable because there is no pay scale stated in the Kerala Educational Rules. The petitioners contended that the writ is maintainable against the unaided school management by quoting the decision of Supreme Court in *K. Krishnamacharyulu v. Sri. Venkateswara Hindu College of Engineering*.<sup>29</sup>

Finally, the High Court held that the decision of the *Krishnamacharyulu's* case has to be appreciated in the light of the statutory provisions contained in Rule 2 of Chapter XIV-AA KER, which ensures payment of salary to the teachers by the

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<sup>28</sup> In order to ensure payment of salary to the teachers of recognised schools, Government has brought in on the statute book the rules in Chapter XIV-AA. Rule 2 thereof provides that, "The teaching and non-teaching staff of these schools shall be paid salary every month by cheques drawn on managements' accounts in Nationalised or Scheduled Banks." This is to ensure the payment of salary at the rate agreed to between the managements of the unaided recognised educational institutions and the members of staff concerned. Rule 2 therefore pre-supposes payment at a particular rate.

<sup>29</sup> A.I.R. 1998 S.C. 295. In this case Court held that: "We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the needs of the education opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of the remedy, provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, 'we hold that the Writ Petition is maintainable. They are entitle to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution."

management of unaided recognised schools. That pre-supposes a rate of pay as agreed to by the management and not as stipulated by the Government. When there is such a statutory provision, necessarily, with respect to non-payment of salary, writ Petition can be maintainable for judicial review, and the action or inaction on the part of the authority invested with power to impart education. It is in that perspective the decision of the Supreme Court in *Krishnamacharyulu's* case has to be viewed. Viewed in that angle, necessarily the management is performing a duty having a public element as held by the Supreme Court. Petitioner can, if there is flagrant violation of Rule 2 Chapter XIV-AA KER, seek a direction for enforcement of that rule in a petition under Article 226 of the Constitution of India. The Court further directed the management to pay salary to the members of the teaching and non-teaching staff at the rate as agreed to in the agreement between them with arrears wherever it arises.

Thus, it is clear that the provisions of Kerala Education Act and Rules are applicable to private unaided schools in the State. Private aided school teachers are well considered by the Act and Rules. On the other hand, there are no specific norms regarding the salary and service conditions of private unaided school teachers. The lone proviso that relates to their service conditions is chapter XIVAA. In this chapter also, only the basic conditions of service are prescribed. The right to give and withdraw recognition to schools are exercised by the Government in accordance with the respective provisions. The non-payment of salary of teachers in accordance with the terms is prescribed as one of the conditions for the withdrawal of recognition granted to a school both aided and unaided.<sup>30</sup> Hence, the Government has the power to issue orders stipulating the rates of pay for the teaching and non-teaching staff in the private unaided schools. But there are no definite provisions in the Kerala Education Act and Rules which provide the scale of pay, provident fund, gratuity, insurance, pension, maternity benefits, leave etc., for private unaided school teachers.

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<sup>30</sup> *supra* n.18.

### **3.3. Affiliation Bye-laws of Various School Boards**

Majority of private unaided schools in Kerala are following the syllabus of CBSE and CISCE. The service conditions of teachers and other employees working in such schools are governed by the bye-laws of respective boards. Hence, it is necessary to look into what is stated in those affiliation bye-laws regarding the salary and other service benefits of teachers working in such schools.

#### **3.3.1. Central Board of Secondary Education**

The Affiliation Bye-laws of Central Board of Secondary Education<sup>31</sup> requires that every School within India or outside seeking provisional affiliation with the Board must have formal prior recognition of the concerned State Government.<sup>32</sup> It also necessitates the payment of Government school teachers' salary to the teachers working in CBSE schools in India. Section 3.3 (v) of chapter 2 (Norms for affiliation) of the said bye-law clearly state this fact and it reads as follows:

The schools in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Government of India or as per the conditions laid down by the State Government. The schools outside India should pay salaries not lower than those of the teachers in Government schools in that country or not less than the salaries and foreign allowances payable to Kendriya Vidyalaya School teachers if officially posted to that country. A certificate to this effect should be obtained from the Indian Diplomatic Mission.<sup>33</sup>

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<sup>31</sup> Herein after referred to as CBSE.

<sup>32</sup> CBSE, Affiliation Bye-laws, Chapter 2, Rule 3(3) (i).

<sup>33</sup> *id.* Rule 3(3) (v).

Apart from these, affiliation bye-laws made it obligatory on the part of school management to disburse the salary through account payee cheques drawn on a scheduled bank, from the date of the first appointment of the teachers on probation.<sup>34</sup> It also mandates the requirement of well-defined conditions of service,<sup>35</sup> provident fund, gratuity, pension and other welfare measures to the CBSE teachers as per norms of the State Government or the Central Government.<sup>36</sup> The Pupil – Teacher ratio in CBSE schools is 1:30 and the optimum number of students prescribed in a class are 40.<sup>37</sup> The maximum workload of a high school or higher secondary school teacher is limited to 75% of the total periods in a week.<sup>38</sup>

Every school affiliated with the Board is required to formulate service rules for its employees in accordance with the State Education Act or follow the service rules prescribed in the affiliation bye-laws.<sup>39</sup> The important service rules stated in the affiliation bye-laws are as follows:

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<sup>34</sup> *id.* Rule 10 (2).

<sup>35</sup> *id.* Rule 10 (3). The Section reads as follows: The school should have well defined conditions of service as per norms of State / Union Territory Government and should issue letters of appointment to the employees at the time of joining service and should also sign a contract of service. The contract should be similar to the format given in Appendix III in these bye-laws or in the form prescribed by the State/U.T. Government, in case the act of the State/U.T. Provides so. The period of probation should normally be one year extendable for another year. In case the management is not satisfied with the performance, the same should be brought to the notice of the employees concerned in writing. Probation should not be extended beyond two years and the Management should arrive at a decision to confirm the teacher or not before the end of the probationary period.

<sup>36</sup> *id.* Rule 10 (4). The Rule reads as follows: The school should have contributory provident fund and gratuity or pension, gratuity and general provident fund as retirement benefits. These schemes should be as per Government rules of the State/Centre. In addition, it will also consider providing other welfare measures like free children education, leave travel concession, medical benefits, leave encashment etc.

<sup>37</sup> *id.* Rule 10 (6).

<sup>38</sup> *id.* Rule 10 (5).

<sup>39</sup> *id.* Chapter VII, Rule 24.

- (i) Working days and holidays of CBSE schools are the same as that applicable to State Government schools and working hours are stipulated by the Principal of the school from time to time.<sup>40</sup>
- (ii) The retirement age of teachers is 60 and they are entitled to avail all those leave as are permissible to their counterparts in the Government service.<sup>41</sup>
- (iii) Teachers are bound to follow the code of conduct framed under the affiliation bye-laws.<sup>42</sup>
- (iv) Managements are required to adhere the principles of natural justice in case of inflicting any disciplinary action against the employees including teachers working in CBSE schools.<sup>43</sup>

Chapter V of the affiliation bye-laws empowers the Board to withdraw the recognition granted provisionally to a school, if there is a default or delay on the part of the school management to pay salaries and allowances to teachers and non-teaching staff at par with their counterparts in the State Government service or the school is functioning without approved terms and conditions of service etc.<sup>44</sup>

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<sup>40</sup> *id.* Rule 31.

<sup>41</sup> *id.* Rule 40.

<sup>42</sup> *id.* Rule 42.

<sup>43</sup> *id.* Rule 46 & 47.

<sup>44</sup> *id.* Chapter V, Rule 17 (2) (a). The Rule reads as follows: Proceedings for withdrawal of affiliation may be initiated by the Board in case the schools are found guilty of following after reasonable notices :

- i) Not paying salaries and allowances to teachers and other employees, at least at par with those obtaining in State/Union Territory institutions; default or delay in payment of salaries and allowances.
- ii) Financial irregularities including channelling of funds for purposes other than those provided for in these bye-laws.
- iii) Engagement in activities prejudicial to the interest of the State, inculcating or promoting feelings of disloyalty or disaffection against the Government established by law.
- iv) Encouraging or tolerating disharmony/hatred between different sections of the Society.
- v) Non-fulfillments of conditions laid down regarding deficiencies to be removed, even after due notice.

### 3.3.2. Council for the Indian School Certificate Examinations

The affiliation rules of Council for the Indian School Certificate Examinations<sup>45</sup> also have the same provisions as stated in the CBSE affiliation bye-laws with respect to the salary and other service benefits of teachers. It requires that every school has to obtain a no objection certificate (NOC) from the State Government concerned for affiliation of the school to the Council.<sup>46</sup> The affiliation rules oblige the management to issue a written appointment letter to every employee of the school.<sup>47</sup>

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- vi) Disregard of rules and conditions of affiliation even after receiving warning letters.
  - vii) Hindrance in the smooth functioning of the school on account of dispute between rivalries within the school management.
  - viii) Absence of approved terms and conditions of service, or frequent dismissal of teachers from service.
  - ix) Poor academic performance of the school for three consecutive years in not being able to keep at least 50 per cent of passes of the general pass percentage.
  - x) Non-availability of proper equipment/space/staff for teaching a particular subject.
  - xi) Any other misconduct in connection with the admissions/examinations/any other area which in the opinion of the Board warrants immediate disaffiliation of the school.
  - xii) In case of transfer of property/sale of school by one Society/Trust/ # Company Registered under section 25 of the Companies Act, 1956/Management to another Society/Trust/# Company Registered under section 25 of the Companies Act, 1956/Management through agreement/Sale deed.
  - (xiii) Any violation of the norms that have been prescribed by the Hon'ble Supreme Court of India in the writ petition (Criminal) nos. 666-70 of 1992 Vishaka and others V /s State of Rajasthan and others delivered on 13-8-1997 for protection of women from sexual harassment at the work place if established would attract strict action against the institution which may even lead to disaffiliation.
  - (xiv) Violation of provision of sub-clause 3.3 (f) of Chapter II.
  - (xv) Violation of Item 20.2 (vii) of Chapter VI.

<sup>45</sup> Hereinafter referred to as CISCE.

<sup>46</sup> Council for the Indian School Certificate Examinations, Rules for Affiliation, Chapter I, Rule I (1) (a) (i).

<sup>47</sup> *id.* Rule I (5) (b). The appointment letter shall contain (i) the terms and conditions of service of the employee including the designation, scale of pay and other allowances, (ii) the different categories of leave of absence, age of retirement, provident fund, pension, gratuity, medical and other benefits to which the employee shall be entitled; (iii) the penalties which could be imposed on the employee for the violation of any code of conduct or the service rules or the breach of any of the terms of the contract entered into by him/her etc.

According to the CISCE rules, salaries and other admissible allowances to the staff working there should be at par with the corresponding categories of employees in the State Government schools or as per conditions prescribed by the Government of India or as per the conditions laid down by the State Government in the NOC.<sup>48</sup> The schools outside India should pay salaries not lower than that of the teachers in Government schools in that Country.<sup>49</sup> The maximum number of students<sup>50</sup> permitted in a class is 45 and the workload of a teacher is two third of the total number of periods on the time table.<sup>51</sup>

The Council has the power to withdraw recognition of schools, if there is any disregard on the part of schools to follow the rules and conditions on the basis of which affiliation has been granted including the non-payment of salary and other allowances to the staff at par with the respective employees in the Government service.<sup>52</sup>

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<sup>48</sup> *id.* Rule I (5) (b) (ii).

<sup>49</sup> *id.* Rule I (5) (b) (iii).

<sup>50</sup> *id.* Chapter 4, Rule 3.

<sup>51</sup> *id.* Chapter 3, Rule 13 (a).

<sup>52</sup> *id.* Chapter 1, Rule VII. The Rule reads as follows:

1. The Council shall have the power to withdraw the affiliation of a school or temporarily suspend affiliation, if the Council is satisfied that the school concerned is not fit to continue as an affiliated School.
2. The chief executive and secretary shall initiate de-affiliation proceedings against a School for all or any of the following reasons:
  - (a) Non-fulfilment of assurances given by the School with regard to deficiencies to be removed within the specified period even after having been given due notice.
  - (b) If it is reported that the school is indulging in any kind of malpractice.
  - (c) Failure on the part of the School to conform to the requirements of the Council as laid down in the regulations and syllabuses or for not abiding by any other decision of the Council.
  - (d) Failure on the part of school to fulfil the requirements laid down by the Council for proper arrangements and fair conduct of its examinations.
  - (e) Disregard on the part of the school of the rules and conditions on the basis of which affiliation has been granted to the school after having been given due notice by the chief executive and secretary.
  - (f) If the school does not carry out the notified decisions of the Council to the satisfaction of the chief executive and secretary.
  - (g) On non-implementation of a directive issued by the office of the Council.

The affiliation bye-laws of CBSE and CISCE clearly state the requirement of providing salary and other service benefits to teachers working in these schools at par with their counterparts in the Government schools. It also authorises the respective boards to withdraw affiliation granted to a school, if it is not paid salary and other allowances to employees at the rate not less than that paid to their counterparts in the Government schools.

Whether a private unaided school teacher can claim pay parity with a Government school teacher is an important question and a number of cases came for consideration before the Apex Court involving this question. Can a teacher from a private educational institution claim equal wages as are payable to a teacher of the same status doing the same job in a Government educational institution? The Supreme Court of India considered this question in *K. Krishnamacharyulu v. Venkateshwara Hindu College of Engineering*<sup>53</sup> and held as follows:

It is not in dispute that executive instructions issued by the Government have given private teachers the right to claim the pay scales so as to be on par with the Government employees. The question is: when there is no statutory rules issued in that behalf and the institution, at the relevant time, being not in receipt of any grant-in-aid; whether the writ petition under Article 226 of the Constitution is maintainable? In view

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- (h) On the consideration that the school is not providing amenities and facilities as prescribed by the Council from time to time.
  - (i) If it is established that the school has in contravention of the persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 denied admission to a child because of disability.
  - (j) Non-compliance of the applicable laws, rules, regulations, byelaws, directives and guidelines of the State/Central Government and Courts in respect of all matters concerning the administration and running of the school.
  - (k) Financial irregularities, engaging in activities prejudicial to the interest of the Council and/or any other misconduct relating to admissions, examinations, etc.
  - (l) If it is established that any school to which the provisions of The Right of Children to Free and Compulsory Education Act, 2009 are attracted has contravened the same.
  - (m) Any other matter which the Council considers sufficiently serious for delisting / de-affiliation.

<sup>53</sup> *supra* n. 29.

of the long line of decisions holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who teach education, gets an element of public interest in the performance of their duties. As a consequence, the element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence, are they also not entitled to the parity of pay scales as per executive instruction of the Government? ...The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. ... When an element of public interest is created and the institution is catering to that element, the teacher, the arms of the institution is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution.<sup>54</sup>

The judgement in this case is a milestone as far as the demand of private school teachers seeking implementation pay parity. Here the Court pointed out that even in the absence of statutory rules; teachers of private educational institutions are entitled to parity of pay scale as per Constitutional norms and executive instructions issued by the Government, since the teachers have an element of public interest in the performance of their duties.

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<sup>54</sup> *id.* at p.296.

In *Recognised School Teachers Union v. State of Kerala*,<sup>55</sup> the union representing teachers of the recognised unaided schools in the state of Kerala had filed a petition before the Kerala High Court stating that their salary is too low and if anybody dared to question the authorities, he is threatened with expulsion. They further stated that, while making a hike in the rate of a fee of students, the representatives of the management assured the Government that they are prepared to allow near parity in salary to the employees. But the management did not comply with the assurance. They also demanded the implementation of the order dated 30-09-1999 by which the Government fixed the minimum salary payable to the teachers. Therefore, the petitioners prayed for an immediate action to be taken if the salary and other privileges have not been given.

In this case, the petitioners relied on the decision of the Apex court in *K. Krishnamacharyulu and Others v. Sri.Venkateswara Hindu College of Engineering and Another*<sup>56</sup> and submitted that there should not be any difference between the amount paid to the teachers in recognised schools and the Government schools, that they are doing the same kind of work. Petitioners also invited the attention of the Court to Rule 17 (6) of Chapter V of Kerala Education Rules and contended that it is open to the Government to issue directions to recognised schools.

Finally, the Court disposed of the writ petition directing the Government of Kerala to take a decision on the demands of the recognised unaided school teachers union after consultation with the petitioners and the representatives of the managers of the un-aided recognised schools within a period of four months.

Again, in *Mrs. Satimbla Sharma and Others. v. St. Paul's Senior Secondary School and Others*<sup>57</sup> the Supreme Court of India considered the issue of pay parity of school teachers. Here, a petition was filed by teachers of a private unaided minority school in Himachal Pradesh seeking pay parity with Government school

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<sup>55</sup> O.P. No. 23625/2001.

<sup>56</sup> *supra* n. 29.

<sup>57</sup> A.I.R. 2011 S.C. 2926.

teachers. It was an appeal against the judgment of the Himachal Pradesh High Court.

The Respondent School was initially established as a mission school. The school received grant in aid from British Indian Government and thereafter from the Government of India till 1950. From 1951 to 1966, the school received grant-in-aid from the Government of Punjab. When the State of Himachal Pradesh was formed, the school received grant-in-aid from the Government of Himachal Pradesh from 1967 to 1976. From 1977-1978 onwards the school had not been receiving any grant-in-aid from the Government of Himachal Pradesh and the teachers of the school were being paid less than the teachers of Government schools and Government aided schools in the State of Himachal Pradesh.

Dissatisfied with the salary and allowances, some of the teachers of the School filed a Writ Petition in the High Court of Himachal Pradesh for a direction to pay the salary and allowances at par with the teachers of Government schools and Government-aided schools. The single judge of the High Court of Himachal Pradesh allowed the writ petition and directed the respondents to pay to the writ petitioners salary and allowances at par with their counter-parts working in the Government schools. Aggrieved by the judgment of the learned single judge, the respondents filed an appeal before the Division Bench of the High Court and the Court set aside the judgment of the single judge. Hence, this appeal was filed before the Supreme Court of India.

The appellants submitted that they are doing the same work as done by the teachers of Government schools and Government aided schools and yet are being paid lower than the teachers of Government schools and Government aided schools. Appellants further submitted that if the pay and allowances of the teachers of private minority schools such as the respondent are not made the same as that of the pay and allowances of the teachers of the Government schools and Government aided schools, the teachers of private minority schools will suffer discrimination

and their right to equal pay for equal work under Article 39(d) read with Article 14 of the Constitution will be violated.

Appellants relied on the decision of the Supreme Court in *Frank Anthony Public School Employees' Association v. Union of India and Others*.<sup>58</sup> Where Section 12 of the Delhi School Education Act which made the provisions of Section 10 providing for parity of scales of pay and allowances of the employees of the recognised private schools with that of the schools run by the appropriate authority inapplicable to unaided minority institutions as discriminatory.

Appellants again submitted that in *State of H.P. v. H.P. State Recognised and Aided Schools Managing Committees and Others*,<sup>59</sup> the Supreme Court relying on *Mohini Jain*<sup>60</sup> case held that the right to education is a fundamental right guaranteed under Part-III read with Part-IV of the Constitution of India. Since the right to education is a fundamental right, school education has a public element in it and the Court can always issue a *mandamus* to enforce a public duty in matters of education.

Appellants pointed out that in *K. Krishnamacharyulu and Others. v. Sri Venkateswara Hindu College of Engineering and Another*, the employees of an unaided private educational institution claimed parity in pay-scales with the employees of Government institutions and Court held that the employees had an enforceable right and there was an element of public interest in such a claim and the teachers of a private unaided institution are entitled to avail the remedy provided under Article 226 of the Constitution and they cannot be denied the same benefits which were available to other teachers working in Government institutions.

The appellants further submitted that the School is provisionally affiliated to the Council for the Indian School Certificate Examinations and the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in Clause (5) (b) that the salary and allowances

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<sup>58</sup> A.I.R. 1987 S.C.311.

<sup>59</sup> (1995) 4 S.C.C. 507.

<sup>60</sup> A.I.R. 1992 S.C. 1858.

and other benefits of the staff of the school must be comparable to that prescribed by the State Department of Education.

Then the appellants referred to the report of the Education Commission 1964-66 appointed by the Ministry of Education, Government of India, recommending that the scales of pay of school teachers belonging to the same category but working under different managements such as government, local bodies or private managements should be the same and this principle of parity should be adopted forthwith.

Besides, the appellants pointed out that Sub-section (3) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. They referred to Section 38(2) (1) of the 2009 Act which provides that the appropriate Government may, by notification, prescribe the salary and allowances payable to, and the terms and conditions of service of, a teacher under Sub-section (3) of Section 23. Further submitted that the appropriate Government as defined in Section 2(a) of the 2009 Act is the State Government. Therefore, the State Government can issue a notification prescribing the salary and allowances payable to, and the terms and conditions of service of, teacher under Sub-section (3) of Section 23 of the 2009 Act.

The Respondents, on the other hand, supported the impugned judgement of the Division Bench of the High Court. They further pointed out that if the school is made to pay to its teachers the same salary and allowances of teachers of Government schools and Government aided schools, it will have to increase the school fees and this would affect the students whose parents cannot afford higher school fees.

Finally, the Supreme Court said, regarding the decision of *Frank Anthony Public School Employees Association v. Union of India and Others*<sup>61</sup> relied on by

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<sup>61</sup> *supra* n.58.

the appellants, that the scales of pay and other terms and conditions of service of teachers and other employees of the Frank Anthony Public School, New Delhi, which was a private unaided minority institution, compared very unfavourably with those of their counterparts of the Delhi Administration Schools and the Frank Anthony Public School Employees' Association sought equalisation of their pay-scales and conditions of service with those of teachers and employees of Government schools. Sections 8 to 11 of the Delhi School Education Act dealt with the terms and conditions of service of employees of recognised private schools. Section 10 of the Delhi School Education Act provided that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of the recognised private schools shall not be less than those of the corresponding status in schools run by the appropriate authority. However, Section 12 of the Delhi School Education Act provided that the provisions of Sections 8 to 11 were not applicable to unaided minority institutions.

The case of teachers of Frank Anthony Public School was that if Sections 8 to 11 were made applicable to them, they would at least be as well off as teachers and other employees of Government schools. The Frank Anthony Public School Employees' Association, therefore, challenged Section 12 of the Delhi School Education Act as discriminatory and violative of Article 14 of the Constitution. The Supreme Court held that Section 12 of the Delhi School Education Act insofar as it makes the provisions of Sections 8 to 11 inapplicable to unaided minority schools is discriminatory. This was thus a case in which the employees of unaided minority institutions were not given the benefits available to employees of other private institutions under Sections 8, 9, 10 and 11 of the Delhi School Education Act only on the ground that unaided minority institutions enjoy autonomy of administration under Article 30(1) of the Constitution. The Court held that this could not be a rational basis for differentiation of service conditions, pay and other service benefits between employees of unaided minority institutions and the employees of

other private schools and the Court declared Section 12 as discriminatory and violative of Article 14 of the Constitution.

But the Court further observed that, this decision in the case of *Frank Anthony Public School Employees' Association v. Union of India and Others*<sup>62</sup> does not assist the appellants in any manner because the guarantee of equality is not available against an unaided private minority school.

The Court further said that:

It could not issue a *mandamus* to a private unaided school to pay the salary and allowances equal to the salary and allowances payable to teachers of Government schools or Government aided schools. This is because the salary and allowances of teachers of a private unaided school is a matter of contract between the school and the teacher and is not within the domain of public law.<sup>63</sup>

Further, the Court relied on *Sushmita Basu and Others. v. Ballygunge Siksha Samity and Others*.<sup>64</sup> The teachers of a recognised private school, known as Ballygunge Siksha Sadan in Calcutta, filed a writ petition praying for the issuance of a writ of *mandamus* directing the authorities of the school to fix the salary of teaching and non-teaching staff of the school. Further, they prayed to remove all anomalies in the scales of pay as recommended by the third pay commission as extended to Government aided schools and Government schools. The Court held that in the absence of statutory provision no such direction can be issued by the High Court under Article 226 of the Constitution. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid teachers of Government /Aided schools, then a writ of *mandamus* to the school could be issued to enforce such statutory duty.

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<sup>62</sup> *ibid.*

<sup>63</sup> *supra* n. 57, p. 2930.

<sup>64</sup> (2006) 7 S.C.C. 680.

Here the Supreme Court observed that:

In the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of Government schools and, therefore, a mandamus could not be issued to pay to the teachers of private recognized unaided schools the same salary and allowances as were payable to Government institutions.<sup>65</sup>

With respect to the decision of *K. Krishnamacharyulu and Others. v. Sri Venkateswara Hindu College of Engineering and Another* relied upon by the learned Counsel for the appellants, the Court held that even though there were no statutory rules, the laboratory assistants as non-teaching staff of private college were entitled to the parity of the pay-scales as per the executive instructions of the Government and the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on par with Government employees.

The Court held that in the present case, there are no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of Government schools or Government aided schools.

The Court further added that it cannot issue a *mandamus* to respondents on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in Clause (5) (b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law.

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<sup>65</sup> *supra* n.57, p. 2931.

Similarly, the Court cannot issue a *mandamus* to give effect to the recommendations of the report of Education Commission 1964-66 that the scales of pay of school teachers belonging to the same category but working under different managements such as Government, local bodies or private managements should be the same, unless such recommendations are incorporated in an executive instruction or a statutory provision.

Finally, the Supreme Court held that:

The Division Bench of the High Court has rightly held in the impugned judgment that the teachers of private unaided minority schools had no right to claim salary equal to that of their counter parts working in Government schools and Government aided schools. The teachers of Government schools are paid out of the Government funds and the teachers of Government aided schools are paid mostly out of the Government funds, whereas the teachers of private unaided minority schools are paid out of the fees and other resources of the private schools... moreover, unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution and are not State within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority schools. Similarly, such unaided private schools are not State within the meaning of Article 36 read with Article 12 of the Constitution and as the obligation to ensure equal pay for equal work in Article 39(d) is on the State, a private unaided minority school is not under any duty to ensure equal pay for equal work.<sup>66</sup>

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<sup>66</sup> *id.* at p. 2929.

The Supreme Court has also made the following observation in this case:

We, however, find that the 2009 Act has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and Sub-section (3) of Section 23 of the 2009 Act provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make rules and Section 38 (2) (1) of the 2009 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under subsection (3) of Section 23. Section 2(a) defines “appropriate Government” as the State Government within whose territory the school is established. The State of Himachal Pradesh, in this appeal, is thus empowered to make rules under Sub-section (3) of Section 23 read with Section 38(2) (1) of the 2009 Act prescribing the salary and allowances payable to, and the terms and conditions of service of teachers. Article 39(d) of the Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. Respondent State should therefore consider making rules under Section 23 read with Section 38(2) (1) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible.<sup>67</sup>

### **3.4. Right of Children to Free and Compulsory Education Act, 2009**

The main object of the Act is to provide for free and compulsory education to all children within the age group of six to fourteen years. It came in to force on 26<sup>th</sup> August, 2009. The Act is applicable to all schools including the private

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<sup>67</sup> *id.* at p. 2931.

unaided schools.<sup>68</sup> The Act requires that teachers can be appointed only if they possess the necessary qualifications as prescribed by an academic authority authorised by the Central Government in this behalf.<sup>69</sup>

According to the Act, the salary and the allowances payable to, and the terms and conditions of service of teachers shall be such as may be prescribed by rules made under this Act.<sup>70</sup> The Central Rules drafted for the implementation of the Act requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund, and other prescribed benefits of teachers shall be at par with similar qualification, work and experience.<sup>71</sup> Besides the Rules framed by the Government of Kerala under the Act also state that the salary, allowances and terms of conditions of service of unaided school teachers shall be in accordance with the regulations and guidelines regarding service conditions, salary and allowances issued by the Government from time to time.<sup>72</sup>

Thus, Rules framed under the Act underlined the authority of the appropriate Government to prescribe the salary and other allowances of private unaided school teachers. But the applicability of the Act to unaided schools was questioned before the Supreme Court in a number of cases. Whether The Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and how far the provisions of the Act are applicable to unaided schools were the main issues considered by the Court in *Society for Un-aided Private Schools of Rajasthan v. Union of India and Another*.<sup>73</sup> The Court, in this case, held that:

Article 21A of the Constitution casted an obligation on State to provide free and compulsory education to children of age of 6 to 14 years and not on unaided non-minority and minority educational institutions.

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<sup>68</sup> Right of Children to Free and Compulsory Education Act 2009, Sec. 2 (n).

<sup>69</sup> *id.* Sec. 23(1).

<sup>70</sup> *id.* Sec. 23(3).

<sup>71</sup> Right of Children to Free and Compulsory Education Rules 2010, Rule 20 (3).

<sup>72</sup> The Kerala Right of Children to Free and Compulsory Education Rules 2011, Rule 17 (1).

<sup>73</sup> A.I.R. 2012 S.C. 3445.

Rights of children to free and compulsory education guaranteed under Article 21A of Constitution and Right to Education Act could be enforced against schools defined under Section 2(n) of Act, except unaided minority not receiving any kind of aid or grants to meet their expenses from appropriate governments or local authorities.<sup>74</sup>

The Court further held that:

Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and should apply to following: (i) a school established, owned or controlled by appropriate Government or a local authority; (ii) an aided school including aided minority schools receiving aid or grants to meet whole or part of its expenses from appropriate Government or local authority; (iii) a school belonging to specified category; and (iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from appropriate Government or local authority.<sup>75</sup>

Finally, the Court held that the 2009 Act and in particular Sections 12 (1) (c) and 18 (3) of Act have infringed the fundamental freedom guaranteed to unaided minority schools under Article 30(1) of the Constitution and consequently declared that the Act should not apply to such schools.

Again the Supreme Court held in *Pramati Educational and Cultural Trust and Others v. Union of India and Others*<sup>76</sup> that, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. Therefore, if the Right of Children to Free and Compulsory Education Act, 2009 is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Hence, the 2009 Act insofar it is made

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<sup>74</sup> *id.* at p.3510.

<sup>75</sup> *id.* at p.3467.

<sup>76</sup> A.I.R. 2014 S.C. 2114.

applicable to minority schools, aided or unaided, referred in clause (1) of Article 30 of the Constitution is *ultra vires* the Constitution.

The question that came for consideration before the High Court of Kerala in *Chithra C.R. v. State of Kerala and Others*<sup>77</sup> was whether the rights of teachers in private unaided educational institutions can be enforced by the Court in the exercise of its powers under Article 226 of the Constitution of India?. After hearing the parties, the Court said that it is clear that the recognition of unaided schools and the terms and conditions of service of teachers appointed thereto are now specifically matters which are governed by Right to Education Act and Kerala Education Act and modulated by rules formulated there under. In the light of the above provisions, Court held that writs can be issued to enforce the service conditions of teachers of recognised unaided schools.

### **3.5. Government Interventions in Unaided Schools**

It is to be noted that, certain constructive measures have been taken by the Government of Kerala over the years for the benefit of employees in the recognised unaided schools. Minimum salary fixation, the appointment of committees to study the issues of teachers and non-teaching staffs in unaided schools, guidelines for granting the no objection certificate to start CBSE, ICSE schools etc. are some of the positive initiatives from the part of the Government.

#### **3.5.1. Minimum Salary Fixation of 1999**

Owing to the demand from various unaided school teachers and non-teaching staff organisations, the Government had appointed a Committee<sup>78</sup> headed by the Director of Public Instructions, Government of Kerala for fixing the minimum monthly salary of teaching and non-teaching staff of recognised unaided schools in 1996. On the basis of the report of the Committee, Government issued orders fixing the minimum salary of teaching and non-teaching staff of those

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<sup>77</sup> 2017(3) K.H.C. 687.

<sup>78</sup> G.O. (MS) No.07/1996 G.Edn. dt. 02-01-1996.

schools, in 1999.<sup>79</sup> This was done in accordance with the various provisions of the Kerala Education Rules that empowers the Government to issue orders prescribing the rates of pay to be paid in the case of teaching and non-teaching staff in such institutions.<sup>80</sup> This order insists the managers of the recognised unaided schools to pay salary to their employees not less than the monthly rate stipulated therein.

However, the teaching and non-teaching staffs of the Government and private aided schools are enjoying a much better position than their counterparts in the private unaided schools and the following table illustrates the disparity.

**Table 3.1.**

<b>Designation</b>	<b>Minimum Monthly Rate of Pay<sup>81</sup> (Unaided)</b>	<b>Monthly Salary<sup>82</sup> (Govt./ Aided) (Pay + DA)</b>
Head Master	3200	8811
High School Assistant	3000	6072
Primary Teacher	2500	5280
Clerk	2000	4026
Peon / Class IV Employees	1800	3445

It is clear from the above table that the minimum monthly salary fixed by the Government in 1999 for the teaching and non-teaching staff of recognised unaided schools in Kerala was very low. It was less than half of the salary of their

<sup>79</sup> G.O. (MS) No.244/99 G.Edn. dt. 03-09-1999.

<sup>80</sup> Rule 22(a) (viii) Chapter V, KER reads as follows: The recognition granted to a school may be withdrawn if the salary of any teacher in the school is not being paid to him / her in accordance with the terms. Under Rule 23, Chapter V, KER, the recognition granted to a school is liable to be cancelled: "If at any time it is found that a private school is not functioning as an efficient unit in the educational system of the state or has fallen into mismanagement or if the authorities of the school have been *guilty of any serious contravention of the Rules*, the recognition and the sanction accorded for the opening of the school may be withdrawn and the school closed down after reasonable notice."

<sup>81</sup> *supra* n.79.

<sup>82</sup> G.O. (P) 3000/98 Fin. dt. 25.11.1998. (With effect from 01.03.1997).

counterparts in the Government and aided schools. With such a minimal income, the question as to how can they lead a decent life coping up with the living cost conditions remained unanswered. Thus the attempt made by the Government did not yield the intended results.

### **3.5.2. Appointment of Two Member Committee**

After several years, in 2007 another significant development that took place in connection with the pay and service conditions in unaided schools was the appointment of a two member Committee<sup>83</sup> to study and report the grievances of unaided school teachers and non-teaching staff. This Committee was appointed in response to the representation submitted by a School Teachers Union from the unaided sector<sup>84</sup> seeking redressal of the following grievances:

- (i) Implement a pay scale instead of a minimum salary.
- (ii) Allow maternity leave with pay to female teachers.
- (iii) Grant the benefits enjoyed by aided school teachers attending an in-training session conducted by Education Department either by Government or by collecting funds from the respective managements.
- (iv) Make the service conditions of Government and aided school teachers applicable to unaided school teachers also.
- (v) Count 50% of the unaided school service along with Government and aided school service in the case of teachers getting a job in Government and aided sector, as qualifying service for seniority and pension.

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<sup>83</sup> As per G.O. (MS) No. 117/2007/G. Edn. (J) dt. 22-06-2007.

<sup>84</sup> Recognised School Teachers Union, Mannuthy, Thrissur, dt.02-06-2005.

The Committee submitted its report to Government in 2008. The recommendations<sup>85</sup> of the Committee with regard to the major demands made by the School Teachers Union are as follows:-

- (i) The scales of pay as applicable to each designation of the teaching and the non-teaching staff in Government and aided schools may be extended to the respective designations of teaching and non-teaching staff in the recognised unaided schools including higher secondary schools in Kerala.
- (ii) The same package of maternity leave benefits as allowed to Government and aided school teachers, be extended to teachers of recognised unaided schools.
- (iii) The recognised unaided school teachers attending training sessions should not be subjected to any discrimination and that they should be treated the same way as Government and aided school teachers in matters concerning distribution of teaching materials. The State Government may decide to grant them daily allowances.

The then Director of Public Instructions considered the report and accepted almost all of its recommendations in principle. He expressed his opinion through a letter to the Government Secretary to the General Education Department, Government of Kerala on 20-02-2009.<sup>86</sup> But the Government has not taken any action on the report and the recommendations. Meanwhile, Ms. Lissy P. Thottan and others approached the Kerala High Court through a writ petition<sup>87</sup> praying for the immediate implementation of the report. On 30-03-2009, the High Court of Kerala directed the Government to consider the report submitted by the two member committee and take a decision in the matter after notice to the service organisations representing the teaching and non-teaching staff of recognised unaided schools and also the representatives of the management.

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<sup>85</sup> A.A. Baby and K.G. Sukumara Pillai, *A Report on Recognised Unaided Schools in Kerala*, committee appointed by the Government of Kerala, 2008, p.78.

<sup>86</sup> H2/44601/2006/DPI dt. 20-02-2009.

<sup>87</sup> W.P. (C) No.2287/09.

Even after several rounds of discussion, Government could not reach in a unanimous opinion especially in the matter of salary, service conditions etc. Thus, the Government has examined the report again and came to a conclusion that all the recommendations cannot be accepted, except the recommendation with respect to the revision of salary of teaching and non-teaching staff of recognised unaided schools. Finally, the Government decided to revise the salary of teaching and non-teaching staff of recognised unaided schools with effect from 01-01-2011.<sup>88</sup>

### 3.5.3. Salary Revision of 2011

The following table illustrates the minimum monthly salary fixed by the Government of Kerala in 2011 for the teaching and non-teaching staff of recognised unaided schools.

**Table 3.2.**

<b>Designation</b>	<b>Minimum Monthly Rate of Pay<sup>89</sup></b>
Head Master	7000
High School Assistant	6000
Primary Teacher	5000
Clerk	4000
Peon / Class IV Employees	3500

In the mean time, the salary of Government and private aided school teachers and non-teaching staff is revised in 2009 and again in 2014. The revised minimum salary as per the above pay revisions as well as the disparity between Government and unaided school employees pertaining to their salary are displayed in table 3.3.

<sup>88</sup> G.O (MS) No. 36/11/G. Edn. dt. 14-02-2011.

<sup>89</sup> *ibid.*

**Table 3.3.**

Designation	Monthly Salary (Govt. / Aided)		Minimum Monthly Rate of Pay (Unaided)
	2009 Pay Revision <sup>90</sup>	2014 Pay Revision <sup>91</sup>	Salary Revision 2011 <sup>92</sup>
Head Master	20740	39500	7000
High School Assistant	15380	29200	6000
Primary Teacher	13210	25200	5000
Clerk	9940	19000	4000
Peon / Class IV Employees	8500	16500	3500

Unfortunately, the minimum salary fixed by the Government for the teaching and non-teaching staff of recognised unaided schools remained inadequate to meet their daily needs. It is believed that the Government's decision in this matter was not in consonance with the expectation of the poor employees of recognised unaided schools but one heavily inclined towards the collective strength of private school managements. At the same time, their counterparts in the Government and aided schools are drawing a much better salary which we can see from the comparative table given above.

#### **3.5.4. Guidelines for Issuing No Objection Certificate to CBSE / ICSE Schools**

In 2011, the Government of Kerala introduced new guidelines for issuing no objection certificate to schools for getting CBSE/ICSE affiliation.<sup>93</sup> The said guidelines clearly speak about the service conditions of employees working there. It requires that the school shall appoint only qualified and eligible staff and must

<sup>90</sup> 2009 Pay Revision w.e.f. 01/07/2009 as per G.O. (P) No.85/2011/Fin. Dated, 26/02/2011.

<sup>91</sup> 2014 Pay Revision w.e.f. 01/07/2014 as per G.O. (P) No.7/2016/Fin. Dated, 20/01/2016.

<sup>92</sup> *supra* n. 88.

<sup>93</sup> G.O (MS) No. 202/11/G. Edn. dt. 07-10-2011.

pay the salary, allowances and other benefits to the employees of the school. Employees in the CBSE/ICSE school shall be offered the same pay scales as in Government schools for equivalent categories.<sup>94</sup> The pay shall start at the minimum of the scale and the employees shall be eligible for dearness allowance and increments as is allowed in Government schools from time to time.<sup>95</sup>

The managements of private unaided CBSE/ICSE schools have challenged this provision along with other provisions in the guidelines before the High Court in *State of Kerala v. The Mythri Vidya Bhavan English Medium School*.<sup>96</sup> The High Court considered all the aspects and held that many clauses are not practical and accordingly struck them off. Regarding the issue of clause (viii), i.e. the requirement of payment of salary to employees and teachers at same scales as in Government for equivalent categories, the petitioners challenged this provision mainly on the ground that it is discriminatory and violative of Article 14 of the Constitution. The direction to give salary to staff and teachers at par with teachers in Government schools is not made applicable to unaided schools following State syllabus. The petitioners have produced a copy of G .O. (MS.) No.36 /11/ G.Edn. dated 14.2.2011, where in State Government has prescribed salary to teachers employed in unaided schools following state syllabus which is far below the Government scale.

In response, the Government contended that unaided schools following State syllabus are very few and what Government had prescribed is the minimum salary payable and in order to attract qualified teachers, management has to pay reasonable wages. Further, the Additional Advocate General clarified that it is open to the Government to reconsider the above Government Order in the light of the norm prescribed above and the provisions of the Right to Education Act and the Rules framed there under.

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<sup>94</sup> *id.* Clause (viii).

<sup>95</sup> *ibid.*

<sup>96</sup> 2012(4) K.H.C. 321.

While considering the question as to whether there is a violation of Article 14 in as much as the above norm is contrary to Government Order referred above, wherein Government has prescribed very low rates of wages to teachers and staff of unaided schools following State syllabus, the Court observed that:

The general complaint in the State that school teachers in unaided schools following CBSE/ICSE syllabus are paid meagre salary and in fact, there are reports of agitations by school teachers in unaided CBSE schools leading to disruption of classes... In fact, specific allegation made which appear to us to be quite possible is that managements open separate bank accounts for school teachers in a bank near to the school and the Principal of the school operates individual accounts of teachers by retaining Cheque books issued to all the teachers. On record the school management pays reasonable salary to all the teachers through cheques, but amounts credited to the individual accounts of teachers are drawn by the Principal by getting cash cheques signed by the teachers simultaneously and the Principal after withdrawing the entire cash, pays only very low amount to the teachers and allows the management to pocket the balance amount. This is outright cheating of teachers for which action is not only called for against school management for violation of CBSE Affiliation Norms and also the above order of the Government, but criminal case should also be booked against the managements and the principals colluding with them.<sup>97</sup>

The Court further said that, it is clear from Rule 20 (1) of the Right to Education Rules prescribed by the Central Government that the appropriate Government or local authority has the authority to fix terms and conditions of service of teachers and staff which includes the salary, allowances and all other service benefits payable to them including pension. Rule 20 (3) specifically states that pay and allowances, medical facilities, pension, gratuity, provident fund etc., shall be at par with similar qualification, work and experience. This condition in

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<sup>97</sup> *id.* at p.331-332.

the impugned order gets validated by virtue of sub-rule (3) of Rule 20 above, though the Central Government has not issued any notification prescribing salary and allowances payable to staff and teachers of unaided schools following CBSE/ICSE syllabus in terms of sub-rule(1) of Rule 20. Moreover, Clause 3.3. (v) of the CBSE Affiliation Bye-laws under Chapter II provides as follows:

(v) The school in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Government of India. The schools outside India should pay salaries not lower than those of the teachers in government schools in that country or not less than the salaries and foreign allowances payable to Kendriya Vidyalaya School teachers if officially posted to that country. A certificate to this effect should be obtained from the Indian Diplomatic Mission.<sup>98</sup>

Here, the Court observed that the above provision in the affiliation bye-laws is worded similar to Rule 20(3) and there is no need to consider the authority of the State Government to prescribe salaries and allowances payable to staff and teachers of unaided schools seeking NOC for affiliation to CBSE/ICSE syllabus. Hence, the Court held that the petitioners are bound by Rule 20(3) of the Central Rules prescribed under the RTE Act. Therefore, the above provision of the CBSE Affiliation Byelaws to pay salary and allowances to teachers and staff as stated therein is valid.

Then all the petitioners have raised a contention that the provision under the impugned order issued by the State Government and the Rules prescribed under the RTE Act and the provision in the Affiliation Byelaws for payment of salary at rates applicable to Government school teachers will lead to a heavy financial burden on all educational institutions. If they recoup the same by enhancing the fees, most of the students will not be able to pay such heavy fees leading to their leaving the schools for schools following State syllabus.

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<sup>98</sup> *id.* at p. 332.

Here, the Court found force in the apprehension of the petitioners because fee structure is something accepted by the parents at the time of admission of the students and all on a sudden if fees are increased to make up for payment of salary to teachers and staff at Government school levels, several students will be compelled to leave the school. That will affect the very object of the RTE Act, that is to accomplish the objective of the fundamental right of children conferred under Article 21A of the Constitution to get a quality education, that too, free and compulsorily to all children in neighbouring schools.

Finally, after hearing the petitioners on the one side and the arguments of the Central and State Governments and also counsels for CBSE/ICSE Boards, Court held that:

The provision in the Affiliation Byelaws as well as Rule 20(3) of the Central Rules prescribed under the RTE Act requires reconsideration by the Central Government under Rule 20(1) in consultation with these Boards. It is a matter for detailed consideration as to whether there is a requirement to pay salary and allowance to teachers and staff in unaided schools at par with Government schools because it may not be financially viable for the managements and the student community. However, unless fair wages are paid to both teaching and non-teaching staff and their service conditions reasonably fixed, the unaided private schools will not get quality teaching staff which will affect the coaching and in turn the educational standards of the students.<sup>99</sup>

Therefore, pending decision by the State and Central Governments in consultation with each other and the CBSE/ICSE Boards on this issue under the RTE Act, as an interim measure the Court direct CBSE/ICSE Boards to immediately enforce as condition for continued affiliation, payment of monthly salary, provisionally at the rate of Rs.10,000/- for primary and middle school teachers, Rs.15,000/- for secondary school teachers and Rs.20,000/- for senior secondary school teachers with an additional allowance to Headmasters/Principals

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<sup>99</sup> *id.* at p.334.

of Schools by all un-aided schools in Kerala. So far as the non-teaching staff is concerned, Court directed payment of a minimum of Rs.6, 000/- to clerical staff and Rs.4, 500/- to peons and class IV staff as an interim measure until a decision is taken by Governments as above.

The Court also directed the CBSE/ICSE as well as the educational authorities to enforce the above direction immediately and also ensure that no manipulations take place in regard to payment of salary to teachers and staff and no school should be allowed to operate bank accounts of teachers through Principal or any other agent. Every teacher should be allowed to start and operate a bank account in any branch of any bank of his/her choice and no institution should be allowed to retain cheque books of any teacher. If any manipulation or violation is found leading to actual payment below amounts shown as paid or payment below the amounts payable under affiliation norms, the appropriate action including withdrawal of NOC and affiliation as well as permissible criminal action should be taken against the managements and the principals involved.

It is to be noted that the provisional salary fixed by the Court, in this case, was minimum salary not maximum. Even though the High Court has proposed consultations by the Central and State governments with CBSE and ICSE boards in 2012, no decision in this regard is seen taken. However, the High Court judgement in the above case is a landmark in the history of the struggle by unaided school teachers and non-teaching staff for getting a decent and reasonable salary.

### **3.5.5. Guidelines for Granting Recognition to Unrecognised Schools Following State Syllabus**

In order to implement the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the Right to Education Rules (Kerala), 2011,<sup>100</sup> the Government of Kerala issued guidelines for granting recognition to unrecognised schools following State syllabus in 2013.<sup>101</sup> Through this order the

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<sup>100</sup> G.O. (P) No. 100/2011/G.Edn. dated 30-04-2011.

<sup>101</sup> G.O. (MS) No. 184/2013/G.Edn. dated 10-06-2013.

Government declared that recognition will be granted only to those schools fulfilling the norms under the existing Kerala Education Rules and Rule 14 of the Right to Education Rules and those schools which are non-compliant are to be closed down.

The guidelines contain provisions regarding the qualification and salary of teachers working in such schools. It requires the management to appoint only qualified and eligible teachers in the school.<sup>102</sup> It also mandates that the salary of the teachers should be the same that is paid in the Government schools.<sup>103</sup> This guideline, of course, is an encouraging move from the part of the Government. However, it does not have any retrospective effect.

### **3.5.6. Monitoring Committee**

In 2014, the Director of Public Instructions, Government of Kerala constituted a Monitoring Committee<sup>104</sup> to hear and settle the grievances and other disputes arising in the unaided school sector. The Committee comprised of six members, of whom two represent the Government, two from the unaided teachers' organisations and the remaining two are the representatives of the management. An Additional Director of Public Instruction serves as the convenor of the committee. It is no doubt that, the constitution of such a committee is really an energy booster for the unaided school teachers in their battle for better salary and allowances.

### **3.5.7. Assurance of New Legislation**

In June 2014, the Labour Minister, Government of Kerala, had accepted in the State Legislative Assembly that the wages and service conditions of teachers in the unaided schools are pitiable. He further added that, however, the Labour Department could not intervene because the Industrial Disputes Act and other labour laws do not apply to them. Therefore, the Government has drafted a new bill

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<sup>102</sup> *id.* Proviso 17.

<sup>103</sup> *id.* Proviso 18.

<sup>104</sup> "Kerala Un Aided School Teachers Organisation Bulletin" (Malayalam) (No.1), July, 2014, p.26. (The Committee was formed on 23-05-2014).

mandating minimum wages for teachers in the unaided schools.<sup>105</sup> However, the bill has not been introduced in the State Legislative Assembly so far.

Again in October 2016, the Labour Minister, Government of Kerala declared in the State Legislative Assembly that a comprehensive legislation to ensure minimum wages and better service conditions for teachers and other employees in unaided educational institutions in the State is under consideration of the Government. He also supplemented that the bill for the enactment of the above said legislation will be introduced in the State Legislative Assembly in the very near future.<sup>106</sup> But no positive responses from the part of the Government in this regard have been reported thereafter.

### **3.6. Conclusion**

There are two categories of private unaided schools functioning in Kerala. One category follows the State syllabus and the other working in accordance with the CBSE / ICSE syllabus. State syllabus schools are governed by the Kerala Education Act and they are operating in accordance with the provisions of Kerala Education Rules and other orders issued by the Government from time to time. The recognition of the State Government is required for the establishment of CBSE and ICSE schools in the State. This recognition is given in the form of no objection certificate. Therefore, the Government can impose reasonable conditions for granting the no objection certificate. Once the certificate is granted and schools are affiliated to respective boards, the State Government has no effective control over such schools in their day to day functioning. They are generally working in accordance with the respective affiliation bye-laws. The affiliation bye-laws of CBSE and CISCE contain necessary provisions for regulating the service conditions of employees including teachers working in these schools. But unfortunately, no effective measures have been taken by the authorities to implement those provisions so far.

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<sup>105</sup> “Law for minimum wages for unaided teachers”, The Hindu, June 20, 2014, p.5.

<sup>106</sup> “Legislation soon to ensure better wages for teachers”, The Hindu, October 22, 2016, p.8.

There is no proper legislation or other regulation for the fixation and/or revision of salary and other service conditions of private unaided school teachers. The Kerala Education Act and Rules are applicable to private unaided schools in the State. But, it does not contain any specific provision providing a scale of pay and other service benefits to private unaided school teachers. The Kerala Education Rules authorises the Government to prescribe the rate of pay applicable to them. Unfortunately, the salary fixed by the Government under this provision was insufficient to meet their daily needs. Moreover, the Government has not yet introduced a scale of pay for the teachers of private unaided schools in the State. Right to Education Act requires that the private unaided school teachers shall be paid salary and other service benefits at par with their counterparts in the Government service. But the decisions of the Supreme Court made the Act inapplicable to minority schools. On the other hand, their counterparts in the Government and aided schools are enjoying the Governmental protection in their salary and other service benefits. Yet, the teachers (most of them are women) in this sector are working with a great sense of dedication and accountability.

Government and the judiciary have intervened in this matter as and when the situation demanded. Government's interference has been there in this sector since 1990. Various orders, circulars, directions have been issued by the Government from time to time for the protection and welfare of the employees in this sector. But such attempts from the part of the Government did not produce the intended result due to improper implementation of such orders.

Judicial interventions, especially with respect to the salary of unaided school employees, have brought to light the real problems in this sector to the society. However, in many cases, the Apex Court failed to rise up to the expectation of the employees working in the unaided schools and has given only a literal interpretation to the available statutory provisions and rules. Though the Affiliation Bye-laws of various school boards insist on payment of salary equal to that of teachers in Government service to the unaided school teachers, it still remains a dream for them.

Teaching is considered to be a noble profession and therefore, the teachers enjoy a respectable position in the society. It is the responsibility of the teachers to mould future citizens. They deserve a dignified position in the society. Thus, it is the duty of the State to provide them with decent wages and fair service conditions. But it is clear that the existing laws governing the wages and service conditions of private unaided school teachers are not adequate to provide them fair wages. Moreover, the absence of a proper legislation regulating the affairs of all private unaided schools in the State including the CBSE, ICSE etc., can be cited as another important shortfall in the present legal system governing their service conditions.

## **Chapter 4**

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# **MINIMUM WAGES, WELFARE LEGISLATIONS AND PRIVATE UNAIDED SCHOOL TEACHERS**

## Chapter 4

# MINIMUM WAGES, WELFARE LEGISLATIONS AND PRIVATE UNAIDED SCHOOL TEACHERS

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Welfare legislations are always a blessing for the working class all over the World. A good number of such legislations have been enacted in India during the pre and post independent period incorporating the noble principles laid down by international instruments and the Indian Constitution. Generally, the labour welfare legislations are of two kinds; one that envisages right to compensation to the workers and the other that provide rights to workers for wages and other benefits. How far the provisions of the welfare legislations, particularly relating to wages and other conditions of service such as The Minimum Wages Act, 1948, The Employees Provident Fund and Miscellaneous Provisions Act, 1952, The Maternity Benefit Act, 1961 etc., are applicable to the teachers of private unaided schools is the major subject of examination made in this chapter.

Among the service conditions of employees, wages occupy a prime position since it largely determines the status of employees in the society. Other service conditions like, provident fund, insurance, gratuity, pension, maternity benefit etc. also require adequate consideration. Two important labour legislations in the Country that directly relate to wages are the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948. The Payment of Wages Act primarily intends to provide wages to workers regularly and without making any illegal deductions. The Act does not provide any rate or quantum of wages that has to be paid mandatory to the workers. But on the other hand, the Minimum Wages Act is intended to

achieve the object of providing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them.

The Minimum Wages Act prescribes the procedure for the fixation and revision of minimum wages of workers. It is the statutory right of employees engaged in those employments which are included in the schedule of the Act to get minimum wages at the rate fixed by the Government in accordance with the provisions of the Act. It is obligatory on the part of the employer to pay minimum wages irrespective of his capacity to pay. The Act also lays down penalties for those employers who are violating their statutory duty to pay the minimum rate of wages. Thus, undoubtedly this welfare legislation is a gift for the working class especially for those who are employed in the unorganised sector. Therefore, it is essential to make a detailed study regarding the meaning and development of minimum wage. The important provisions of the Act, as well as its applicability to private unaided school teachers, are also examined in this chapter.

#### **4.1. Evolution and Development of Minimum Wage**

In the beginning, the minimum wage was originated as a method to combat the propagation of sweat shops in manufacturing industries, where a large number of women and young persons with poor wages were employed. Later on, the exponents of minimum wage supported the attainment of self-sufficiency of families and for that, the protection of this law was extended to men and to other low paid workers.<sup>1</sup>

From the annals of history, the history of minimum wage legislation can be traced from the legislation framed in New Zealand, where the Government enacted the first minimum wage law called the 'Industrial Conciliation and Arbitration Act' in 1894.<sup>2</sup> The Act instituted district conciliation boards. Though the main duty

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<sup>1</sup> David Neumark and William L. Wascher, *Minimum Wages*, The MIT Press, Cambridge, London, (2008), p.1.

<sup>2</sup> *id.* at p.10.

entrusted to the boards was to adjudicate labour disputes, the boards were also empowered to fix the minimum level of wages and other conditions of employment, if found necessary. Thereafter nationwide minimum wage legislation was passed in 1899 for the welfare and protection of children and apprentices who were employed by enterprises without proper payment of wages.<sup>3</sup>

At the end of 19<sup>th</sup> Century, the State of Victoria in Australia established a set of wage boards to protect the minimum wage of workers both men and women. The United Kingdom recognised the need for fixation of minimum wages in 1909 by constituting wage boards through legislation.<sup>4</sup> Later on, the wage boards were replaced by wage councils. It was abolished in 1993 due to the opposition from trade unions.<sup>5</sup> Subsequently, United Kingdom passed the National Minimum Wages Act in 1999 that mandates the revision of national minimum wage every year in accordance with the age of workers.<sup>6</sup>

The initial history of the United States' minimum wage starts from the State of Massachusetts in 1912. Soon after, in 1923 fifteen States and districts of Columbia and Puerto Rico had enacted their own minimum wage laws by following the legislations of Australia and United Kingdom.<sup>7</sup> All these Acts were challenged before the Courts by stating that its provisions had violated the freedom of contract principle and the due process clause of the American Constitution. In almost all cases the Supreme Court ruled in favour of employers and declared the Acts unconstitutional.<sup>8</sup> The President Franklin Roosevelt's first attempt to pass federal minimum wage legislation was also struck down by the US Supreme Court.

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<sup>3</sup> *id.* at p.11.

<sup>4</sup> *ibid.*

<sup>5</sup> Available at [http://research.omicsgroup.org/index.php/History\\_of\\_the\\_minimum\\_wage](http://research.omicsgroup.org/index.php/History_of_the_minimum_wage) (accessed on 30/01/2016).

<sup>6</sup> Available at <https://www.eurofound.europa.eu/observatories/eurwork/articles/the-uks-first-national-minimum-wage> (accessed on 30/01/2016).

<sup>7</sup> *supra* n.1, p.12.

<sup>8</sup> *id.* at p.15.

Eventually, in 1938 the American Congress passed the Federal Labour Standards Act, which assured minimum wages to workers.<sup>9</sup>

Generally, the system for payment of minimum wage is rare in small countries and in less developed regions of large countries. However, it is most common in Africa where 48 out of the 57 countries have some system of the minimum wage. In South Africa, wage levels were introduced in 2002 to support the wages of masses of low-paid farm workers, hospitality workers, domestic workers and others in sectors where unions are weak. Most of the countries in Europe have enacted laws for providing minimum wage to workers. But countries like Italy, Germany and Norway have no provision for a statutory minimum wage. As an alternative, these countries have an extensive collective bargaining system, whereby collective agreements are automatically extended to other firms in the same sector. As a result, most of the workers have a guaranteed legal minimum wage despite there being no general minimum wage legislation at the national level.<sup>10</sup>

In China, new rules were issued in 2004 in the wake of increasing concerns about growing wage inequality.<sup>11</sup> Nowadays, the minimum wage, an important component of economic growth, is prevailing in some form or other in around 180 countries in the World including India.

## 4.2. Meaning of Minimum Wage

Minimum wage is the base level of wage payable in industries or establishments as required by law. According to *Webster's Dictionary*,<sup>12</sup> the minimum wage is a wage set by contract or by law as the lowest that may be paid to employees doing a specified job. As per *Collins Dictionary*, the minimum wage is

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<sup>9</sup> *id.* at p.18.

<sup>10</sup> Michael Barry and Peter Brosnan, "Minimum Wage Systems: An Asia Pacific Perspective" in *Labour, Employment and Work in England*, Department of Industrial Relations, Griffith University, Australia, (2006), p.127.

<sup>11</sup> Uma Rani and Patrick Belser, "The Effectiveness of Minimum Wages in Developing Countries: The case of India", Vol. 4 (Issue 1), *International Journal of Labour Research*, 2012, p.46.

<sup>12</sup> *Webster's New World College Dictionary*, IDG Books India (P) Ltd., (4<sup>th</sup> edn., 2000), p.917.

the lowest wage that an employer is allowed to pay to an employee, according to a law or agreement.<sup>13</sup> The International Labour Organization<sup>14</sup> defines the minimum wage as the wage which constitutes the floor of the wage structure and its objective is to protect workers who occupy the lowest position among the wage earners.

Unlike the situation in an ancient police state, the governments of modern welfare states have started interfering with the labour market by fixing rates of wages of workers to ensure their sustenance in life, which is commonly called as the minimum wage.<sup>15</sup> In some States, it is determined by law, while in others it is decided by means of negotiation among workers' representatives, employers and the Government or through collective agreements between workers and employers.<sup>16</sup>

One of the primary objectives of having a fixed minimum wage is the prevention of 'sweating.' So the minimum wage should be a wage which would be sufficient to cover the bare physical wants of a worker and his family that is, a rate which must be paid to the worker irrespective of the capacity of the firm to pay.<sup>17</sup> The statutory minimum wage is the minimum prescribed by the statute and it will provide for some measure of education, medical requirements and amenities to the worker and his family.<sup>18</sup>

Ensuring minimum wage to the workers is necessary to maintain their health, strength and morale. It will increase their productivity, output and automatically solve many probable frictions that may arise out of intense labour.<sup>19</sup> Hence, the

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<sup>13</sup> *Collins Cobuild Advanced Illustrated Dictionary*, Harper Collins Publishers, Great Britain, Indian edition (2010).

<sup>14</sup> *Global Wage Report 2008/09- Minimum Wages and Collective Bargaining: Towards Policy Coherence*, International Labour Office, Geneva, 2008, p.34, available at [www.ilo.org](http://www.ilo.org) › ILO home › Research › Flagship reports › Global Wage Report (accessed on 10/10/2014).

<sup>15</sup> K. Ramakrishna, "Concept of Minimum Wage", (108) F.L.R., 2006, p.62.

<sup>16</sup> Frederico Luiz Barbosa de Melo Ademir *et. al.*, "Rescuing the Minimum Wage as a Tool for Development in Brazil", Vol. 4 (Issue 1), International Journal of Labour Research, 2012, p.28.

<sup>17</sup> G. B. Pai, *Labour law in India*, Butter Worth India, New Delhi, (Vol. 2, 2001), p.161.

<sup>18</sup> P. Ramanatha Aiyar, *The Law Lexicon*, Wadhwa & Company Nagpur, (2<sup>nd</sup> edn., 2002), p.1233.

<sup>19</sup> R .C.Saxena, *Labour Problems and Social Welfare*, K. Nath & Co. Meerut, (13<sup>th</sup> edn., 1974), p.588.

minimum wage is necessary to safeguard the mutual concern and trust between the employers and the employees and to mitigate the difficulties that are likely to arise in their healthy rapport.<sup>20</sup> Besides, it has to be reiterated that payment of minimum wage is not at the mercy of the employer but a right vested on the workers.

In the organised sector, there is a formal contract between the employer and the worker about payment of wages. In the unorganised sector, however, this contract is quite casual and always fluctuating. In both cases, there is a solid requirement to state the lowest wage rate, so that the wage earner and his family can enjoy a minimum standard of living.

### 4.3. Minimum Wage in India

In India, the idea of minimum wage is not something new. It was in existence even in ancient times. In *Valmiky Ramayana*, it is considered a sin if anybody pays less wage to the employee, after extracting full work.<sup>21</sup>

However, it is not an easy task to trace the history of wage in our Country in a systematic manner. No comprehensive data is available about wages prior to the 20<sup>th</sup> Century. Untill the end of 19<sup>th</sup> Century; the State had no control over the working environment of workers. Thus, wages were generally determined by contract between the employers and workmen. Up to the year 1923, there were no relevant labour legislations in the country other than one regulating the working conditions of employees in factories.<sup>22</sup>

The ILO Convention of 1928 had laid down the method to be employed for the creation of wage fixing machinery.<sup>23</sup> The concept of fixing minimum wages in

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<sup>20</sup> *ibid.*

<sup>21</sup> Chapter 75, Verse 23 of Ayodhya Kand of Balmiky Ramayan in M.P.Srivastava, "Philosophy of Minimum Wage", (1998) (79) F.L.R., p.6.

<sup>22</sup> Kripa Dayal Srivastava, *Commentaries on the Minimum Wages Act, 1948*, Eastern Book Company, Lucknow, (1<sup>st</sup> edn., 1995), p.4.

<sup>23</sup> Minimum Wage Fixing Machinery Convention 1928, Art. 1: The International Convention of 1928 prescribes the setting up of minimum wage - fixing machinery in industries in which 'no

India initiated well back in 1929, when the Royal Commission on Labour in India took up this issue and proposed an enquiry into the viability of creating minimum wage fixation machinery. Afterwards, the Standing Labour Committee and Indian Labour Conference at its meetings discussed the matter in detail.<sup>24</sup> The severe price rise in 1943 and the continuous fall of actual wages forced the Government to consider the matter at the fifth Indian Labour Conference. Finally, the legislative provision for setting minimum wage was accepted by the Indian Labour Conference in October, 1944.<sup>25</sup>

In December 1947, the Government of India organised an industrial conference in order to lay a strong foundation for industrial peace. The tripartite conference shaped a truce resolution, generally known as the Industrial Truce Resolution of 1947. The Government of India accepted the spirit of Truce Resolution in the Industrial Policy Resolution of 1948 which differentiated between the organised and sweated industries. For organised industries, it preferred the promotion of fair wage agreements between employers and workers through tripartite boards and to the sweated industries, resolution recommended the need for legislative protection by means of minimum wage legislation.<sup>26</sup> This gave rise to the enactment of the Minimum Wages Act in 1948.

So, the real initiative for the enactment of the minimum wage legislation in India came from the Conventions and Recommendations of the ILO. The system of wage councils developed in the United Kingdom and the idea of wage fixing

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arrangements exist for the effective regulation of wages by collective agreement or otherwise, and wages are exceptionally low.

<sup>24</sup> J.N.Sharma, "Minimum Wage Fixation", *Indian Labour Journal*, 1986, Vol. 27, p. 674.

<sup>25</sup> *ibid.*

<sup>26</sup> Sahab Dayal, "The Development of Modern Wage Concepts and Labour Legislation in India – An Analysis", Vol.12 (Issue 1), *Indian Journal of Industrial Relations*, 1976, p.148.

machinery mooted by the Whitley Commission also inspired the Government for the enactment of the Act.<sup>27</sup>

#### **4.4. The Minimum Wages Act of 1948**

Minimum Wages Act, 1948 is a milestone in the history of labour welfare legislations in the country. Commenting on the object of the Act in *Y.A. Mamarde and Others v. Authority under the Minimum Wages Act*<sup>28</sup> the Supreme Court has observed as follows:

The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seem to... be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. This anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good.<sup>29</sup>

Thus, it is the concern of modern welfare states to protect the interests of poor workers by enacting appropriate labour legislations. This social welfare legislation passed by the Indian parliament is intended to secure the welfare of the workers in a competitive market by providing minimum wages in certain employments.<sup>30</sup>

India is one of the most developing countries in the World to introduce a minimum wage policy. Since most of the workers in the country are illiterate and unorganised, they are unable to protect their interests in a highly competitive

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<sup>27</sup> J.N. Sharma, "Minimum Wages Fixation in India and United Kingdom", Vo. 16, Indian Labour Journal, 1975, p. 1803.

<sup>28</sup> A.I.R. 1972 S.C. 1721.

<sup>29</sup> *id.* at p.1725.

<sup>30</sup> Minimum Wages Act 1948, Preamble.

market where labour supply is constantly greater than demand. Therefore, the Act aims at fixation of minimum wage which the employer must pay.<sup>31</sup>

Thus, the Minimum Wage Act, 1948 must be understood as an endeavour to provide a statutory minimum wage in harmony with Article 43 of the Constitution of India.<sup>32</sup> It must also be noted that the contents of the minimum wage are not static but it is a dynamic one changing from time to time in accordance with the need of the hour.<sup>33</sup>

#### **4.4.1. Applicability of the Act**

The Minimum Wages Act is applicable to all the States in India. It applies to a number of employments which are listed in the schedule added to the Act. The schedule can be amended at any time by the appropriate Government by adding a new employment in to it.

Regarding the applicability of the Minimum Wages Act, the Supreme Court in *Sanjit Roy v. State of Rajasthan*,<sup>34</sup> held that the State cannot make laws which will take away the benefit of Minimum Wages Act.

Whether an employer can claim exemption from the Act on the ground that he is paying wages more than the prescribed rate of minimum wage? This was one of the questions that came for consideration before the Supreme Court in *Airfreight Ltd. v. State of Karnataka & Others*.<sup>35</sup> The Court held that the payment of wages more than the prescribed minimum rates of wages is not relevant for deciding the applicability of the Act. It cannot be stated that, as they are paying more than the

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<sup>31</sup> *Edward Mills Co. Ltd., v. State of Ajmer*, A.I.R. 1955 S.C. 25.

<sup>32</sup> Art. 43 reads as follows: “The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and...”

<sup>33</sup> G.L.Kothari, *Wages, Dearness Allowance & Bonus*, N.M. Tripathi Private Ltd., (1968), p.10.

<sup>34</sup> A.I.R.1983 S.C. 328.

<sup>35</sup> A.I.R. 1999 S.C. 2459.

prescribed minimum wages, the Act or the notification would not be applicable. Further, the Court said that, for determining whether they are paying minimum rates of wages or not, the amount paid for the value of items which are excluded under Section 2(h) of the Act is not to be taken into consideration.

Thus, the provisions of the Act are intended to attain the object of providing social justice to workmen engaged in the scheduled employments by fixing minimum rates of wages for them. It is mainly applicable to those industries where wages paid to the workers are very low or inadequate.

#### **4.4.2. Definition of Wages**

Wages under the Act means all remuneration including house rent allowance payable to a person employed in respect of his employment except those which are expressly excluded.<sup>36</sup> This definition of ‘wages’ suggests that it is a consideration for the services rendered by the employee. It has a composite meaning and includes all remunerations contemplated by the Act. However, the expression “minimum wage” is not precisely defined in the Minimum Wages Act.

Whether the monetary value of the grain supplied at concessional rates and the amount paid as attendance bonus can be included into the minimum wages payable to the employees is a question that came for consideration before the Supreme Court in *Manganese Ore (India) Ltd. v. Chandi Lal Saha*.<sup>37</sup> In this case, the Government of India by a notification dated May 19, 1969 issued under the

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<sup>36</sup> Minimum Wages Act 1948, Sec. 2(h) reads as follows: “Wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment (and includes house rent allowance), but does not include-

(i) the value of- (a) any house accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate government; (ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance; (iii) any travelling allowance or the value of any travelling concession; (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge.

<sup>37</sup> A.I.R. 1991 S.C. 520.

Minimum Wages Act, 1948, fixed the minimum rates of wages payable to different categories of employees employed in manganese mines. The management, by an agreement, was also provided attendance bonus and food grains to workers at concessional rates.

Regarding the first part of the question, the Court held that it is clear from the scheme of the section that the minimum wages payable under the Act are to be paid in cash. The supply of essential commodities at concessional rates can only form part of the minimum wage, if it is authorised by the appropriate Government by a notification in the Official Gazette under Section 11(3)<sup>38</sup> of the Act. Admittedly, no such notification has been issued by the appropriate Government in the present case.

The Court also discussed the definition of “wages” under Section 2(h) of the Act and held:

The scheme of the Act recognises “Wages” as defined under Section 2(h) and also “wages in kind” under Section 11 of the Act. Reading both the provisions together “wages in kind” can only become part of the “wages” if the conditions provided under Sub-sections (2), (3) and (4) of Section 11 of the Act are complied with. Admittedly, there was no notification by the Central Government under Section 11(3) of the Act and as such the supply of grain at a concessional rate cannot be considered “Wages” under Section 2(h) of the Act.<sup>39</sup>

As regards the second part of the question, attendance-bonus, it was an additional payment made to the workmen as a means of procuring their regular attendance with the ultimate object of increasing production. The bonus was in the nature of extra remuneration for regular attendance. The said bonus was not

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<sup>38</sup> If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorize the provision of such supplies at concession rates.

<sup>39</sup> *supra* n. 37, p. 524.

payable to all the workmen at the time of joining the employment. It was payable to a workman who had put in continuous service for a specified period and who was loyal to the management. The attendance bonus was only an incentive and it was not a wage. There is a basic difference between the incentive bonus and the minimum wage. Every workman is entitled to the minimum wage from the very first day of his joining the employment whereas the bonus has to be earned and it becomes payable “after the event”. In the present case also, the attendance bonus was payable after regular attendance for a specified period and remaining loyal to the management. The scheme of payment of attendance bonus was thus an incentive to secure the regular attendance of the workmen. The Court relied on *Titaghur Paper Mills Co. Ltd. v. Its Workmen*<sup>40</sup> where the Supreme Court had held that the payment of production bonus is in the nature of an incentive and is in addition to the wages, therefore, it cannot be treated as part of the minimum wages fixed under the Act.

#### **4.4.3. Components of Minimum Rate of Wages**

The minimum wage fixed or revised by the appropriate Government in respect of scheduled employments under section 3 of the Act includes the following:

- a) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such a manner as the appropriate Government may direct, or
- b) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorized, or
- c) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.<sup>41</sup>

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<sup>40</sup> A.I.R. 1959 S.C. 1095.

<sup>41</sup> *supra* n.30, Sec. 4(1).

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate are computed by the competent authority<sup>42</sup> at such intervals and in accordance with such directions as may be specified by the appropriate government.<sup>43</sup> The Act lays down that wages should be paid in cash, although it empowers the appropriate Governments for the payment of minimum wages wholly or partly in kind.<sup>44</sup>

Here, it is worth to note the observation of the Apex Court in *Hydro (Engineers) Pvt. Ltd. v. The Workmen*.<sup>45</sup> The Court observed:

The Minimum Wages Act 1948 does not define 'minimum wages' presumably because it would not be possible to lay down a uniform minimum wage for all industries throughout the country on account of different and varying conditions prevailing from industry to industry and from one part of the country to another... the concept of minimum wage does take in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of a minimum wage. Furthermore, in the light of spiralling of prices in recent years, if the wage scales are to be realistic, it may become necessary to fix them so as to neutralise at least partly the price rise in essential commodities.<sup>46</sup>

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<sup>42</sup> Competent authority means the authority appointed by the appropriate government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employment specified in such notification.

<sup>43</sup> *supra* n.30, Sec. 4(2).

<sup>44</sup> *id.* Sec. 11.

<sup>45</sup> A.I.R. 1969 S.C. 182.

<sup>46</sup> *id.* at p.186.

#### 4.4.4. Fixation and Revision of Minimum Wage

The main purpose of the Minimum Wages Act is to prevent exploitation of the workers and for that; it aims at fixation of minimum wage which the employers must pay. The fixation of a wage structure is always a delicate task because a balance has to be struck between the demands of social justice and depletion of profits.

Under the Minimum Wages Act, both State and Central Governments are the “Appropriate Governments” for the fixation and revision of minimum rates of wages for employments covered by the Schedule to the Act. The rates of wages once fixed are revised at an interval not exceeding five years.<sup>47</sup>

The Act provides for fixing minimum wages in certain employments where labour is ignorant or less organised and is vulnerable to exploitation. Minimum wages are not to be fixed in respect of any employment in which there are less than 1,000 employees in the whole State. The appropriate Government may, in respect of employees employed in an employment specified in Part II of the schedule<sup>48</sup>, instead of fixing minimum rates for the whole State, fix such rates for a part of the State or for any specified class or classes.<sup>49</sup>

The Act empowers the appropriate Government to fix different minimum rates such as:

- (a) time work rate – a minimum rate of wages for time work,
- (b) piece work rate – a minimum rate of wages for piece work,
- (c) guaranteed time rate – a minimum rate of remuneration for such employees who are employed on piece work but for the purpose of securing to such employees a minimum rate of wages on a time work basis, and

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<sup>47</sup> *supra* n. 30, Sec. 3.

<sup>48</sup> This part mainly deals with the employments in the agricultural sector.

<sup>49</sup> *supra* n. 30, Sec. 3(1) (b).

(d) overtime rate – a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be payable, in respect of overtime work done by employees.<sup>50</sup>

The Act necessitates that during the pendency of any proceeding before the Industrial Tribunal or National Tribunal or any other competent authority relating to rates of wages, no order fixing or revising the minimum rates of wages by the Government can be issued. It also provides that if an award is in operation, an order fixing or revising the minimum rates of wages by the Government shall not be issued.<sup>51</sup>

The Act further states that in fixing or revising the minimum rates of wages under section 3, different minimum rates of wages can be fixed for different scheduled employments, different classes of work in the same scheduled employment and different localities. It is also possible to prescribe different wage rates for adults, adolescents, children and apprentices. Moreover, it can also be fixed on the hourly, daily or monthly basis. A wage period longer than a month is also possible, if it is thus prescribed under the Act.<sup>52</sup>

The Act lays down the procedure for fixing and revising the minimum rates of wages. It enunciates two methods for the purpose and the appropriate Government can follow either of the two methods viz.,

- a) Appoint as many committees and sub-committees to hold inquiries and advise the appropriate government in respect of such fixation or revision as the case may be.
- b) Publish its proposals by a notification in the Official Gazette for the information of persons likely to be affected thereby and specify a date not

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<sup>50</sup> *id.* Sec. 3(2).

<sup>51</sup> *id.* Sec. 3(2) (a).

<sup>52</sup> *id.* Sec. 3(3).

less than two months from the date of notification on which the proposals will be taken into consideration.<sup>53</sup>

After considering the advice of the committee or committees so appointed or considering all representations received before the date specified in the notification, the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The minimum rates of wages so fixed or revised by the notification shall come into force on the expiry of three months from the date of its issue, unless such notification otherwise provides. However, in case of revision of minimum rates of wages, the appropriate Government shall also consult the Advisory Board.<sup>54</sup>

#### **4.4.5. The Supreme Court on Fixation and Revision of Minimum Wage**

The Supreme Court of India has examined a good number of cases regarding the fixation and revision of minimum wages of employees in the scheduled employments. It is worthwhile to mention some of them. Whether the financial capacity of an employer is a relevant factor in fixing minimum wages to employees in the scheduled employment? This question came up before the Supreme Court while deciding a dispute relating to wage structure in *Crown Aluminium Works v. Their Workmen*.<sup>55</sup> An appeal by special leave arose out of an industrial dispute between the appellant Crown Aluminium Works and its workmen. The Government of West Bengal, by an order dated 31-07-1952, referred thirteen matters for adjudication. The learned adjudicator considered the pleas and the evidence submitted by the parties and investigated into the financial position of the appellant. Accordingly, the adjudicator pronounced the award on October 9, 1953, on all matters referred to him. Both parties were aggrieved by the award and that led to the filing of two cross appeals before the Labour Appellate

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<sup>53</sup> *supra* n.30, Sec. 5(1).

<sup>54</sup> *id.* Sec. 5(2).

<sup>55</sup> A.I.R. 1958 S.C. 30.

Tribunal. On July 11, 1955, the Labour Appellate Tribunal disposed of those appeals by a consolidated order. The workmen appeared to be satisfied with the order but the appellant was not convinced and they filed an appeal before the Supreme Court. The main grievance made before the Court by the appellant was in respect of the revision made by the Labour Appellate Tribunal in the wage structure which was constituted by the original Tribunal.

In this case, the Supreme Court held that:

In deciding industrial disputes in regard to wage structure, one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on a fair and just basis to be determined in the light of all relevant considerations. There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms.<sup>56</sup>

Accordingly, the Court dismissed the appeal by rejecting the contentions raised by the appellants.

Again the Supreme Court considered the delicate issue of wage fixation in *The Kamani Metals and Alloys Ltd. v. The Workmen*<sup>57</sup> and specified certain

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<sup>56</sup> *id.* at p.34.

<sup>57</sup> A.I.R. 1967 S.C. 1175.

guidelines for the fixation. Three principles on which wages are to be fixed have been stated by the Court in the following words:

The first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the workload. It must, however, be realised that 'fair wage' is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal.<sup>58</sup>

The question of revision of wage structure to the prejudice of the workmen on the ground of financial stringency was considered by the Supreme Court in *The Workmen represented by Secretary v. The Management of Reptakos Brett & Co. Ltd. and Another*.<sup>59</sup> The Court in this case held:

The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage

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<sup>58</sup> *id.* at p.1177.

<sup>59</sup> A.I.R. 1992 S.C. 504.

structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry: - (vi) children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage... The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.<sup>60</sup>

But in *A.K. Bindal and Another v. Union of India and others*,<sup>61</sup> the Supreme Court reiterated its earlier stand that while fixing fair wage or living wage the financial capacity of the employer is a predominant criterion. But this qualification is not applicable for the fixation and revision of minimum wages. A.K. Bindal, an authorised representative of HFC and FCI, has filed a writ petition before the Delhi High Court contending that Clauses 11, 12, 13 and connected clauses of Annexure V of the Memorandum dated 19.7.1995 issued by Government of India, Ministry of Industry should be quashed for the purpose of revival of uniform treatment of the officers in the profit and loss making companies in the FCI and HFC. The other prayer made was that the respondents be directed to pay to the petitioners by way of interim relief at least 60% of the benefit of the revision of pay and perks which their counterparts have been given, pending the final decision of the writ petition.

The contention that the economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees, does not appeal to the Court. In this case, the Court referred to a decision rendered by a Constitutional Bench in

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<sup>60</sup> *id.* at p. 509.

<sup>61</sup> A.I.R. 2003 S.C. 2189.

*Express Newspapers Ltd. and Others. v. Union of India and Others*,<sup>62</sup> where the following principles for fixation of rates of wages among others were laid down:

In the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity.<sup>63</sup>

Further, the Supreme Court of India examined the scope of Section 3 (1-A) of the Act in *Ram Kumar Misra v. State of Bihar*<sup>64</sup> and pointed out that sub section (1-A) of Section 3 does not preclude the appropriate Government from fixing minimum rates of wages in respect of any scheduled employment even if there are in the whole State less than 1000 employees engaged in such employment. It merely empowers the appropriate Government to refrain from fixing minimum rates of wages in respect of such employment, leaving it open to the appropriate Government to fix minimum rates of wages in respect of such employment, if it so thinks fit.

#### **4.5. Minimum Wages Act and Teachers of Unaided Schools**

The Act authorises the appropriate Government to add any employment into the schedule, if the Government is of opinion that minimum rates of wages should be fixed in respect of that employment. It can be done by the issue of a notification in the Official Gazette. By this notification, the appropriate Government must give three months' notice of its intention to add the employment to the schedule. After the expiry of three months, the appropriate Government can add the particular employment to the schedule by issuing a second notification.<sup>65</sup>

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<sup>62</sup> A.I.R. 1958 S.C. 578.

<sup>63</sup> *id.* at p.605.

<sup>64</sup> A.I.R. 1984 S.C. 537.

<sup>65</sup> *supra* n. 30, Sec. 27.

In *Lingegowd Detective and Security Chamber (P) Limited v. Mysore Kirloskar Limited and Others*,<sup>66</sup> the appellant company filed a writ petition before the Karnataka High Court for setting aside the order of the Minimum Wages Authority which grants minimum wages to employees engaged in security services. The company challenged the order on the ground that an establishment which provides security personnel to various organisations is not a scheduled employment under the Minimum Wages Act, 1948 and hence, the Act is not applicable to them. The single bench of the High Court upheld the contention of the company; whereas the division bench decided in favour of employees. Against the decision of the High Court, the company filed an appeal before the Supreme Court. In this case, Court held that, the appellant Lingegowd Company is not required to pay the minimum wages fixed by the Government to its employees as the services rendered by it do not form part of scheduled employment.

It is clear that employees who are employed only in the scheduled employment under the Minimum Wages Act are entitled to get the benefit of the minimum wage under the Act. On the other hand, thousands of employees working in the unorganised sector are not able to get minimum wage due to the non-inclusion of their employment into the schedule of the Act. It is quite sure that even now there are many employments, where salary and other working conditions are very poor, which are not included in the schedule for getting the protection under the Act. Section 27 of the Act confers wide powers to the appropriate Government to add an employment item into the schedule of the Act, yet the Government saw hesitant to include new employments into the schedule.

Likewise in order to avail the protection of the Minimum Wages Act, the person should be an ‘employee’ as defined under section 2(i)<sup>67</sup> of the Act. It is true

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<sup>66</sup> A.I.R. 2006 S.C.1967.

<sup>67</sup> Minimum Wages Act 1948, Sec.2(i) defined “Employee” as any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale

that many persons employed in the unorganised sector are not getting even the bare minimum wage since they are not brought within the definition of ‘employee’ under section 2(i) of the Act.

Whether teachers of educational institutions can be held to be employees under Section 2(i) of the Minimum Wages Act to enable the Government to fix their minimum wage is a question of great relevance. This question came for consideration before the Supreme Court in *Haryana Unrecognised Schools Association v. State of Haryana*.<sup>68</sup> The Government of Haryana in the exercise of powers conferred under Section 27 of the Act added in Part 1 of the Schedule Item No. 40 describing “Employment in private coaching classes, schools including nursery Schools and technical institutions”, for the purpose of fixing minimum rate of wages for the employees therein. By a notification dated 30th of April, 1983 the State Government in the exercise of powers conferred under sub-section (2) of Section 5 of the Act fixed the minimum rate of wages in respect of the different categories of employees serving in such schools.

Against these notifications, writ petitions were filed basically on the ground that the teachers of educational institution cannot come within the purview of the Act, since they are not ‘workmen’ within the meaning of Industrial Disputes Act nor would they be ‘employee’ under Section 2(i) of the Minimum Wages Act. The High Court, however, dismissed the writ petitions on the ground that the power of the State Government to add any employment to the Schedule under Section 27 of the Act is without any fetter and further the appropriate Government has tried to mitigate the sufferings and exploitation of the educated trained or untrained teachers at the hands of the managements or employers or the private educational institutions.

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for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union.

<sup>68</sup> A.I.R. 1996 S.C. 2108.

With regard to the allegation of the writ petitioners that the views of the representatives of the educational institutions were not taken into consideration, the High Court resisted the allegation by relying upon the decision of the Supreme Court in *Ministry of Labour & Rehabilitation and Another. v. Tiffin's Barytes Asbestos & Paints Ltd. and Another.*<sup>69</sup> Where the Court observed that:

A notification fixing minimum wages, in a country where wages are already minimal should not be interfered with under Article 226 of the Constitution except on the most substantial grounds and the legislation is a social welfare legislation undertaken to further the Directive Principles of State Policies action taken pursuant to it cannot be struck down on mere technicalities.<sup>70</sup>

Attacking the correctness of the decision of the High Court, the appellant contended that the object of the Act being to prevent exploitation of the workers and for that purpose it aims at fixation of minimum wages which the employers must pay and that the teachers of an educational institution cannot be brought within the purview of the Act. Further contended that the definition of employee under Section 2(i) of the Act even if is given a liberal interpretation, will not bring within its sweep a teacher of an educational institution since the duty discharged by a teacher can neither be termed as manual or clerical nor can it be held to be skilled or unskilled. Therefore, the State Government has no power to fix the minimum wage of a teacher of an educational institution in the exercise of power under Section 5(2) read with Section 27 of the Act.

The respondent, on the other hand, contended that it was open for the State Government to add a particular category of employment to the Schedule in the exercise of power under Section 27 of the Act. Since the management of the schools is exploiting the teachers, the State Government, in order to mitigate the

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<sup>69</sup> A.I.R.1985 S.C. 1391.

<sup>70</sup> *id.* at p.1393.

grievances of the teachers, has fixed minimum wage under Section 5(2) of the Act and therefore it should not be interfered with.

The appellant, in the course of argument, has further submitted that the association which filed the writ petition and which is the appellant before the Court consist of teachers and if teacher themselves do not urge to be brought within the purview of the Act there was no need for the Government to bring them within the purview of the Act.

Here, the questions that came up for consideration were whether the teachers of an educational institution can be brought within the purview of the Act and the appropriate Government can fix the minimum wages of such teachers by issuing notification under the Act?

After a combined reading of Section 2 (i) and Section 27 as well as the object of the legislation, the Supreme Court held:

It is explicitly clear that the State Government can add to either Part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled, unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power under Section 27 of the Act. Since the teachers of an educational institution are not employed to do any skilled or unskilled or manual or clerical work and therefore could not be held to be an employee under Section 2(i) of the Act. It is beyond the competence of the State Government to bring them under the purview of the Act by adding the employment in educational institution in the Schedule in exercise of power under Section 27 of the Act.<sup>71</sup>

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<sup>71</sup> *supra* n.68, p. 2110.

The Court, while examining the question whether the teachers employed in schools are workmen under the Industrial Disputes Act, relied on the ratio in *Miss A. Sundarambal v. Government of Goa, Daman & Diu and Others*,<sup>72</sup> where the Court observed:

The teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as ‘workmen’ within the meaning of Section 2(s) of the Act. Imparting education which is the main function of teachers cannot be construed as skilled or unskilled manual work or clerical work. Imparting education is in the nature of a mission or a noble vocation. A teacher educates children; he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching.<sup>73</sup>

Applying the above said dictum in the definition of ‘employee’ under Section 2(i) of the Act, the Court held that, a teacher would not come within the purview of the said definition and therefore teachers of educational institutions cannot be brought within the scope of the Act. The Court further held that the State Government in the exercise of powers under the Act is not entitled to fix the minimum wage of such teachers. Hence, the impugned notifications so far as the teachers of the educational institution concerned are quashed.

The above decision of the Supreme Court excluding teachers from claiming minimum wages under the Minimum Wages Act is highly disappointing and unfortunate. In India, most of the teachers in the unaided private educational institutions are paid very low salary and their working conditions are pathetic. Even in Kerala, the most literate State in the Country, the situation is not different. A

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<sup>72</sup> A.I.R. 1988 S.C. 1700.

<sup>73</sup> *id.* at p. 1704.

large number of unaided schools and high rate of educated unemployed make the problem more crucial.

#### **4.6. Industrial Disputes Act, 1947**

The Act was enacted with the objective of providing a mechanism for the investigation and settlement of industrial disputes and for certain other purposes. The main purpose of the Act is to settle industrial disputes that may arise between employers and workmen, peacefully through the methods of conciliation, arbitration and adjudication as provided under the Act.

The Supreme Court of India has laid down the following major objectives of the Act in *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate*.<sup>74</sup>

- (i) Promotion of measures for securing and preserving amity and good relations between the employer and workmen.
- (ii) An investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of representation by a registered trade union or federation of trade unions or association of employers.
- (iii) Prevention of illegal strikes and lockouts
- (iv) Relief to workmen in the matter of lay off and retrenchment and
- (v) Collective bargaining.<sup>75</sup>

In order to avail protection under the Act, a person should be a ‘workman’<sup>76</sup> as defined under section 2 (s) of the Act and should be employed in connection

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<sup>74</sup> A.I.R. 1958 S.C. 353.

<sup>75</sup> *id.* at p. 358.

<sup>76</sup> Industrial Disputes Act 1947, Sec 2 (s). “Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied,

with any of the items that are enumerated in the definition of ‘industry’<sup>77</sup> as stated in section 2 (j) of the Industrial Disputes Act. Whether education is an industry and teachers and other employees working in educational institutions are ‘workmen’ entitled for the benefits under the Act are questions that were considered by the Supreme Court in various cases. In *University of Delhi v. Ram Nath*,<sup>78</sup> where Ram Nath was employed as a driver in the University and he was retrenched from service without giving proper retrenchment compensation under Section 25F of the Industrial Disputes Act. Against the action, he filed an application before the Industrial Tribunal praying for retrenchment compensation under Section 33 C (2) of the Act. The Tribunal had passed an order in favour of Ram Nath and directed the University to pay retrenchment compensation. The award was challenged before the Supreme Court by the appellants on the ground that the work carried on by the University is not an industry within the meaning of Section 2(j) of the Act

The Supreme Court, after analysing the definitions of employer, industry, and workman prescribed under Section 2(g)<sup>79</sup>, 2(j) and 2(s) of Act and held that the

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and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

<sup>77</sup> *id.* Sec. 2 (j). “Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

<sup>78</sup> A.I.R. 1963 S.C. 1873.

<sup>79</sup> *supra* n.78, Sec. 2 (g). “Employer” means-

- (i) in relation to an industry carried on by or under the authority of any department of [the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

work of imparting education by educational institutions is not an industry within the meaning of Section 2(j) of the Act.

The Court further observed that:

it would be unreasonable to hold that educational institutions are employers within the meaning of S. 2(g), or that the work of teaching carried on by them is an industry under S. 2(j), because, essentially the creation of a well-educated, healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process.<sup>80</sup>

However, the decision in the above case has been overruled by the Supreme Court in *Bangalore Water Supply and Sewage Board v. Rajappa and Other*.<sup>81</sup> In this case, Court applied the triple test<sup>82</sup> to determine whether a particular activity is covered by the definition of industry or not and held that an ‘educational institution’ is an ‘industry’ within the meaning of section 2(j) of the Industrial Disputes Act, 1947. However, a ‘teacher’ who is working in that educational institution is not a ‘workman.’ But other employees and non-teaching staff, employed to do unskilled, skilled, manual, technical, supervisory or clerical work, come under the purview of the definition of workmen. The decision of the Supreme Court empowers the appropriate Government to refer the disputes relating to such employees other than teachers to an Industrial tribunal or Labour Court for adjudication.

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<sup>80</sup> *supra* n.78, p.1876.

<sup>81</sup> A.I.R. 1978 S.C. 548.

<sup>82</sup> The triple test to be satisfied are;

- (i) there must be systematic activity;
- (ii) organised by co-operation between employer and employee;
- (iii) for the production and / or distribution of goods and services calculated to satisfy human wants and wishes.

Here, the Court held that:

Education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man without a mission is spiritually still-born. The high mission of life is the manifestation of the divinity already in man. To Christian education as a mission, even if true, is not to negate its being an industry. We have to look at educational activity from the angle of the Act, and so viewed the ingredients of education are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion.<sup>83</sup>

Again, the Supreme Court in *A. Sundarambal v. Government of Goa, Daman and Diu and Another*,<sup>84</sup> considered the question as to whether a teacher working in a school falls under the definition of ‘workman’ as defined in the Industrial Disputes Act. In this case, the petitioner was a teacher of a school in Goa and her services were terminated by the school authorities on several grounds. She raised an industrial dispute and which was admitted for conciliation by the Assistant Labour Commissioner acting as the Conciliation Officer. But the conciliation proceedings did not make any settlement between the parties. Then, the petitioner wrote several letters to the Government to refer the industrial dispute to the appropriate authority for adjudication under S. 10 (1) of the Industrial Disputes Act. Ultimately, the Government informed her that it is not making any reference to dispute under S. 10 of the Industrial Disputes Act “on the ground that a teacher cannot be termed as ‘workman’ for the purposes of the said Act”. In these circumstances, the petitioner has approached the Court praying for a writ of *mandamus* requiring the State Government to make a reference under S. 10 of the Industrial Disputes Act.

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<sup>83</sup> *supra* n. 81, p. 584.

<sup>84</sup> *supra* n. 72.

Here, the Court pointed out that, in order to be a workman under the Act, a person should be one who satisfies the following conditions:

- (i) he should be a person employed in an industry for hire or reward;
- (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and
- (iii) he should not be a person falling under any of the four clauses, i.e.,(i) to (iv) mentioned in the definition of 'workman' in section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

The Court further said that:

We are concerned in this case primarily with the meaning of the words 'skilled or unskilled manual, supervisory, technical or clerical work'. If an employee in an industry is not a person engaged in doing work falling in any of these categories, he would not be a workman at all even though he is employed in any industry. The question for consideration before us is whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled or unskilled manual work, supervisory work, technical work or clerical work. If he does not satisfy any one of the above descriptions he would not be workman even though he is an employee of an industry.<sup>85</sup>

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<sup>85</sup> *id.* at p. 1703.

Finally, the Court made the following observation:

That teachers as a class cannot be denied the benefits of social justice. We are aware of the several methods adopted by unscrupulous managements to exploit them by imposing on them unjust conditions of service. In order to do justice to them it is necessary to provide for appropriate machinery so that teachers may secure what is rightly due to them. In a number of States in India laws have been passed for enquiring into the validity of illegal and unjust terminations of services of teachers by providing for appointment of judicial tribunals to decide such cases.... we hope that this lacuna in the legislative area will be filled up soon.<sup>86</sup>

The above-cited decisions of the Supreme Court took away ‘teachers’ from the ambit of the definition of ‘workmen’ under Section 2(s) of the Industrial Disputes Act, 1947. Because of that reason, the appropriate Government is disentitled to refer their disputes to adjudication under the Act. Therefore, the teachers are not able to avail any of the benefits under the Industrial Disputes Act. This is, in fact, a real setback for the teachers especially those working in the unaided sector since there is no proper mechanism to address their grievances.

#### **4.7. The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952**

The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation enacted for the purpose of the institution of provident fund, pension fund and deposit-linked insurance fund for employees in factories and other establishments. The object, as well as the scheme of the Act, is charted with a view to ensure that all the industries to which the Act has been made

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<sup>86</sup> *ibid.*

applicable establish a compulsory provident fund for their employees. The Act also makes provision for the retired life of a workman or for the dependents in case of his early death. Thus, the Act intends to give considerable protection and timely financial backing to employees and their families when they are incapable to meet family and social commitments, in case of disablement, early death and other contingencies.

Subject to the provisions contained in Section 16 of the Act<sup>87</sup> it is applicable to every establishment which is a factory<sup>88</sup> and any other establishment employing twenty or more persons or class of such establishments which the Central Government may specify in this behalf.<sup>89</sup> The Central Provident Fund Commissioner may extend the application of the Act, by notification in the Official Gazette, to any establishment where the employer and the majority of employees in that establishment have agreed to the application of the Act.<sup>90</sup> Further, the provisions of the Act are applicable to an establishment despite the number of

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<sup>87</sup> The Employees Provident Funds and Miscellaneous Provisions Act 1952, Sec. 16. The section reads as follows:

- (1) This Act shall not apply – (a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;
- (2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient to do so, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

<sup>88</sup> *id.* Sec.1(3) (a).

<sup>89</sup> *id.* Sec.1(3) (b).

<sup>90</sup> *id.* Sec.1(4).

employees working in that establishment at any time falls below the statutory minimum.<sup>91</sup>

Further, the Act elucidates that where an establishment consists of different departments or has branches in the same place or in different places, all such branches or departments shall be treated as parts of the same establishment.<sup>92</sup> This provision enlarges the applicability of the Act by including all the departments or branches which may not otherwise be covered and employing twenty or more persons separately so as to attract the provisions of the Act.

The provisions of this beneficial piece of social welfare legislation are available only to the 'employees' working in or in connection with the work of an establishment as specified in the Act. The term 'employee' as defined under the Act means:

any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person-

- (i) employed by or through a contractor in or in connection with the work of the establishment;
- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment.<sup>93</sup>

Thus, the primary condition for a person to become an employee within the definition of the Act is that he should be employed for wages in or in connection with the work of the establishment. It clearly indicates some kind of contract of

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<sup>91</sup> *id.* Sec.1(5).

<sup>92</sup> *id.* Sec.2 A.

<sup>93</sup> *id.* Sec. 2 (f).

service between the employee and the employer.<sup>94</sup> The definition of ‘employee’ under the Act made the application of the Act even to contract labours.

The question is whether a teacher is an employee and the educational institution in which he is employed is an establishment within the meaning of the respective definitions under the Employees Provident Fund and Miscellaneous Provisions Act and thereby entitled to the benefits of the Act?

Regarding the application of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 to educational institutions, the Supreme Court of India, in *D.A.V. College and Others v. Regional Provident Fund Commissioner and Others*<sup>95</sup> held that there is no substance in the contention of the petitioners that the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 has no application to the educational institutions. The Court also directed that the petitioners shall comply with the Act and the schemes framed there under regularly with effect from 1.2.1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between 1.3.1982 and 1.2.1988 shall be paid by each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner.

The main issue in *Madhya Pradesh Shishak Congress v. Regional Provident Commissioner, Jabalpur*,<sup>96</sup> was whether the Central Act of 1952 or the State Act of 1978 is applicable to the schools in the State of Madhya Pradesh as far as the provident fund is concerned. In 1978, the Madhya Pradesh Act 20 of 1978 was promulgated known as the Madhya Pradesh Ashaskiya Sikshan Sanstha. The Act

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<sup>94</sup> *id.* Sec. 2 (e). “Employer” means - (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section 1 of section 7 of the Factories Act 1948 (63 of 1948), the person so named; and (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

<sup>95</sup> (1988) Supp (1) S.C.C. 518.

<sup>96</sup> A.I.R.1999 S.C.443.

was basically meant to regulate the payment of salaries to the employees of the institutions covered by that Act. The Rules of 1978 were, however, replaced by the Ashaskiya Shikshan Sanstha Institutional Fund Rules in 1983. These are referred to as the State rules of 1983. Under the rules, for the first time, a scheme was set out for contributory provident fund covering the teachers and employees of aided schools.

In the mean time, the Central Government specified certain classes of establishments in which 20 or more persons were employed as covered by the said Central Act of 1952. The establishments so covered included any college whether or not affiliated with the University, as also any school whether or not recognised or aided by the Central or the State Government. It also covered any other institution in which the activity of imparting knowledge or training was carried on.

Later on, the Regional Provident Fund Commissioner has issued orders directing the schools concerned, to deposit the contribution of the employees as well as the employers to the provident fund constituted under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, for the period of 1st August, 1982 to 1<sup>st</sup> December, 1988. The writ petitions filed by the appellants to challenge those orders have been dismissed by the High Court. Thus the appellants have filed the appeal against the judgement of the High Court in a representative capacity on behalf of the teachers and other employees of various private but aided schools in the state of Madhya Pradesh.

After examining the provisions of the legislations, Supreme Court pointed out that it is clear from the rules that the state legislation has excluded the operation of the state scheme as framed under the 1983 rules, over those employees to whom the Central Act applies. Further, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 initially did not apply to educational institutions. However, by virtue of the notification of the Central Government, the Act became applicable, *inter alia*, to the aided schools of the State of Madhya Pradesh. In this view of the matter, the Court held that:

There can be no doubt that for the period 1st August, 1982 to 1st August, 1988 the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was applicable to such teachers and employees of the aided schools in the State of Madhya Pradesh who are covered by the provisions of the scheme framed there under. The orders of the Regional Provident Fund Commissioner, therefore, in so far as the orders cover the period 1st August, 1982 to 1st August, 1988 are valid.<sup>97</sup>

Again in *Regional Provident Fund Commissioner v. Sanatan Dharam Girls Secondary School and Others*,<sup>98</sup> the Apex Court dealt with the issue as regards whether the non-governmental institutions, commonly termed as private educational institutions, would be covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 or whether any provision of law introduced by a particular State would entitle such schools to be exempted in view of Section 16 of the Employees' Provident Fund and Miscellaneous Provisions Act.

Here, the State Government of Rajasthan had framed rules known as the rules for payment of Grant-in-Aid to non-governmental educational, cultural and physical educational institutions in 1963. Later in 1989, the Rajasthan Legislative Assembly passed The Rajasthan Non-Government Educational Institutions Act, 1989 which came into force from 01.01.1993.

On 05.08.1997, the State Government (Finance Department) issued an order to implement the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 on non-Governmental aided educational institutions employing 20 or more persons. On 24.01.1998, the State Government (Educational Department) passed an order by which it transferred the existing provident fund amount from the State treasury to the office of Regional Provident Fund Commissioner.

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<sup>97</sup> *id.* at p. 447.

<sup>98</sup> A.I.R. 2007 S.C. 276.

Challenging the orders and circulars of the State Government, various educational institutions filed writ petitions in the High Court of Rajasthan. The Regional Provident Fund Commissioner also filed two writ petitions in the High Court. The learned Single Judge dismissed the writ petitions filed by the Regional Provident Fund Commissioner and allowed the twenty one writ petitions filed by different educational institutions by an order dated 16.01.2001 stating that the State Act would override the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and also observed that the educational institutions before him would fall under the exception under the amended section 16 (1) (b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Against the order of the learned Single Judge, the Regional Provident Fund Commissioner went on appeal before the division bench of the Rajasthan High Court. However, the division bench also observed that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 would not apply to the educational institutions and dismissed the appeals filed by the Regional Provident Fund Commissioner.

Then the Regional Provident Fund Commissioner filed an appeal before the Supreme Court against the decision of the High Court and the Court held that, there can be no dispute that educational institutions would be covered by the Employees Provident Fund Act, 1952. But those schools, which are exempted under section 16 of the Employees' Provident Fund and Miscellaneous Provisions Act, would not be covered by the Employees Provident Fund and Miscellaneous Provisions Act and would be governed by the rules introduced by the State Government. Consequentially, those private schools, which do not fall under the rules introduced by the State Government under the Private Schools Act and are not exempted by Section 16 of the Employees' Provident Fund and Miscellaneous Provisions Act, would thus continue to be covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

In the above decisions, the Court categorically said that the ‘establishment’ under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 includes any college whether affiliated with the University or not and any school whether recognised, Government, aided or unaided. Therefore, the teachers working in those institutions are entitled to avail the benefits of provident fund, pension fund etc., provided under the Act. Thus, the provisions of this welfare legislation are applicable even to the marginalised class of teachers of private unaided schools in the State.

#### **4.8. The Employees State Insurance Act, 1948**

The Employees State Insurance Act is an innovative legislation in the field of social insurance in the country. The main objective of the Act is to provide certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain other matters in relation thereto.<sup>99</sup> The Act permits the employer to make payment of contribution and deduction of the contribution of employees from their wages at the rates specified in the first schedule to the Act and to credit the same to their account.<sup>100</sup> This would entitle the employees to receive various types of benefits provided under the Act.

The Act applies, in the first instance, to all factories including factories belonging to the Government other than seasonal factories. However, this provision does not apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.<sup>101</sup>

The Act authorises the appropriate Government to extend the provisions of this Act or any of them, to any other establishment, or class of establishments, industrial, commercial, agricultural or otherwise after giving one month’s notice of

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<sup>99</sup> Employees State Insurance Act 1948, Preamble.

<sup>100</sup> *id.* Sec.39.

<sup>101</sup> *id.* Sec.1(4).

its intention to do so in the Official Gazette. But it is to be done in consultation with the Employees State Insurance Corporation and where the appropriate Government is a State Government with the approval of the Central Government,<sup>102</sup>

It is also provided under the Act that, where its provisions have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.<sup>103</sup>

Further, a factory or an establishment to which this Act applies shall continue to be governed by the provisions of the Act in spite of that the number of employees in the establishment at any time falls below the limit specified by the Act. The Act defines employee as follows. The Act defines the term ‘employee’<sup>104</sup> as follows:

“Employee” means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and -

- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
- (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

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<sup>102</sup> *id.* Sec. 1(5).

<sup>103</sup> *ibid.*

<sup>104</sup> *id.* Sec.2 (9).

- (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service ; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment ; or

[any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), [and includes such person engaged as apprentice whose training period is extended to any length of time].

but does not include]-]

- (a) any member of [the Indian] naval, military or air forces; or
- (b) any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government]:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]<sup>105</sup>

The definition of employee as given under the Act not only covers those persons who are working inside the factory or establishment but also includes those persons who are working out of the establishment and carry on work of the establishment.

<sup>105</sup> *ibid.*

Whether the provisions of the Employees State Insurance Act, 1948 can be extended to educational institutions for providing benefits under the Act to teachers and other employees working there was the question that came for consideration before the High court of Kerala in *CBSE School Management's Association v. State of Kerala*.<sup>106</sup> Here, the issue was whether the notification dated October 8, 2007, issued by the Kerala Government under Section 1(5) of the Employees State Insurance Act, 1948, extending the provisions of the said Act to educational institutions, is valid or not.

The petitioners, in this case, represent the managements of unaided recognised schools affiliated to CBSE, ICSE etc. They contended that educational institutions are not similar to industrial, commercial or agricultural establishments and cannot be roped in by resort to the expression 'or otherwise' in Section 1(5). It was further contended that CBSE schools are under control of the Central Government and the appropriate Government to issue notification is the Central Government and not the State Government.

On the other hand, the State Government contended that the category mentioned in Section 1(5) is a separate category and the words 'or otherwise' should be given a wide meaning. It was further contended that educational institution is an 'industry'. E.S.I. Corporation contended that the Act should be interpreted in such a manner so as to advance the object of the social welfare enactment.

After detailed precedential survey and purposive interpretation of the statute, the Court relied on the decision of the Supreme Court in *Bangalore Water Supply and Sewerage Boards*<sup>107</sup> case and held that the notification is valid and the educational institution is an industry.

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<sup>106</sup> (2010) II L.L.J. 240 (Ker.).

<sup>107</sup> *supra* n.81.

It was further held that the petitioner schools are not established by the Central Government. They are established and administered by various trusts, either private or public. The students in the schools can take the CBSE Examinations, if only they get affiliation from the said Board. So, complying with the affiliation bye-laws of the CBSE, the schools have obtained affiliation. The provisions of affiliation bye-laws are made to ensure that proper standards of instruction are maintained in the schools in accordance with the norms prescribed. Provisions are also there, to ensure that the schools are having the necessary infrastructure and also qualified teachers. The CBSE can disaffiliate the schools if the norms prescribed under the affiliation bye-laws concerning the above matters are not observed. In view of the above position, the claim of the petitioners that the schools affiliated to the CBSE are under the control of the Central Government is plainly untenable and hence the State Government is the appropriate Government to issue notification under Section 1(5) of the ESI Act.

Can the teachers of schools and colleges being run by congregations under the Christian community be employees within the meaning of Section 2(9) of the ESI Act was one of the questions that considered by the High Court of Kerala in *Don Bosco Higher Secondary School v. Employees' State Insurance Corporation*.<sup>108</sup> In this case, appeals were filed by various minority congregations running unaided schools and colleges, challenging the notification issued by the Government of Kerala extending the provisions of the Employees State Insurance Act, 1948 to educational institutions run by individuals, trustees, societies or other organisations, wherein 20 or more persons are employed or were employed on any day of the preceding twelve months.

In this case, the Court held that the Government is free to bring in any establishments of their choice within the sweep of Section 1(5) of the ESI Act and there cannot be any restriction to it. Therefore, it is evident that a school or college can also be an establishment within the meaning of “or otherwise” as contained in

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<sup>108</sup> 2014 (3) K.H.C. 440.

Section 1(5) of the ESI Act, or establishment to which this Act applies in various provisions of the ESI Act. Therefore, the teachers and other employees including nuns, to whom wages enabling them to be covered under the ESI Act are payable, employed at the schools or colleges being run by congregations, are employees within the meaning of Section 2(9) of the ESI Act read with Section 1(5) of the Act.

Finally, the Court held that the employees as defined in the ESI Act take in teachers or other employees of such unaided schools and colleges drawing wages below the statutory minimum specified for the coverage, also irrespective of the fact whether they are nuns or another person.

In *Holy Family English Medium L.P. School v. Employees' State Insurance Corporation and Others*,<sup>109</sup> the High Court of Kerala again examined the right of the State Government to issue notification under section 1(5) of the ESI Act to bring schools following CBSE syllabus within the coverage of the Act. Here the appellants, who are running CBSE schools, contended that the State Government is not the appropriate authority to issue the notification under Section 1(5) of the Act since the institutions are following the CBSE syllabus which is under the control of the Union Government. It is further contended that the teachers engaged by the appellant are not workers or employees of the establishment and therefore there cannot be any coverage for them under the Act. Further, some appellants also contended that their institutions are minority institutions and thus they are eligible for the protection under Article 30(1) of the Constitution, therefore, the notification issued by the State Government transgressed into their right, which is not permissible.

The Corporation, on the other hand, contended that the notification under Section 1(5) issued by the State Government has already been upheld by the High Court and that teachers also are employed for wages bringing them within the ambit of the term employee. It is also contended by the ESI Corporation that the

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<sup>109</sup> 2016 (2) K.L.J. 267.

Apex Court has clearly held that the bar under Article 30(1) of the Constitution is only in respect of the day to day administration and not with regard to the field of welfare legislation.

Regarding the authority of the State Government to issue notification, the Court pointed out that the appropriate Government has the power to issue a notification. But before exercising the power, it is mandatory for the Government to consult the ESI Corporation and six months notice to be given of its intention to extend the coverage to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Moreover, prior approval of the Central Government should have been obtained before issuing the notification. In this case, the Court held that the notification has been issued by the State Government after consultation with the Corporation, with the 'prior approval' of the Central Government and also after giving six months notice of its intention to do so.

The question as to whether teacher is an employee coming within the ambit of Section 2(9) of the Act, the Court held that even a plain reading of the provision gives a clear idea that engagement of a person for wages can be for any work in, or incidental or preliminary to or connected with the work of the establishment. The work of the establishment being imparting of education to students, engagement of a teacher to meet the said work comes within the purview of Section 2 (9), which is quite clear in all respects and there is no room for any ambiguity.

Regarding the applicability of notification to minority schools, the Court relied on the decisions in *St. Xavier's case*<sup>110</sup> and *T.M.A. Pai's case*<sup>111</sup> and held that it is clear that proper regulations can be imposed to promote 'health' of the employees and since extension of coverage under the E.S.I. Act itself is a positive measure in this regard, to promote 'health' by way of providing sickness benefit, maternity benefit, employment injury benefit etc., such general law is not liable to

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<sup>110</sup> A.I.R. 1974 S.C. 1389.

<sup>111</sup> A.I.R. 2003 S.C. 355.

be ousted with reference to the minority status under Article 30(1) of the Constitution of India.

Now it is well settled that the Employees State Insurance Act is applicable to educational institutions and teachers working there. The definition of ‘employee’ as stated in Section 2(9) of the Act includes teachers and other employees working in schools and colleges, Government, aided and unaided, drawing wages below the statutory minimum specified for the coverage. Likewise, educational institutions are ‘establishments’ within the scope of Section 1 of the Act. Thus, the teachers working in private unaided schools are entitled to the various types of benefits provided under the Act.

#### **4.9. The Payment of Gratuity Act 1972**

Gratuity is a retirement benefit given to employees as a provision for old age and a reward for their long meritorious and faithful service. Earlier, it was considered as a payment made by the employer at his will. Gradually, gratuity was paid to employees in accordance with the terms of mutual agreements. Finally, the Payment of Gratuity Act, 1972 made it as a statutory right of employees to whom the Act applies.

The Payment of Gratuity Act, 1972 provides for a scheme of payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.<sup>112</sup> One of the main objectives behind the enactment of the Act was to introduce a uniform pattern for payment of gratuity to the employees in the country.

The Act is applicable to factories, mines, oilfields, plantations, ports and railway companies. It also applies to every shop and such other establishment in which ten or more employees are employed or where employed in any day of the preceding 12 months.<sup>113</sup> The Central Government is also empowered by the Act to

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<sup>112</sup> Payment of Gratuity Act 1972, Preamble.

<sup>113</sup> *id.* Sec. 1(3).

extend its provisions to any other establishments by way of a notification issued in this behalf. Thus, the Act has an extensive coverage over establishments and other institutions in the country.

Whether educational institutions like schools and colleges are establishments within the meaning of the Act was a question considered by the Courts in a number of cases. In *S.I.E.T Women's College v. Mohamed Ibrahim*,<sup>114</sup> the Division Bench of Madras High Court held that since under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 all educational institutions are establishments within the meaning of that Act, educational institutions are establishments within the meaning of the payment of Gratuity, Act, 1972 also.

In order to remove doubts regarding the applicability of the Act to educational institutions, the Central Government in exercise of the powers conferred by Clause (c) of Sub-clause (3) of Section 1 of the Payment of Gratuity Act, 1972 issued a notification specifying that the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments to which the said Act shall apply.<sup>115</sup>

Again in *Habibia Girls Primary School, Ambur v. Ms. Noorinisha and Others*<sup>116</sup> the Madras High Court held that the provisions contained in Section 1(3) (b) of the Payment of Gratuity Act are applicable even to unaided minority educational institutions. Thus, it is clear that an educational institution including one belonging to a minority is an establishment under Section 1(3) (c) of the Act.

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<sup>114</sup> (1992) 1 L.L.J. 91 (Mad. D.B.).

<sup>115</sup> Notification No. 5-42013/1/95-SS II, dated, 3rd April, 1997.

<sup>116</sup> (2004) II L.L.J. 398 (Mad.).

Section 2 (e) of the Act defines the term ‘employee’<sup>117</sup> as under:

“employee” means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.]

The definition obviously speaks of a person employed on wages. It does not use the word ‘employee’ with reference to any specified period of time. Whether teachers employed in educational institutions are ‘employees’ within the definition given under section 2 (e) of the Act and thereby entitled for gratuity is another question that has to be answered for ascertaining the applicability of the Act to them. In *Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer and Others*,<sup>118</sup> the main question considered by the Supreme Court was whether teachers are employees within the meaning of Section 2(e) of the Act. In this case, a petition was filed by a teacher employed in a school run by Ahmedabad Municipal Corporation claiming gratuity under the Payment of Gratuity Act, 1972. The High Court of Gujarat dismissed his petition and held that teachers as a class not covered by definition of “employee” under Section 2 (e), therefore not entitled to claim gratuity under the Act. Against the decision, Ahmedabad Private Primary Teachers Association preferred an appeal before the Supreme Court claiming that a beneficial, purposeful and wide interpretation is to be given to the definition of employee in Section 2 (e) so as to cover teachers within its ambit.

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<sup>117</sup> *supra* n.112, Sec.2 (e).

<sup>118</sup> A.I.R.2004 S.C.1426.

After comparing and considering various definitions of the word ‘employee’ in different enactments and the aims and objectives of the various labour legislations, the Supreme Court dismissed the appeal and held that:

Even on plain construction of words and expression used in definition clause 2 (e) of the Act, teachers who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act. Teachers do not answer description of being employees who are ‘skilled,’ ‘semi-skilled’ or ‘unskilled’. These three words used in association with each other intend to convey that a person who is ‘unskilled’ is one who is not ‘skilled’ and a person who is ‘semi-skilled’ may be one who falls between two categories meaning he is neither fully skilled nor unskilled.<sup>119</sup>

Here, the Court has also expressed its dissatisfaction by holding that the teachers are engaged in a very noble profession of educating our young generation should not be deprived of such important benefit of gratuity. The Court further opined that it is for the legislators to take cognizance of the situation of teachers, to whom gratuity benefit is not made available, and to think of a separate legislation for teachers.

In view of the above observation, it was proposed to widen the definition of employee and accordingly the Government of India has introduced the Payment of Gratuity (Amendment) Bill in 2009 and subsequently it was passed by the Parliament. Now the educational institutions and teachers are covered under the Payment of Gratuity Act, 1972.

#### **4.10. The Maternity Benefit Act 1961**

In order to remove the disparities relating to maternity protection provided under different State enactments, the Central Government passed the Maternity

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<sup>119</sup> *id.* at p.1431.

Benefit Act in 1961. The Act is a piece of social welfare legislation enacted to promote the welfare of working women. It prohibits the working of pregnant women for a specified period before and after delivery.<sup>120</sup> It provides for maternity leave and payment of certain monetary benefits to women workers during the period when they are out of employment because of their pregnancy. Further, the services of a woman cannot be terminated during the period of her absence on account of pregnancy, except for gross misconduct.<sup>121</sup>

The Act applies to every establishment, factory, mine or plantation including any such establishment belonging to the Government.<sup>122</sup> It also applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.<sup>123</sup>

The State Government is empowered to extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. But the State Government can do so only with the approval of the Central government and after giving not less than two months notice, by a notification in the Official Gazette, of its intention to do so.<sup>124</sup> The Act specifically excludes the applicability of the provisions of the Act to any factory or other establishment to which provisions of the Employees State Insurance Act, 1948, apply for the time being.<sup>125</sup>

The Act was amended on May 1, 1976, to extend the benefits to all women employees earning more than the wage ceiling in establishments covered by the ESI Act. The Act was again amended in 2017 to incorporate certain important provisions

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<sup>120</sup> The Maternity Benefit Act 1961, Sec. 4(3), 4(4).

<sup>121</sup> *id.* Sec.12.

<sup>122</sup> *id.* Sec. 2 (1) (a).

<sup>123</sup> *id.* Sec.2 (1) (b).

<sup>124</sup> *ibid.*

<sup>125</sup> *id.* Sec.2 (2).

in the Act. The provisions include the definition of ‘Commissioning mother’,<sup>126</sup> extension of period of maternity benefit to twenty six weeks,<sup>127</sup> provision of maternity benefit to the commissioning mother or woman who legally adopts a child below the age of three months<sup>128</sup> and introduction of crèche facility<sup>129</sup> in every establishment where fifty or more women employees are working etc.

The provisions of this welfare legislation are available only to ‘women’ employed in connection with an establishment under the Act in which ten or more persons are employed or were employed on any day of the preceding twelve months. The term ‘establishment’<sup>130</sup> defined under the Act as:

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; ((iv) (a) a shop or establishment; or
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable.<sup>131</sup>

According to Section 3 (o) of the Act, ‘woman’ means a woman employed, whether directly or through any agency, for wages in any establishment.

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<sup>126</sup> The Maternity Benefit (Amendment) Act 2017, Sec.3 (ba). “Commissioning mother” means a biological mother who uses her egg to create an embryo implanted in any other woman.

<sup>127</sup> *id.* Sec.5 A (3).

<sup>128</sup> *id.* Sec.5 B (4). A woman who legally adopts a child below the age of three months or a Commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

<sup>129</sup> *id.* Sec.11 A.

<sup>130</sup> *id.* Sec.3 (e).

<sup>131</sup> *ibid.*

Whether female workers employed on temporary basis are entitled to the maternity benefit was the question considered by the Supreme Court in *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Another*,<sup>132</sup> female workers engaged by the Municipal Corporation of Delhi raised a demand for grant of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services were not regularised and, therefore, they were not entitled to any maternity leave. The main question that came for consideration before the Industrial Tribunal was whether the female workers whose names appear on the Muster Roll should be given any maternity benefit? The Tribunal allowed the claim of the female workers and directed the Corporation to extend the benefits under the Maternity Benefit Act, 1961 to muster roll female workers who were in the continuous service of the Corporation for three years or more. The Corporation challenged this award before the Delhi High Court and which was dismissed by the Court. Against the decision of the High Court, the present petition was filed before the Supreme Court. The Court upheld the decision of the High Court and observed as follows:

Since Article 42 specifically speaks of “just and humane conditions of work” and “maternity relief”, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.<sup>133</sup>

The Court further observed:

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn

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<sup>132</sup> A.I.R. 2000 S.C. 1274.

<sup>133</sup> *id.* at p.1277.

their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period.<sup>134</sup>

Thus, it is obvious from a plain reading of the definitions of ‘establishment’ and ‘woman’ and the observation made by the Supreme Court in the above case that women employed for wages in any establishment are entitled to avail the benefits provided under the Act. Therefore, the teachers and other employees working in the educational institutions are entitled to the benefits of the Act.

#### **4.11. Conclusion**

Therefore, it is clear from the above discussion that almost all the social security legislations are applicable to private unaided institutions. Teachers, the soul of such institutions are entitled to the benefits provided under the various welfare legislations. They are eligible to avail the benefits of provident fund, insurance protection under ESI Act, gratuity and maternity benefit if the wages drawn by them are within the ceiling limits as prescribed by the respective legislations. However, teachers are not considered as ‘workmen’ or ‘employees’ under the Industrial Disputes Act, 1947 and the Minimum Wages Act, 1948

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<sup>134</sup> *id.* at p.1281.

respectively. Therefore, they are not entitled to the benefits under the Minimum Wages Act, 1948 and access to industrial disputes adjudication machinery provided under the Industrial Disputes Act, 1947. On the other hand, the non-teaching and other employees of educational institutions, including the private unaided schools, are entitled to enjoy these benefits, since those legislations are applicable to educational institutions of any kind.

## **Chapter 5**

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# **WAGES AND SERVICE CONDITIONS OF PRIVATE UNAIDED SCHOOL TEACHERS: AN EMPIRICAL STUDY**

## Chapter 5

# WAGES AND SERVICE CONDITIONS OF PRIVATE UNAIDED SCHOOL TEACHERS: AN EMPIRICAL STUDY

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The wages and service conditions of private unaided school teachers in Kerala has generated a lot of hue and cry from different parts of the State regarding the miserable condition of the teachers working in various unaided schools in the State. However, the scholar could not find out any dependable data, research reports, rules or regulations governing their wages and service conditions. Therefore, in order to ascertain the actual salary and other service conditions of unaided school teachers in the State, a field study has been conducted among them.

### **5.1. Research Methodology Adopted for the Field Study**

The methodology adopted for collecting data from various private unaided school teachers in the State is as follows.

#### **5.1.1. Sample Frame**

The survey was conducted with the help of Unaided School Teachers Associations. Name and address of the unaided school teachers from different parts of Kerala were collected with the help of representatives of their associations. There are about fifty thousand private unaided school teachers in the State.

#### **5.1.2. Sample Size**

The researcher calculated the sample size for the sample frame of 50069 private unaided school teachers. The sample size of the population was identified as 593.17 for a confidence interval of '4' at 95 % confidence level.

### **5.1.3. Sampling Method**

The researcher followed simple random sample method for this study. Random numbers were generated against the list of unaided school teachers using MS Office Excel. The first '593' samples were selected and used the same for the study.

### **5.1.4. Data Collection (Tool Frame)**

A total of 593 questionnaires with a number of 29 questions each were prepared and handed over the same to the teachers working in different places selected by way of simple random sampling. Each question in the questionnaire was framed with a view to understand the different issues faced by this community. They were given the freedom to avoid writing their names, school names or any other details that may reveal their identity.

This chapter is based on the primary data collected through questionnaire. It analyses the responses of 593 respondents from different parts of Kerala. The researcher has analysed the following aspects of the private unaided school teachers in the State for determining their present status. They are:

- (i) Demographic Profile of the Respondents
- (ii) Work Schedule
- (iii) Holidays and Vacations
- (iv) Provision for Leave
- (v) Salary and Increment
- (vi) Service Benefits
- (vii) Fundamental Freedom of Respondents
- (viii) Satisfaction of Respondents

- (ix) Job Security
- (x) Expectations of Respondents.

## 5.2. Demographic Profile of the Respondents

The demographic profile includes the geographical location, age, gender, qualification and teaching experience of the respondents. The detailed analysis of the profile is discussed below.

### 5.2.1. Location of the Respondents

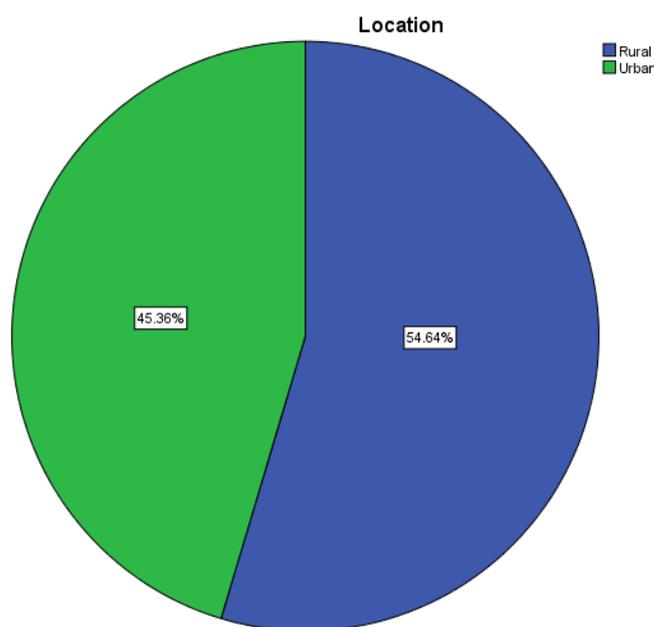
For the purpose of the study, location of a school of the teachers is classified into two categories viz., rural and urban. The classification of respondents according to their location is displayed in Table 5.1 below.

**Table 5.1.** Classification of Respondents According to Their Location.

Location	Frequency	Percent
Rural	324	54.6
Urban	269	45.4
Total	593	100

*Source: Survey Data.*

As per Table 5.1, out of the 593 responses from the teachers, data of 324 constitute 54.6 % of the total respondents collected from the schools situated in Grama Panchayath area (rural). Responses of 269 represent 45.4 % of the total respondents from the schools located in Municipal and Municipal Corporation area (urban). In Kerala, schools are situated in both urban and rural areas and the responses received from the teachers are almost evenly divided between urban and rural areas.



**Figure 5.1:** Classification of Respondents According to Their Location.

### 5.2.2. The Age of the Respondents

For the survey, age of the respondents is graded into four groups viz., below 30 years, 31- 40 years, 41-50 years and above 50 years. The division of the respondents according to their age is shown in the following table.

**Table 5.2.** Classification of Respondents According to Their Age.

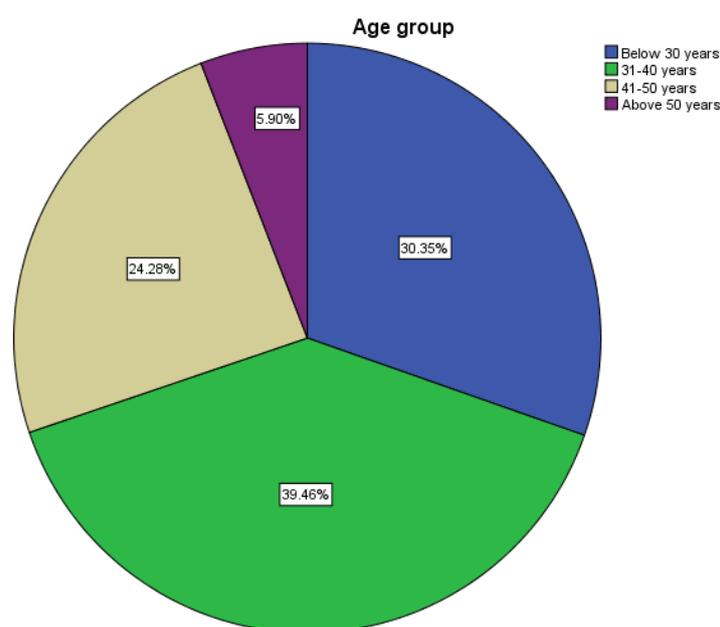
Age group	Frequency	Percent
Below 30 years	180	30.4
31 - 40 years	234	39.5
41 - 50 years	144	24.3
Above 50 years	35	5.9
Total	593	100

*Source: Survey Data.*

Table 5.2 reveals that majority of respondents are in the age group of 31 - 40 years which amount to 39.5 % of the total respondents. 30.4% of the total population belongs to the age group of below 30 years and 24.3 % are in the age group of 41 - 50 years. Only 5.9% of the respondents are above the age of 50 years.

Thus, almost 70% of the total respondents are below the age of 40 years. There are many reasons for the existence of this pattern of the age group in this sector. The most important period for a person in Kerala to get a good employment in Government or other sectors is from the age of 20 – 30 years. After 30 years most of the job seekers lose confidence to find a good employment and settle with any job in their close proximity. Therefore, it can be concluded that these teachers never opt for a job in the unaided schools as their first choice. They are in fact forced to take up this employment due to the non availability of a better employment elsewhere.

Another fact is that only 5.9% of the respondents are aged above 50 years. It appears that the teachers in the unaided schools are either terminated by the management due to their age or they themselves resign the job out of unsatisfactory working environments.



**Figure 5.2:** Classification of Respondents According to Their Age.

### 5.2.3. Gender of the Respondents

Respondents have been classified on the basis of their sex and it is given in Table 5.3.

**Table 5.3.** Classification of Respondents According to Their Gender.

Gender	Frequency	Percent
Male	147	24.8
Female	445	75.2
Total	592	100.0
Missing	01	
Total	593	

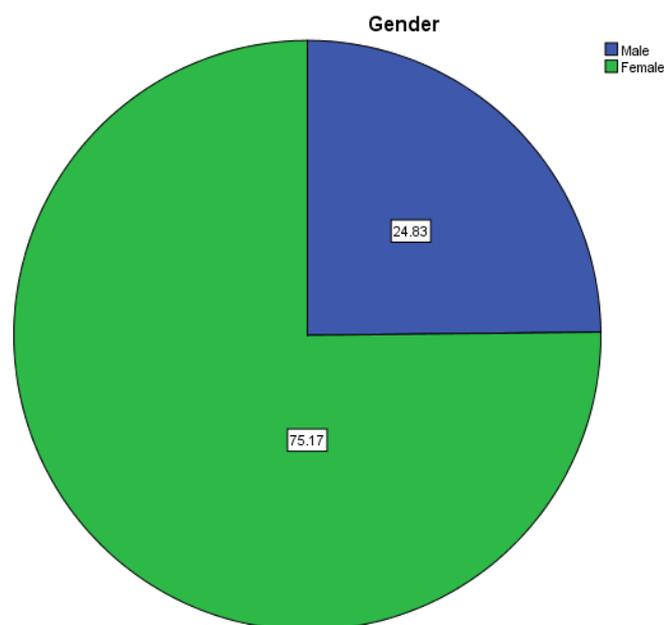
*Source: Survey Data.*

The above Table demonstrates that 445 respondents which comprise 75.2% of the total respondents are women and 147 respondents that constitute 24.8% of the total respondents are men. One respondent has not given any response to this question.

The dominance of female teachers and a dearth of their male counterparts in the unaided schools may be due to several reasons. Some of them can be the following:

- (i) The salary and other benefits in these schools are not sufficient for males to maintain a family as men are the major bread winners in most of the families. The salary earned by women is considered generally as an additional income for the families.
- (ii) Compared to male counterparts, female teachers are less aggressive and less resistant to exploitation in different forms. Therefore, most of the managements prefer to employ female teachers. They usually raise no objections against the decision of the management / employer and are ready to work without any complaint.
- (iii) The traditional system of a family in the State is that men should earn the livelihood and women look after the family and children. As a result of this, men do not have any problem in working in distant places if they get good

remuneration. Women often do not prefer to work in distant places as the responsibility of the family and children are vested on their shoulders. So they are happy to work in neighbourhood places even if the salary and other working conditions are not much favourable and attractive.



**Figure 5.3.** Classification of Respondents According to Their Gender

#### 5.2.4. Qualification of the Respondents

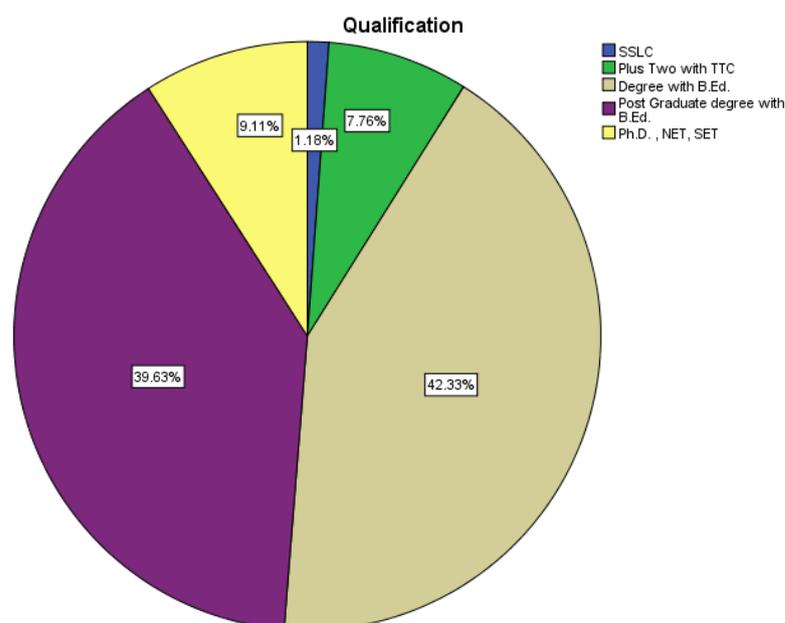
In order to examine the qualification, respondents have been classified on the basis of their qualifications like SSLC with T T C, Plus Two with T T C, Degree with B.Ed., Post Graduate with B.Ed., Ph.D., NET and SET and which is specified in Table 5.4.

**Table 5.4.** Classification of Respondents According to Their Qualifications

Qualifications	Frequency	Percent
S S L C with T T C	7	1.2
Plus Two with T T C	46	7.8
Degree with B.Ed.	251	42.3
Post Graduate with B.Ed.	235	39.6
PhD, NET, SET	54	9.1
Total	593	100.0

Source: Survey Data.

It is evident from Table 5.4 that 251 respondents are graduates with B.Ed. and 235 respondents are post graduates with B.Ed. qualifications which together constitute 81.9% of the total respondents. 54 respondents that amount to 9.1% of the total population are having higher qualifications like Ph.D., NET, SET etc., apart from their post graduate degrees. 7.8 % of the total respondents are plus two with TTC and 1.2 % are SSLC with T T C as their qualification. It is clear from the above facts that the teachers working in unaided schools are having adequate qualifications for the post.

**Figure 5.4.** Classification of Respondents According to Their Qualifications

### 5.2.5. Teaching Experience of the Respondents

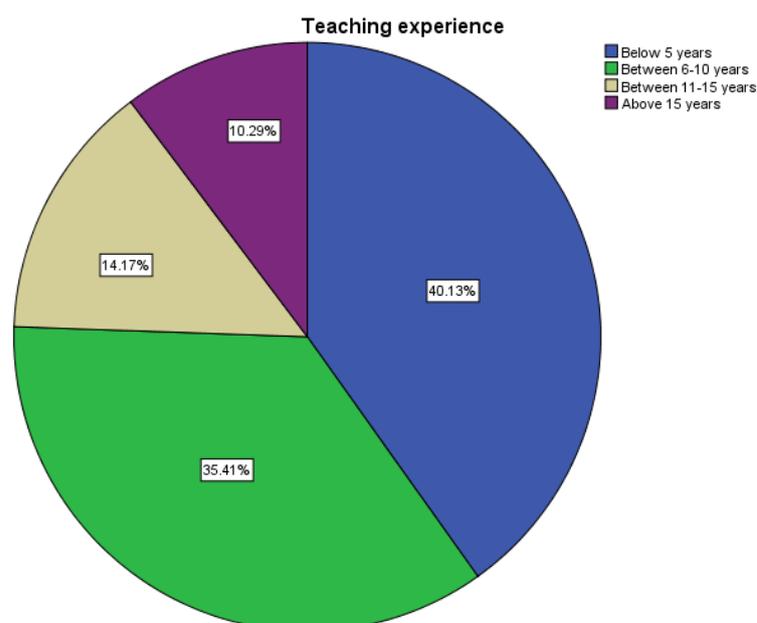
For a detailed examination, respondents have been sorted on the basis of their span of teaching experience in schools and it is illustrated in Table 5.5 below.

**Table 5.5.** Classification of Respondents According to Their Teaching Experience

Years of experience	Frequency	Percent
Below 5 years	238	40.1
Between 6 – 10 years	210	35.4
Between 11 – 15 years	84	14.2
Above 15 years	61	10.3
Total	593	100

Source: Survey Data.

It is explicit from the above figures that the number of well-experienced teachers is very few in unaided schools. Less than 25% of the total respondents are having the teaching experience of above 10 years. 238 teachers consist of 40.1% of the total respondents are having the experience of below 5 years and the remaining 35.4% of the respondents have the experience of 6 - 10 years. The possibility of private unaided school teachers getting a better job elsewhere can be cited as one of the reasons why teachers with long experience are not seen in these schools.



**Figure 5.5.** Classification of Respondents According to Their Teaching Experience

### 5.3. Work Schedule of the Respondents

The scheme of syllabus followed by the respondents, the teaching section to which they belong and the amount of workload they have are the points discussed under this head.

#### 5.3.1. Scheme of Syllabus

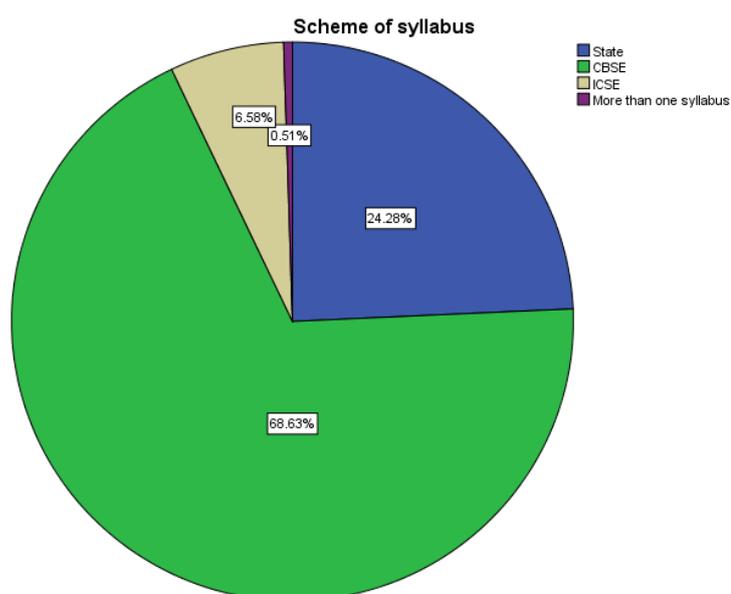
For the purpose of assessment, respondents have been categorised on the basis of syllabus of instruction that is followed in their schools. This is explained in Table 5.6.

**Table 5.6.** Classification of Respondents According to Scheme of Syllabus.

Syllabus	Frequency	Percent
State	144	24.3
C B S E	407	68.6
I C S E	39	6.6
More than one syllabus	03	0.5
Total	593	100

*Source: Survey Data.*

Table 5.6 tells that 407 respondents are following C B S E syllabus which comprises of 68.6% of the total respondents. 24.3% and 6.6% as the case may be of the total respondents are following the Kerala State Board and I C S E syllabi respectively. 0.5% of the schools are working with more than one type of syllabus at a time. It is evident from the table that the majority of private unaided schools in the State are following the CBSE syllabus.



**Figure 5.6.** Classification of Respondents According to Scheme of Syllabus

### 5.3.2. Teaching Section

For detailed scrutiny, respondents have been divided on the basis of their teaching sections. It is given in the following table.

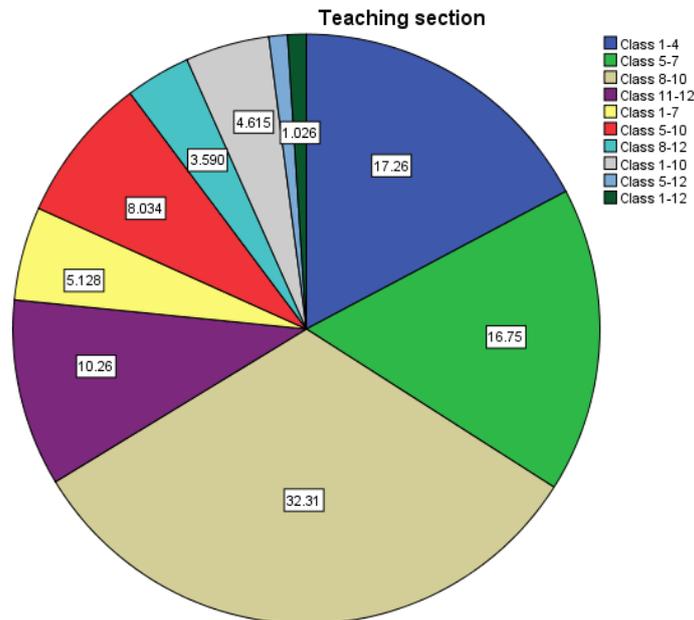
**Table 5.7.** Classification of Respondents According to Their Teaching Section

Teaching section	Frequency	Percent
Class 1 – 4	101	17.3
Class 5 – 7	98	16.8
Class 8 – 10	189	32.3
Class 11 – 12	60	10.3
Class 1– 7	30	5.1
Class 5 – 10	47	8
Class 8 – 12	21	3.6
Class 1 – 10	27	4.6
Class 5 – 12	6	1.0
Class 1 – 12	6	1.0
Total	585	100.0
Missing	8	
Total	593	

Source: Survey Data.

From the analysis of the above data, it is apparent that 189 teachers which form 32.3% of the total respondents are teaching in high schools (class 8 – 10). Teachers instructing in lower primary (class 1 - 4) and upper primary (class 5 - 7) classes constitute 17.3% and 16.8 % respectively of the total respondents. 10.3 % of the total number of respondents is higher secondary teachers. Apart from these, a considerable number of teachers are engaging classes in more than one teaching section which comprise 16.7% of the total respondents.

Hence, it is obvious from the table that the teachers are compelled to teach in three or sometimes up to four teaching sections in schools. Undoubtedly, this system of instruction will adversely affect the health and efficiency of unaided school teachers. It may be noted that affiliation bye-laws of various school boards though prescribe the workload of teachers are seen violated.



**Figure 5.7.** Classification of Respondents According to Their Teaching Section

### 5.3.3. Workload

The workload of unaided school teachers is not uniform in every part of Kerala. It may vary from school to school. Therefore, for the purpose of the study, the respondents have been divided on the basis of their actual period of work and it is displayed in Table 5.8.

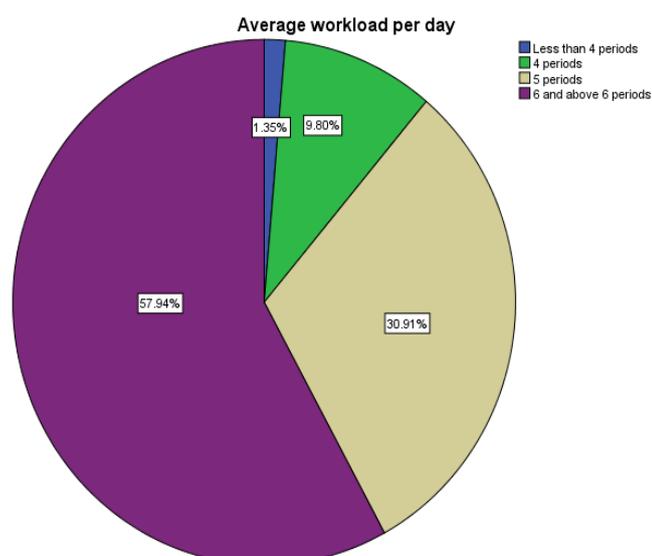
**Table 5.8.** Classification of Respondents According to Their Workload

Number of Periods / Day	Frequency	Percent
Less than 4	8	1.4
4	58	9.8
5	183	30.9
6 or above 6	343	57.9
Total	592	100
Missing	1	
Total	593	

*Source: Survey Data.*

Table 5.8 reveals that 343 teachers represent 57.9% of the total respondents are taking a class of 6 or above 6 periods a day. Only 1.4% of the total teachers responded have a workload of fewer than 4 periods a day. 183 teachers which constitute 30.9% of the total respondents are working with 5 periods and the remaining 58 respondents are having 4 periods in a day. One respondent has not attempted this query.

So the majority of private unaided school teachers are engaging 30 or more than 30 periods in a week. This heavy workload would probably affect their health, efficiency and enthusiasm to teach. Moreover, it can also be considered as an infringement of right against exploitation as assured in Article 23 of the Constitution to the people in the country.



**Figure 5.8.** Classification of Respondents According to Their Workload.

## 5.4. Provision for Leave

Details of casual leave, maternity leave and other kinds of leave like commuted leave, half pay leave, leave without allowance etc. are examined under this head.

### 5.4.1. Casual Leave

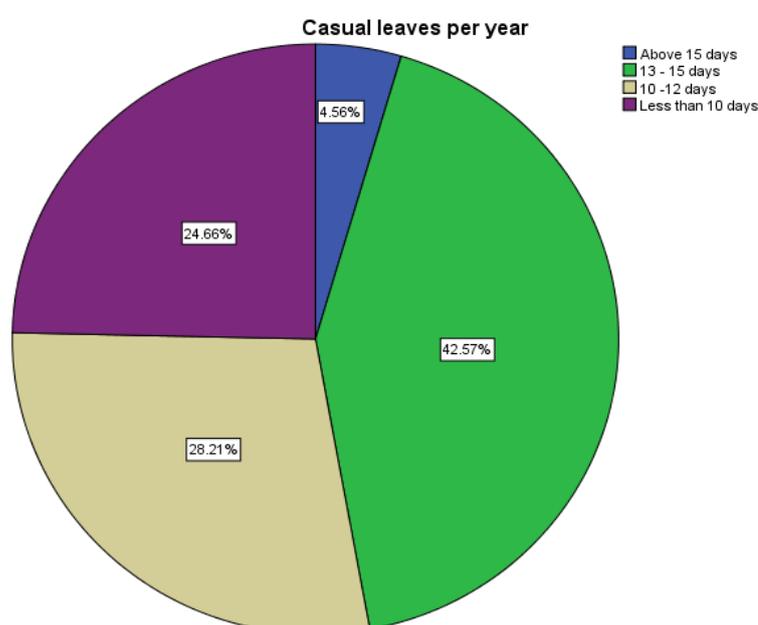
For the purpose of analysis, respondents have been classified in accordance with the number of casual leave they get in a year, which is illustrated in Table 5.9

**Table 5.9** Classification of Respondents According to the Number of Casual Leave / Year.

Casual leave / year	Frequency	Percent
Above 15 days	27	4.6
13 – 15 days	252	42.6
10 – 12 days	167	28.2
Less than 10 days	146	24.7
Total	592	100
Missing	1	
Total	593	

Source: Survey Data.

It is obvious from Table 5.9 that 252 respondents constituting 42.6% of the total respondents are getting casual leave within a range between 13 – 15 days a year. 28.2% of the respondents are granted 10 – 12 days of casual leave per year. However, 146 respondents consisting of 24.7% of the total respondents are granted less than 10 casual leave in a year. Only 4.6% of the total population is having more than 15 casual leave per year. One respondent has not given any response to this enquiry. Casual leave is offered to the private unaided school teachers, but an adequate number of leave is granted only to a bare minimum.



**Figure 5.9.** Classification of Respondents According to the Number of Casual Leave / Year.

#### 5.4.2. Maternity Leave Benefit

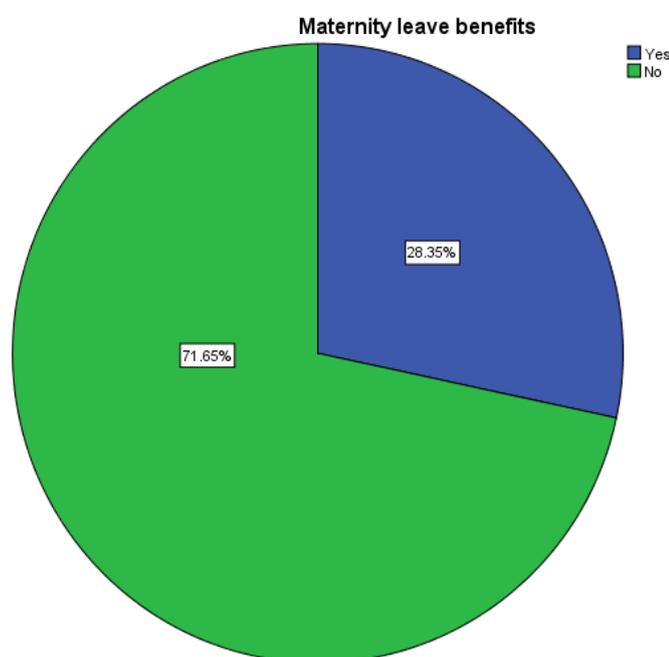
Maternity benefit is an important benefit available to female employees. How many female teachers in these schools are having this benefit is a crucial question and has to be answered. The following table shows the classification of female respondents according to their scheme for maternity benefit.

**Table 5.10.** Classification of Female Respondents Enjoying Maternity Benefit

Provision for Maternity Benefit	Frequency	Percent
Yes	127	28.5
No	318	71.5
Total	445	100
Missing	148	
Total	593	

Source: survey Data.

From the above table, it is clear that only 127 female respondents consisting of 28.5% of the total female respondents (445) are getting the benefit of maternity leave with salary. On the other hand, 71.5% of the female teachers are not getting the benefit of maternity leave. The missing 148 respondents are male teachers.

**Figure 5.10** Classification of Female Respondents Enjoying Maternity Benefit

### 5.4.3. Duration of Maternity Benefit

For the purpose of this study, it is relevant to know the duration of maternity leave with salary available to the female respondents. Hence, the female respondents have been divided on the basis of the extent of maternity leave granted to them with salary and it is illustrated in the Table given below.

**Table 5.11.** Classification of Female Respondents According to Duration of Maternity Benefit

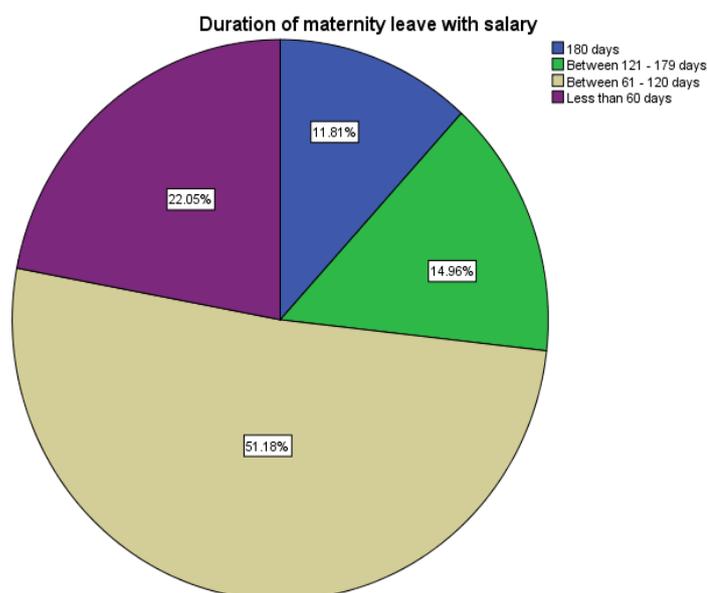
Extent of Maternity Leave with Salary	Frequency	Percent
180 Days	15	11.8
Between 121 – 179 Days	19	15
Between 61 – 120 Days	65	51.2
Less than 60 days	28	22
Total	127	100
Missing	466	
Total	593	

*Source: Survey Data.*

Table 5.11 explains that only 15 respondents comprising 11.8% of the total female respondents are getting 180 days of maternity leave with salary. Majority of respondents constituting 51.2% of the total population are given maternity leave between 61 - 120 days. 15% of the female respondents are granted maternity leave for over 120 days but below 180 days, whereas about 22% of the female respondents are enjoying less than 60 days of maternity leave with salary. Missing 466 teachers include male respondents and those female respondents who have no maternity benefit.

Maternity benefit is a statutory benefit provided by the Maternity Benefit Act, 1961 and the legislation is applicable to all establishments including educational institutions as well. But unfortunately, only 11.8% of the female teachers of private unaided schools are enjoying the benefit of full maternity leave. Right to proper

maternity relief is also recognised as a directive under the directive principles of State policy.<sup>1</sup> The Constitutional and statutory provisions are found violated in the case of maternity benefit of female teachers in the private unaided schools.



**Figure 5.11.** Classification of Female Respondents According to Duration of Maternity Benefit

#### 5.4.4. Other Kind of Leave

Respondents have been classified on the basis of incidents of leave other than casual and maternity leave for the purpose of this study. It is displayed in the following table.

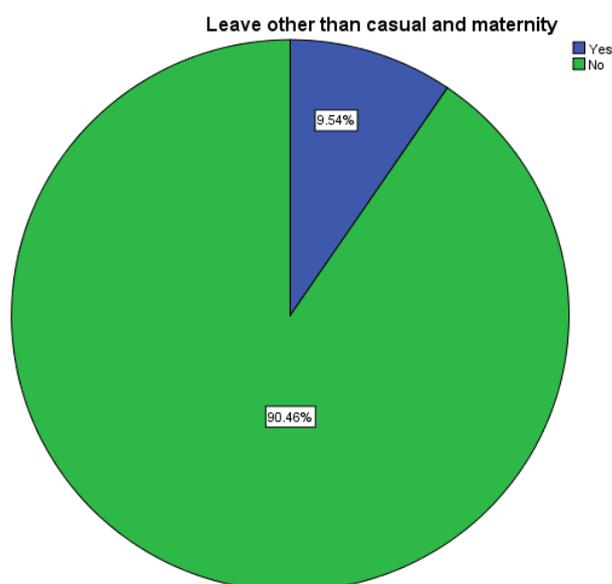
**Table 5.12.** Classification of Respondents According to Leave Other Than Casual and Maternity Leave

Availability of Other Leave	Frequency	Percent
Yes	56	9.5
No	531	90.5
Total	587	100
Missing	6	
Total	593	

Source: Survey Data.

<sup>1</sup> Constitution of India 1950, Art. 42.

Table 5.12 reveals that only 56 respondents forming 9.5% of the total respondents have the privilege of leave other than casual and maternity leave. 90.5% of the respondents are not offered any other kind of leave. Seven respondents have not given any opinion to this query.



**Figure 5.12.** Classification of Respondents According to Leave Other Than Casual and Maternity Leave

#### 5.4.5. Details of Other Kind of Leave

Respondents have been classified based on different types of leave they get from their institution which is shown in Table 5.13.

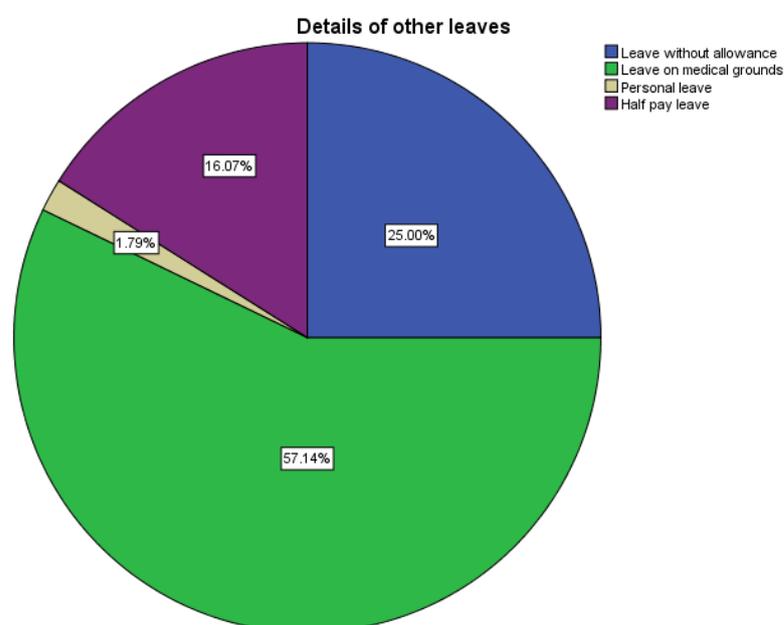
**Table 5.13.** Classification of Respondents According to the Details of Other Leave

Details of Other Leave	Frequency	Percent
Leave Without Allowance	14	25
Leave on Medical Grounds	32	57.1
Personal Leave	1	1.8
Half Pay Leave	9	16.1
Total	56	100
Missing	537	
Total	593	

Source: Survey Data.

It is clear from Table 5.13 that out of the total (56) respondents enjoying the privilege of other kind of leave, 32 respondents representing 57.1% of the total respondents are allowed to take leave on medical grounds. 14 respondents are getting the benefit of leave without allowance. Half pay leave is available to 16.1% and personal leave is offered to 1.8% of the total respondents. On the other hand, 537 respondents are not in the enjoyment of any other kind of leave.

Adequate variety of leave is essential for the protection and preservation of health and efficiency of an employee. This is exactly true in the case of private unaided school teachers also. But, unfortunately, it is totally denied to them.



**Figure 5.13.** Classification of Respondents According to the Details of Other Leave

## 5.5. Holidays and Vacations of the Respondents

Weekly holidays, term vacations, annual vacation, duration of annual vacation with salary are the major point of discussion under this topic.

### 5.5.1. Weekly Holidays

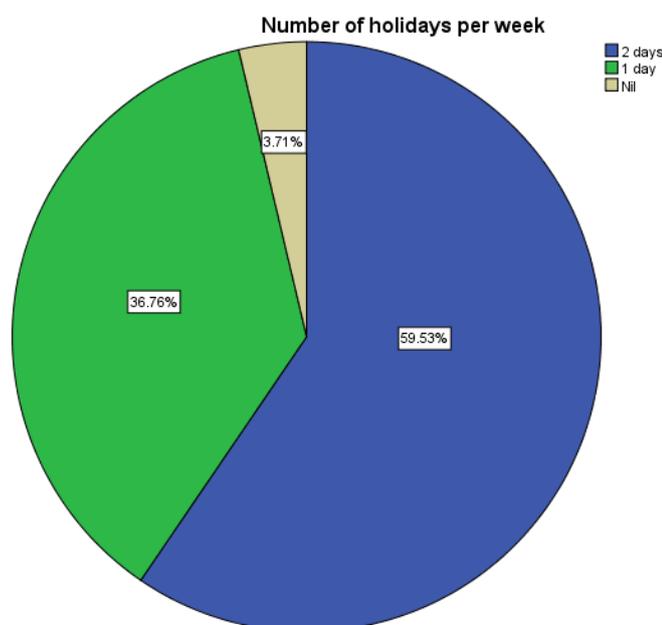
Weekly holidays of respondents are not the same. They are graded on the ground of actual weekly holidays they get for the purpose of analysis. It is illustrated in the following Table.

**Table 5.14.** Classification of Respondents According to Weekly Holidays

Number of Holidays / Week	Frequency	Percent
2	353	59.5
1	218	36.8
Nil	22	3.7
Total	593	100

Source: Survey Data.

Table 5.14 tells that 353 respondents which constitute 59.5% of the total respondents are getting two holidays and 36.8% of the respondents have one holiday per week. However, 22 respondents that amount to 3.7% of the total respondents are not having any holiday in a week. Two weekly holidays are usually granted to a great number of private unaided school teachers in the State.



**Figure 5.14.** Classification of Respondents According to Their Weekly Holidays

### 5.5.2. Term Vacations

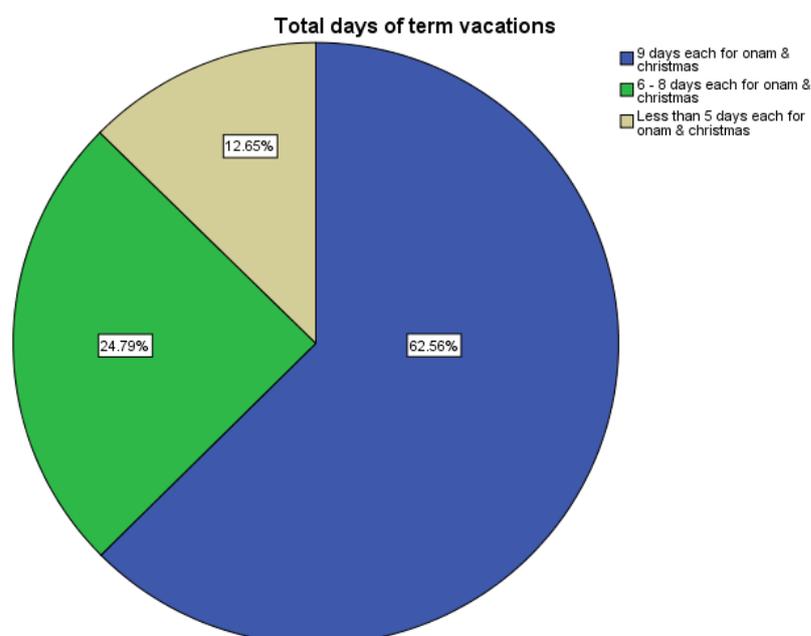
In order to examine this, the respondents have been graded based on the duration of Onam and Christmas vacations they get. It is explained in the Table shown below.

**Table 5.15.** Classification of Respondents According to Period of Term Vacations

Period of Term Vacation	Frequency	Percent
9 days each for Onam & Christmas	371	62.6
6 - 8 days each for Onam & Christmas	147	24.8
Less than 5 days each for Onam & Christmas	75	12.6
Total	593	100

Source: Survey Data.

As per Table 5.15, 371 respondents comprising 62.6% of the total respondents are getting full days of Onam and Christmas vacations. 24.8% of the respondents are granted less than 8 days and 12.6% are allowed less than 5 days holidays for the term vacations. Therefore, it is explicit that the term vacations in its entirety are enjoyed by the majority of the teachers in the private unaided schools.



**Figure 5.15.** Classification of Respondents According to Period of Term Vacations

### 5.5.3. Annual Vacation

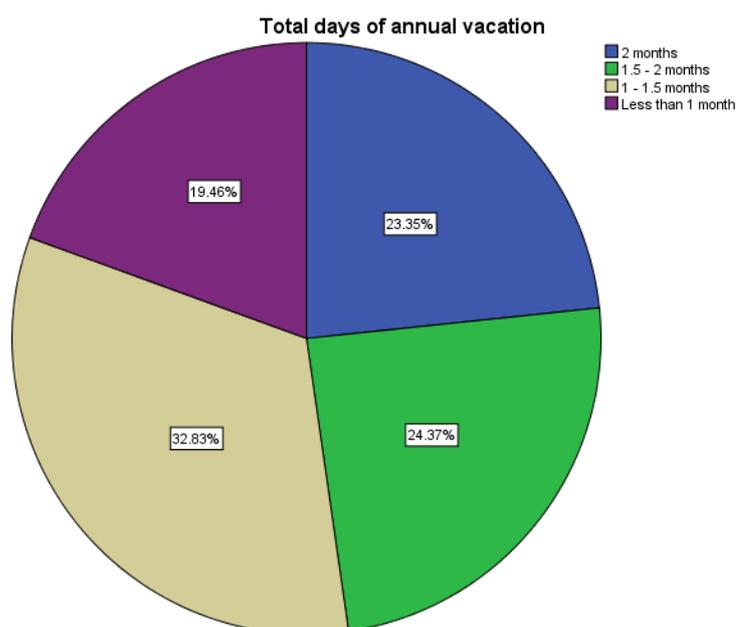
For the purpose of the study, respondents have been classified on the basis of the span of their annual vacation. It is exhibited in Table 5.16.

**Table 5.16.** Classification of Respondents According to Duration of Annual Vacation

Duration of annual vacation	Frequency	Percent
2 months	138	23.4
1.5 – 2 months	144	24.4
1 – 1.5 months	194	32.8
Less than one month	115	19.4
Total	591	100
Missing	2	
Total	593	

*Source: Survey Data.*

It is evident from the table that 194 respondents which represent 32.8% of the total respondents are getting annual vacation between 30 – 45 days. 115 respondents consist of 19.4% of the total population responded are granted annual vacation of less than 30 days. Only 23.4% of the respondents are benefitted with the vacation of 2 months. Two respondents have not given any reply to this issue. Thus, the benefit of annual vacation is available to almost all the teachers of private unaided schools, whereas annual vacation of two months is granted only to a small section of them.



**Figure 5.16.** Classification of Respondents According to Duration of Annual Vacation

#### 5.5.4. Vacation Salary

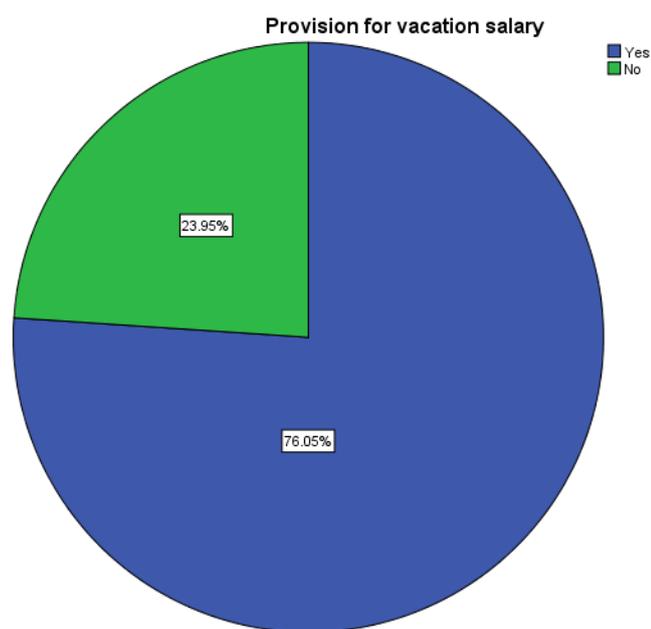
Vacation salary is an important benefit of employees having vacations. Teachers are the main beneficiaries of this benefit. For the purpose of scrutiny, a classification of respondents is made on the basis of the benefit of vacation salary. It is explained in the table shown below.

**Table 5.17.** Classification of Respondents Based on the Benefit of Vacation Salary

Benefit of Vacation Salary	Frequency	Percent
Yes	451	76.1
No	142	23.9
Total	593	100

*Source: Survey Data.*

It is apparent from the figures of Table 5.17 that 451 respondents forming 76.1% of the total respondents are enjoying the benefit of vacation salary. Remaining 23.9% of the total respondents are not receiving any salary during vacations.



**Figure 5.17.** Classification of Respondents Based on the Benefit of Vacation Salary

#### 5.5.5. Amount of Vacation Salary

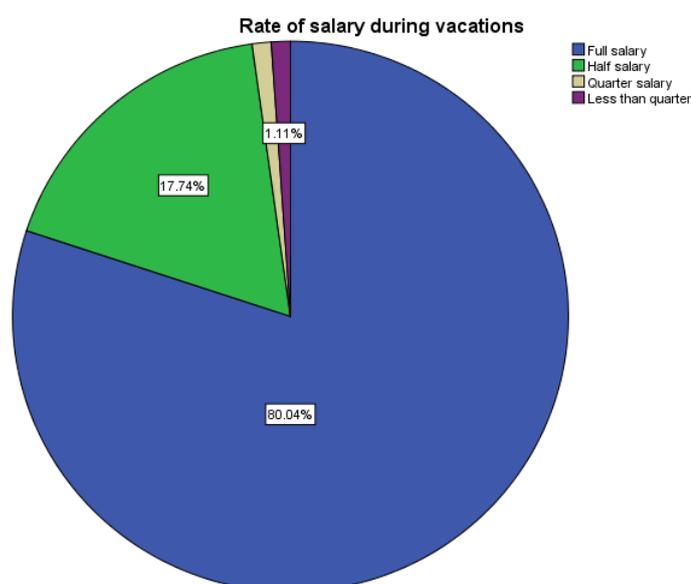
Respondents have been classified on the basis of the amount of salary received by them during vacations. Salary division fixed for the study is full month salary, half salary, quarter salary and less than quarter salary. It is demonstrated in Table 5.18.

**Table 5.18.** Classification of Respondents Based on the Amount of Their Vacation Salary

Amount of vacation salary	Frequency	Percent
Full month salary	361	80
Half month salary	80	17.8
Quarter month salary	5	1.1
Less than quarter	5	1.1
Total	451	100
Missing	142	
Total	593	

Source: Survey Data.

Analysis of the above data indicates that majority of respondents constituting 80% of the total respondents are receiving full month salary during vacations. 80 respondents comprising 17.8% of the total population are getting half month salary during vacations. It is to be noted that only 2.2% of the total respondents are given quarter month salary and less than that during vacations. Hence, it is clear that most of the teachers in these schools are enjoying the benefit of vacation salary. However, 142 respondents are not receiving any benefit during vacations.



**Figure 5.18.** Classification of Respondents Based on the Amount of Their Vacation Salary

## 5.6. Salary and Increment of the Respondents

Monthly salary, deduction from monthly salary, mode of disbursement of salary, annual increment and the amount of annual increment of the respondents are discussed under this area.

### 5.6.1. Monthly Salary

For the purpose of detailed examination, respondents have been classified on the basis of monthly salary earned by them. The salary divisions used for the classification are, below Rs. 7000, between 7001 – 11000, 11001 – 15000, 15001 – 20000 and above Rs. 20000. The classification is displayed in Table 5.19.

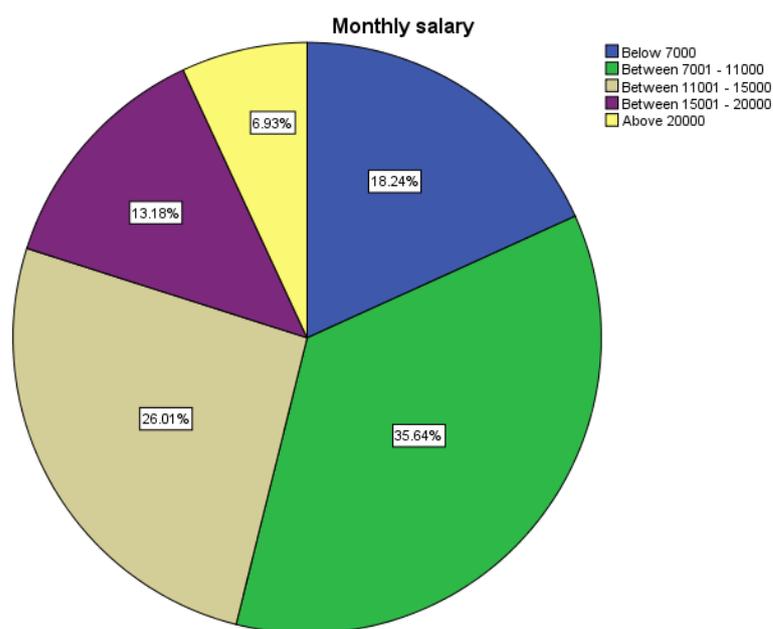
**Table 5.19.** Classification of Respondents According to Their Monthly Salary

Monthly Salary	Frequency	Percent
Below Rs.7000	108	18.2
Between 7001 – 11000	211	35.6
Between 11001 – 15000	154	26.1
Between 15001 – 20000	78	13.2
Above Rs. 20000	41	6.9
Total	592	100
Missing	1	
Total	593	

*Source: Survey Data.*

The figures from the table 5.19 indicate that 211 respondents constituting 35.6% of the total respondents are drawing salary between Rs.7000 and Rs. 11000, 18.2% of the total respondents are receiving an amount below Rs. 7000 in a month as salary. 154 respondents are getting a salary in between Rs. 11001 and Rs. 15000. 13.2% of the total respondents are earning between Rs. 15000 and Rs. 20000 in a month. The notable factor is that only 6.9% of the respondents are drawing salary above Rs. 20000 per month. One respondent has not replied to this query.

The provisions of affiliation bye-laws that insist the payment of Government school teacher's salary to the unaided school teachers are clearly violated in most of the cases. Even the direction of the Government and the Judiciary to pay a reasonable salary to employees of private unaided schools has not been complied with. Another factor to be noted is that only 6.9% of the teachers are getting salary equal to that of a last grade servant in the Government service. This situation makes the right of an individual to live in a dignified manner, as guaranteed under Article 21 of the Constitution, a dream in the case of private unaided school teachers.



**Figure 5.19.** Classification of Respondents According to Their Monthly Salary

### 5.6.2. Salary Deductions

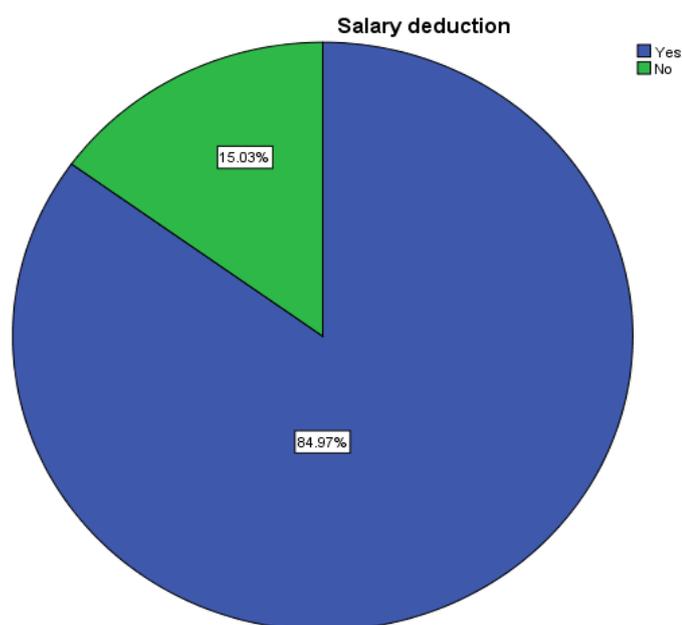
Respondents have been classified on the basis of deductions made by the managements from their salary and it is demonstrated in the following table.

**Table 5.20.** Classification of Respondents According to Deduction From Their Monthly Salary.

Receiving Salary Without Deductions	Frequency	Percent
Yes	503	85
No	89	15
Total	592	100
Missing	1	
Total	593	

Source: Survey Data.

It is revealed from table 5.20 that the majority of respondents are in receipt of salary without any deductions. 89 respondents which represent 15% of the total respondents are getting salary after certain deductions by the management. One respondent has not replied to this question. Unauthorised deduction by the management from the salary of teachers is not common in private unaided schools.



**Figure 5.20.** Classification of Respondents According to Deduction From Their Monthly Salary

### 5.6.3. Mode of Disbursement of Salary

In order to examine, respondents have been divided on the basis of the mode of disbursement of their salary which is described in Table 5.21.

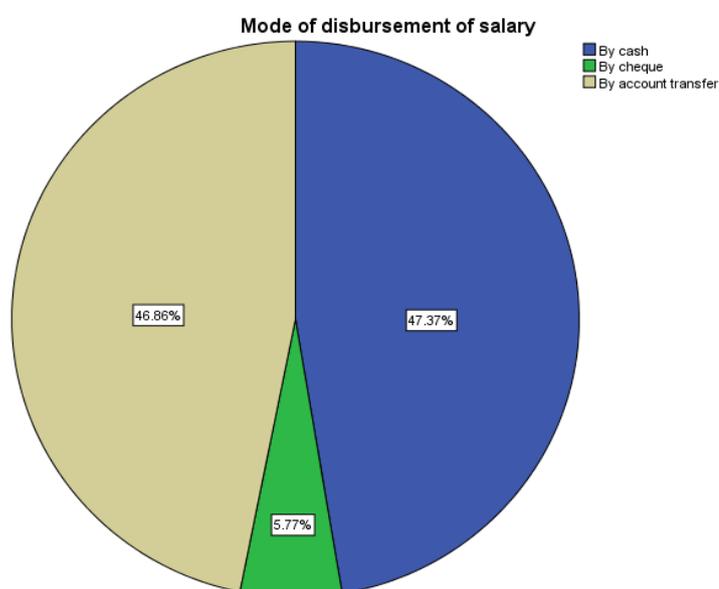
**Table 5.21.** Classification of Respondents According to Mode of Disbursement of Their Salary

Mode of Disbursement of Salary	Frequency	Percent
By cash	279	47.3
By cheque	34	5.8
By Account Transfer	276	46.9
Total	589	100
Missing	4	
Total	593	

Source: Survey Data.

Table 5.21 shows that 279 respondents consisting of 47.3% of the total respondents are receiving salary through the medium of cash. 46.9% of the total respondents are getting salary by means of account transfer and the rest 5.8% by way of cheque. Four respondents have not attempted this question. The affiliation

bye-laws of various school boards, as well as the Kerala Education Rules, mandate the payment of salary through A/c payee cheque, but it has not been complied with in the case of private unaided school teachers in a substantial percentage of cases.



**Figure 5.21.** Classification of Respondents According to the Mode of Disbursement of Their Salary

#### 5.6.4. Annual Increment

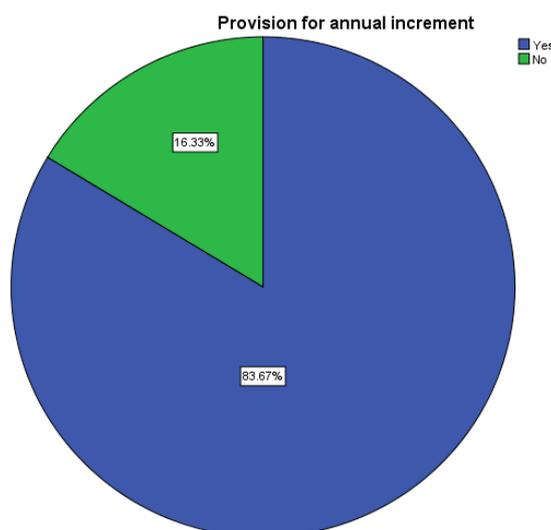
The increment is an incentive provided to the employees every year considering their previous service in the organisation. For the purpose of analysis, respondents have been classified on the basis of their annual increment and it is displayed in Table 5.22.

**Table 5.22.** Classification of Respondents Based on the Receipt of Annual Increment

Provision for Annual Increment	Frequency	Percent
Yes	492	83.7
No	96	16.3
Total	588	100
Missing	5	
Total	593	

*Source: Survey Data.*

The data stated in Table 5.22 indicates that 492 respondents forming 83.7% of the total respondents are receiving annual increment and 96 respondents comprising 16.3% of the total respondents are not paid this incentive. Five respondents have not given any response to the question of annual increment.



**Figure 5.22.** Classification of Respondents Based on the Receipt of Annual Increment

### 5.6.5. Rate of Annual Increment

Annual increment paid is not uniform and varies from school to school and grade to grade of the teachers. Respondents have been grouped on the basis of the rate of increment they get every year and it is shown in Table 5.23.

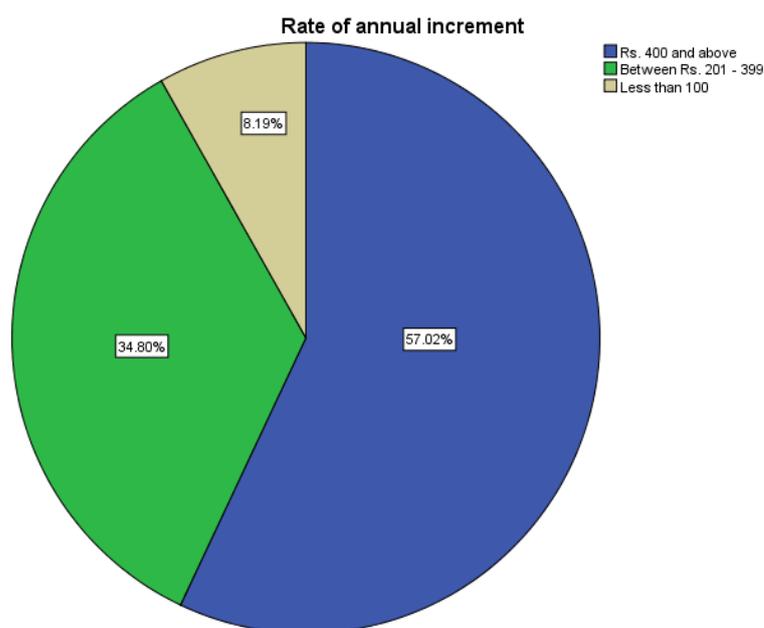
**Table 5.23.** Classification of Respondents Based on the Rate of Their Annual Increment

Rate of Annual Increment	Frequency	Percent
Rs. 400 and Above	195	57
Between Rs. 201- Rs. 399	119	34.8
Between Rs.101 – Rs. 200	0	0
Less than Rs. 100	40	8.2
Total	354	100
Missing	239	
Total	593	

Source: Survey Data.

It is clear from Table 5.22 and 5.23 that out of the 492 teachers responded positively towards the question of the provision of annual increment; only 354 respondents disclosed their rate of annual increment. Out of these, 195 respondents consisting of 57% of the total respondents are paid annual increment at the rate of Rs. 400 and above. 34.8% of the respondents are in receipt of annual increments within the range of Rs.201 to Rs. 399 and the remaining 8.2% of the respondents are granted increment below Rs.100. However, 239 respondents have not reacted to this query.

So, the payment of annual increment is found common in private unaided schools, but the rate of increment is not adequate enough to meet their growing demands. The negligible rate of annual increment may be a reason for not disclosing the rate of annual increment by a large number of private unaided school teachers.



**Figure 5.23.** Classification of Respondents Based on the Rate of Their Annual Increment.

## 5.7. Service Benefits of Respondents

The details of service benefits like provident fund, gratuity, insurance protection and pension received by the respondents are analysed as follows.

### 5.7.1. Provision for Benefits

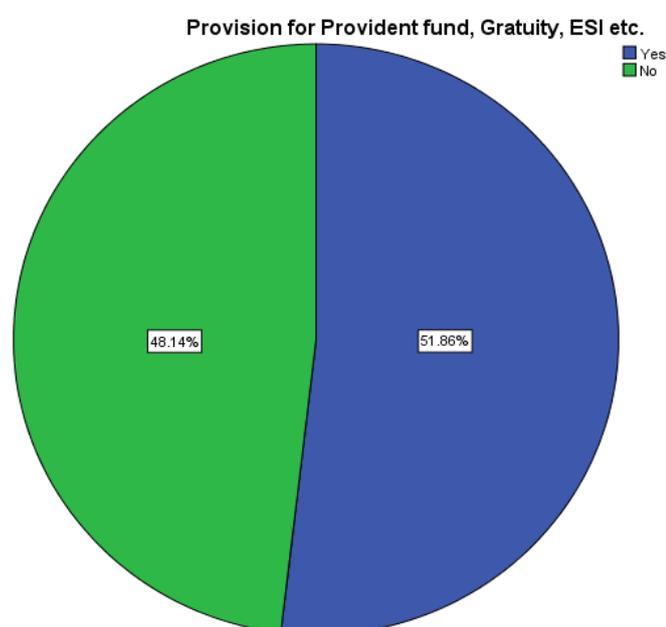
Respondents have been sorted on the basis of enjoyment of benefits like provident fund, gratuity, E S I etc. It is displayed in the following table.

**Table 5.24.** Classification of Respondents Based on the Enjoyment of Service Benefits

Provision for Benefits	Frequency	Percent
Yes	307	51.9
No	285	48.1
Total	592	100
Missing	1	
Total	593	

Source: Survey Data.

Analysis of the Table 5.24 shows that 51.9% of the total respondents are enjoying some kind of benefits like Provident Fund, Gratuity, E S I etc. On the other hand, 285 respondents representing 48.1% of the total respondents do not have any type of such benefits. One respondent has not replied to this question.



**Figure 5.24.** Classification of Respondents According to the Enjoyment of Service Benefits

### 5.7.2. Details of Service Benefits

The service benefits enjoyed by the respondents are of different types. For the purpose of study, respondents have been grouped on the basis of different types of benefits extended to them. This is given in the following table.

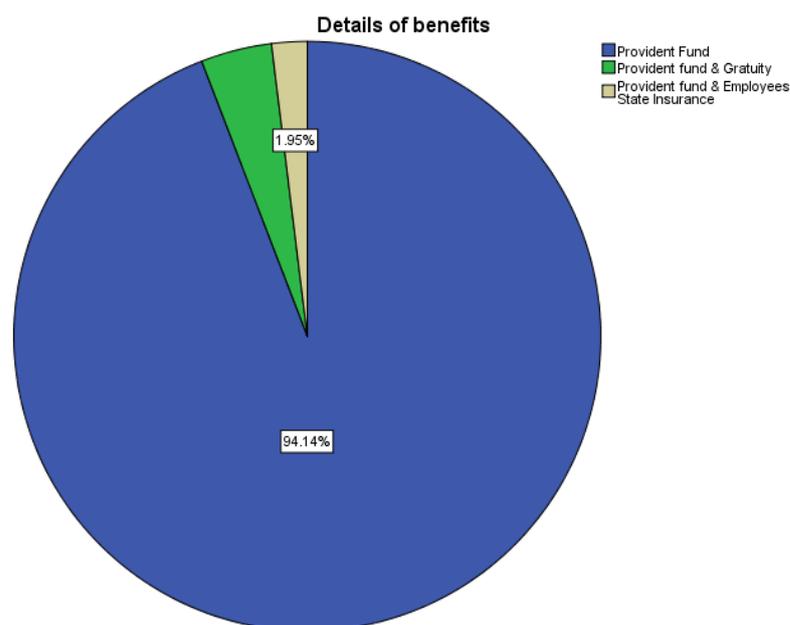
**Table 5.25.** Classification of Respondents According to Types of Benefits.

Types of Benefits	Frequency	Percent
Provident Fund	289	94.1
Provident Fund & Gratuity	12	3.9
Provident Fund & E S I	6	2
Total	307	100
Missing	286	
Total	593	

*Source: Survey Data.*

From the scrutiny of Table 5.25, it is apparent that 289 out of the 307 respondents which comprise 94.1% of the total respondents are having the provision of Provident Fund only. 3.9% of the total respondents are enjoying the benefit of Provident Fund and Gratuity. Provident Fund and E S I benefits are available to the remaining 2% of the total respondents. However, 286 respondents are not enjoying any of these benefits.

Hence, it is clear from the statistics stated above that nearly half of the private unaided school teachers are totally out from the realm of the benefits of welfare legislations in the country. This is highly unjust and discriminatory since most of the welfare legislations are applicable to private unaided school teachers. Statutory mandates are grossly infringed in these private unaided schools. Thus, the benefits of welfare legislations are considered as a dream for a sizeable number of private unaided school teachers.



**Figure 5.25.** Classification of Respondents According to Types of Benefits

### 5.7.3. Pension Scheme

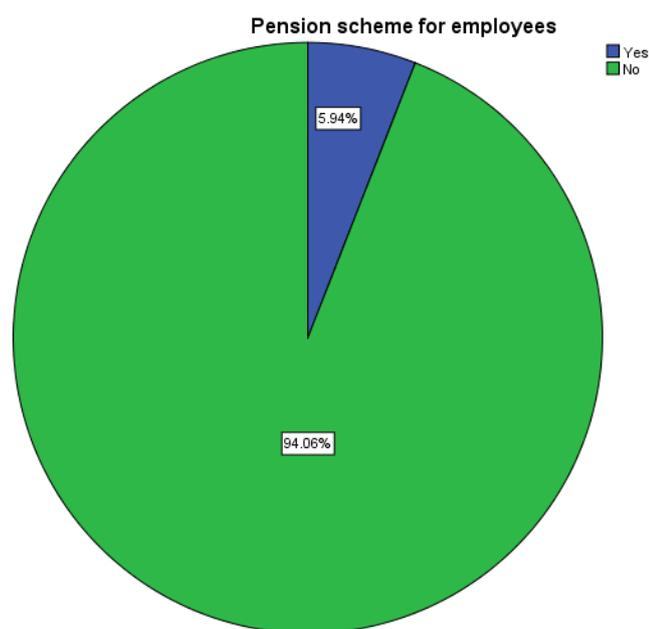
For the purpose of this study, respondents have been classified on the basis of the provision for their pension. It is presented in the following table.

**Table 5.26.** Classification of Respondents According to the Provision for Pension Scheme

Provision for Pension Scheme	Frequency	Percent
Yes	35	5.9
No	554	94.1
Total	589	100
Missing	4	
Total	593	

*Source: Survey Data.*

Table 5.26 demonstrates that only 35 respondents comprising 5.9% of the total respondents are having the privilege of the pension scheme. 94.1% of the respondents are out of the sphere of any sort of pension schemes. Four respondents have not attempted this question.



**Figure 5.26.** Classification of Respondents According to the Provision for Pension Scheme

#### 5.7.4. Types of Pension Scheme

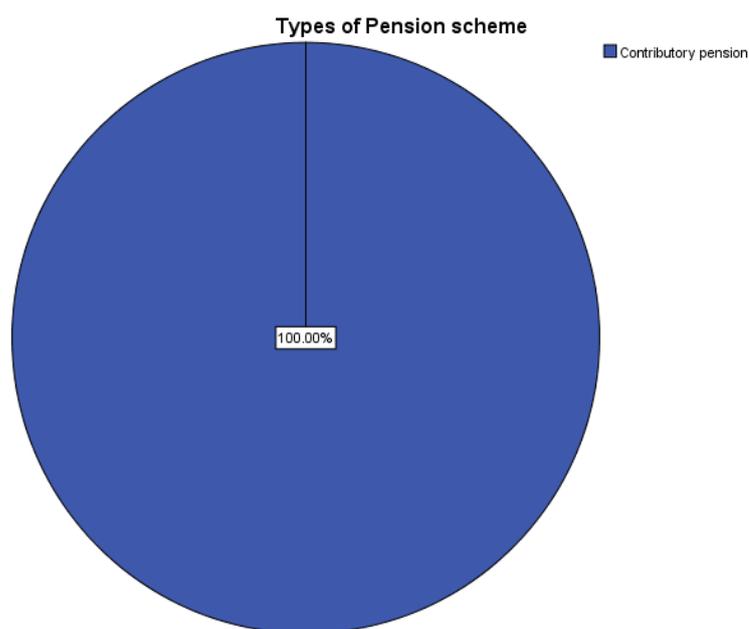
Respondents have been divided on the basis of the nature of the pension scheme enjoyed by them. The division is illustrated in the table shown below.

**Table 5.27.** Classification of Respondents According to the Nature of Pension Scheme

Type of Pension Scheme	Frequency	Percent
Contributory Pension	35	100
Total	35	100
Missing	558	
Total	593	

*Source: Survey Data.*

Table 5.27 presents the fact that only contributory pension scheme is prevailing in private unaided schools. But it is to be noted that, 558 respondents have not been given the benefit of any pension scheme. Thus, the majority of private unaided school teachers are not offered any kind of retirement benefits, like pension for the protection of their life after retirement.



**Figure 5.27.** Classification of Respondents According to the Nature of Pension Scheme

## 5.8. Fundamental Freedom of the Respondents

How far the private unaided school teachers enjoying the fundamental freedoms guaranteed under the Constitution of India is the major enquiry under this head.

### 5.8.1. Execution of Bond

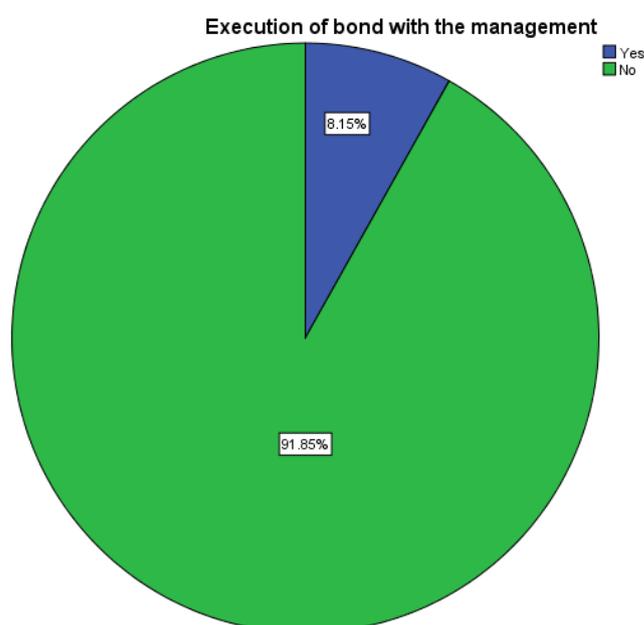
Classification of respondents based on the execution of bond with the management is required for the study and the same is displayed in Table 5.28.

**Table 5.28.** Classification of Respondents Working on Bond With the Management.

Bond executed	Frequency	Percent
Yes	48	8.1
No	541	91.9
Total	589	100
Missing	4	
Total	593	

Source: Survey Data.

From the above statistics, only 48 teachers which amount to 8.1% of the total respondents have executed some sort of bond with the management. 541 respondents comprising of 91.9% of the total population responded are not having any kind of barriers, whereas four respondents have not replied to this enquiry. Though the number of respondents who executed a bond with the management is very nominal, yet the fundamental freedom to practice any trade, occupation or profession which is guaranteed under Article 19 (1) (g) of the Indian Constitution is violated in these cases.



**Figure 5.28.** Classification of Respondents Working on Bond With the Management.

### 5.8.2. Details of Bond Executed

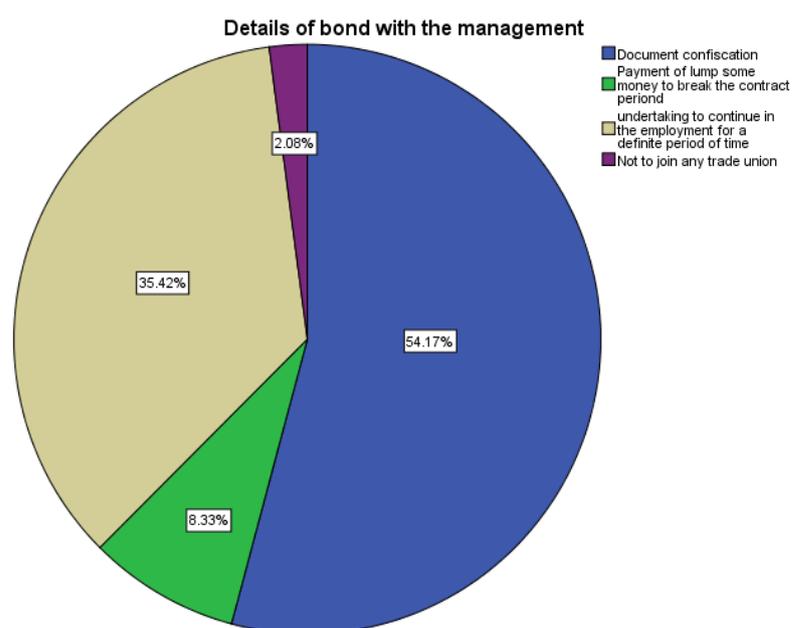
Bonds executed by the respondents with the management of schools are of different types. The following table illustrates the classification of respondents on the basis of nature of bonds executed by them.

**Table 5.29.** Classification of Respondents According to the Types of Bond Executed

Type of Bond	Frequency	Percent
Document Confiscation	26	54.2
Payment of Lump Sum Money	4	8.3
Undertaking to Continue in the Employment	17	35.4
Not to Join any Trade Union	1	2.1
Total	48	100
Missing	545	
Total	593	

Source: Survey Data.

It is clear from the table that out of 48 respondents who have executed a bond with the management, original certificates of 26 respondents consist of 54.2% of the total respondents are in the possession of the management. 35.4% of the total respondents have given some sort of undertaking to the management to continue in the employment for a definite period of time. 8.3% of the respondents have agreed to pay a lump sum amount to the management for relieving them from the job before the completion of the contract period. 2.1% of the respondents are prohibited by the management from joining any Trade Union. Right to form associations or unions is guaranteed under Article 19 (1) (c) of the Indian Constitution to the citizens. This fundamental right is seen infringed in the case of private unaided school teachers.



**Figure 5.29.** Classification of Respondents According to the Types of Bond Executed

### 5.8.3. Trade Union Activities

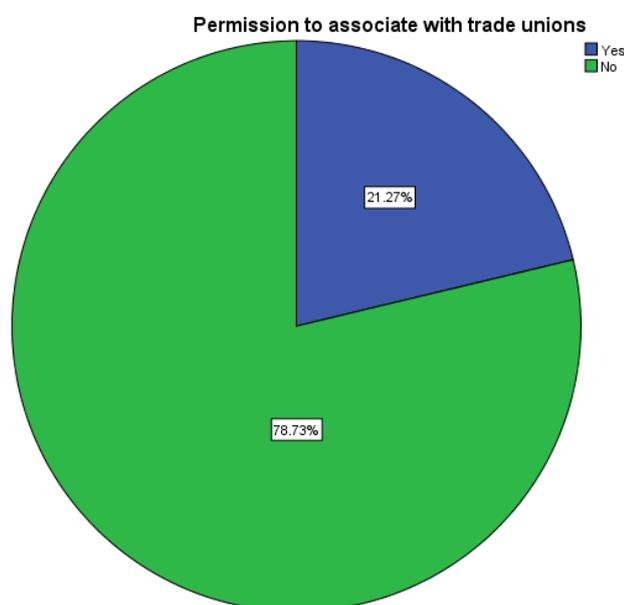
Whether the teachers of private unaided schools are allowed to associate with the activities of Trade Unions working in this sector is a question of great importance considering the role of unions in mitigating the grievances of teachers. In order to answer this question, respondents have been classified on the basis of their Trade Union activities. The classification is illustrated in Table 5.30.

**Table 5.30.** Classification of Respondents Based on Their Association With Trade Unions

Allowed to Associate with Trade Unions	Frequency	Percent
Yes	121	21.3
No	448	78.7
Total	569	100
Missing	24	
Total	593	

Source: Survey Data.

Figures from Table 5.30 point out that 448 respondents consisting of 78.7% of the total respondents are not allowed by the management to associate with the activities of trade unions. Only 21.3% of the total respondents have the permission of the management to involve in the activities of trade unions. It is also to be noted that 24 respondents have not commented anything about their trade union activities. As a result, the fundamental right of a citizen to form associations or unions assured under Article 19 (1) (c) of the Constitution is negated to the private unaided school teachers.



**Figure 5.30.** Classification of Respondents Based on Their Trade Union Activities

## 5.9. Satisfaction of Respondents

The study on the satisfaction of respondents includes job satisfaction, satisfaction with respect to the salary they received and the contentment on Governmental and Judicial interventions in the sector.

### 5.9.1. Job Satisfaction

Job satisfaction is an important factor for the better performance of employees in any kind of employments. For the purpose of the study, respondents have been classified on the basis of their opinion regarding the working environment and job satisfaction. It is explained in Table 5.31.

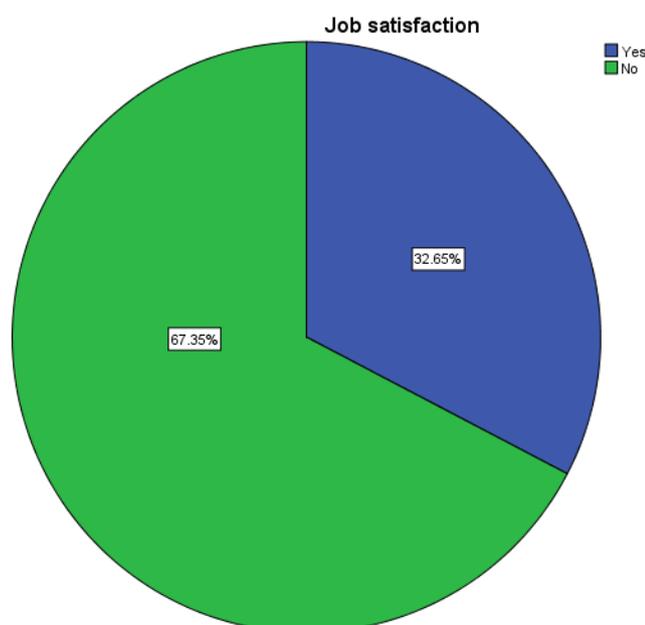
**Table 5.31.** Classification of Respondents According to Their Job Satisfaction

Satisfied with the Present Job	Frequency	Percent
Yes	192	32.7
No	396	67.3
Total	588	100
Missing	5	
Total	593	

Source: Survey Data.

It is explicit from the Table 5.31 that 396 respondents comprising 67.3% of the total respondents are not satisfied with the present working environment. 192 respondents constituting 32.7% of the total respondents are happy with the current working conditions. Five respondents have not expressed any opinion regarding their job satisfaction.

The figures of Table 5.31 clearly show the attitude of the private unaided school teachers towards their present employment. Most of the teachers are working against their will. Actually, the circumstances compel them to continue in these schools until they get a better employment elsewhere.

**Figure 5.31.** Classification of Respondents According to Their Job Satisfaction

### 5.9.2. Satisfaction With Respect to Salary

For the purpose of the study, respondents have been divided on the basis of their satisfaction regarding the amount of salary they received. It is exhibited in table 5.32.

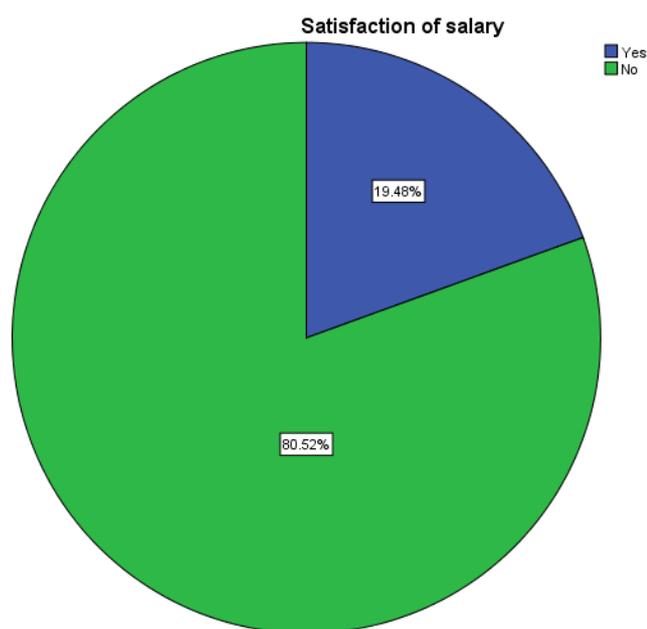
**Table 5.32.** Classification of Respondents Based on Their Satisfaction Regarding the Amount of Salary Received

Satisfied With the Salary	Frequency	Percent
Yes	113	19.5
No	467	80.5
Total	580	100
Missing	13	
Total	593	

Source: Survey Data

Table 5.32 indicates that 467 respondents consisting of 80.5% of the total respondents are not satisfied with their present salary. On the other hand, 113 respondents representing 19.5% of the total respondents opined that the existing salary is adequate for their livelihood. 13 respondents have not expressed their opinion regarding this question.

It is obvious that majority of the teachers are not satisfied with their present salary. They are not able to meet their daily needs with the current income they receive by way of salary. In fact, they are forced to continue in the private unaided schools may be due to financial constraints that they confront and the prevalence of large scale educated unemployment in the State.



**Figure 5.32** Classification of Respondents Based on Their Satisfaction Regarding the Amount of Salary Received.

### 5.9.3. Satisfaction Regarding Government and Judicial Interventions

Respondents have been classified, for the analysis, in accordance with their satisfaction regarding the interventions of the Government and Judiciary in this sector. It is demonstrated in the following table.5.33.

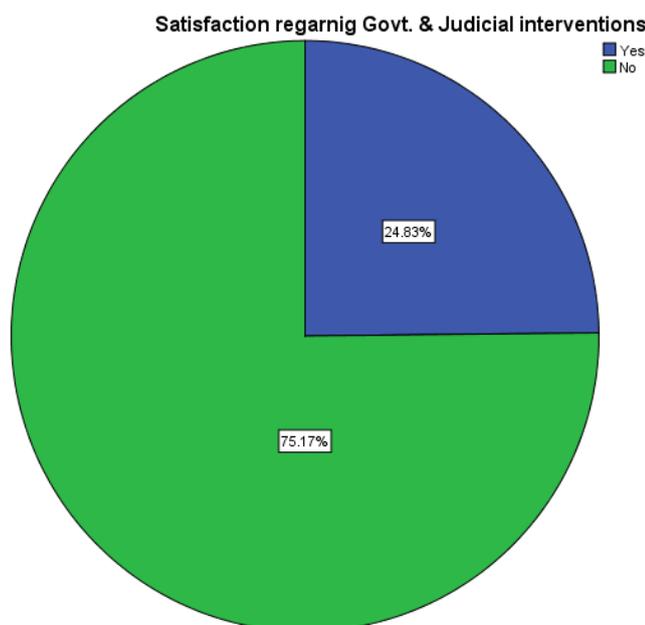
**Table 5.33.** Classification of Respondents Based on Their Satisfaction About the Interventions of Government and Judiciary in the Unaided Schools.

Satisfied With the Interventions Made by Government and Judiciary	Frequency	Percent
Yes	144	24.8
No	436	75.2
Total	580	100
Missing	13	
Total	593	

Source: Survey Data.

Table 5.33 shows that 436 respondents, constituting 75.2% of the total respondents, are not at all satisfied with the interventions and efforts that have been

taken so far by the Government and Judiciary in this sector. 24.8% of the respondents are quite happy with the interventions. 13 respondents have not given any answer to this question. So it is apparent that more than 3/4<sup>th</sup> of the teachers believe that the extent of interventions made by the Government and judiciary so far have not produced any fruitful results.



**Figure 5.33.** Classification of Respondents According to their Satisfaction About the Interventions of Government and Judiciary in the Unaided Schools.

### 5.10. Job Security of the Respondents

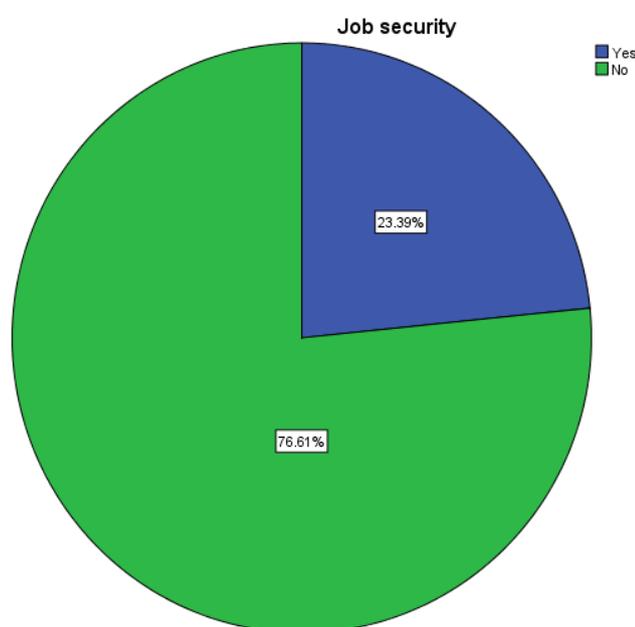
For the purpose of study, respondents have been graded on the basis of security of tenure in their employment. It is displayed in Table 5.34 shown below.

**Table 5.34.** Classification of Respondents Based on Their Job Security.

Job is Secured	Frequency	Percent
Yes	138	23.4
No	452	76.6
Total	590	100
Missing	3	
Total	593	

Source: Survey Data.

It is clear from the above table that majority of respondents which consist of 76.6 % of the total respondents believe that their job is not secured. 138 respondents forming 23.4% of the total respondents consider that there is no threat for their job and it is secure. Three respondents have not given any response to this question. Thus, the majority of respondents feel that their employment is not secured and they may subject to termination at any time by the arbitrary action of the management. However, the circumstances coerce them to go on with the employment even against their determination. This, in fact, shows the pathetic situation of private unaided school teachers in the State.



**Figure 5.34.** Classification of Respondents Based on Their Job Security

### 5.11. Expectations of the Respondents

The analysis on expectations of the respondents includes the anticipation for the fixation of fair salary by the Government and the enactment of an appropriate legislation to resolve the issues of private unaided school teachers.

### 5.11.1. Fixation of Salary

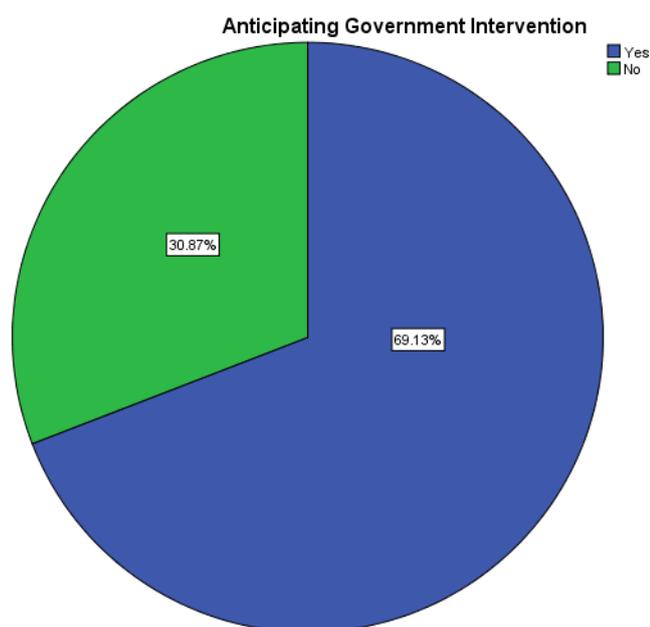
In order to examine this aspect, respondents have been divided on the basis of their expectation for an immediate Government intervention for the fixation of fair and reasonable salary to them. It is illustrated in Table 5.35.

**Table 5.35.** Classification of Respondents According to Their Expectation of Government Intervention for the Fixation of Salary

Government Intervention is Expected	Frequency	Percent
Yes	403	69.1
No	180	30.9
Total	583	100
Missing	10	
Total	593	

Source: Survey Data.

Table 5.35 indicates that majority of respondents, comprising 69.1% of the total respondents, are hoping for an urgent intervention from the part of Government for the fixation of reasonable salary for the teachers. 180 respondents, consist of 30.9% of the total respondents, are not anticipating any type of intervention from the Government in the near future. Ten respondents have not reacted to this question. Thus, a considerable number of private unaided school teachers are worried about their present salary and they are eagerly waiting for an effective intervention from the part of the Government. On the other hand, a group of teachers, though dissatisfied with their salary, are not anticipating a Government intervention in this regard.



**Figure 5.35.** Classification of Respondents According to Their Expectation of Government Intervention for the Fixation of Salary

### 5.11.2. Appropriate Legislation

For the purpose of the study, respondents have been classified in accordance with their opinion regarding the requirement of a suitable legislation from the part of the Government to regulate the service conditions of employees working in unaided schools. The classification of respondents is displayed in Table 5.36.

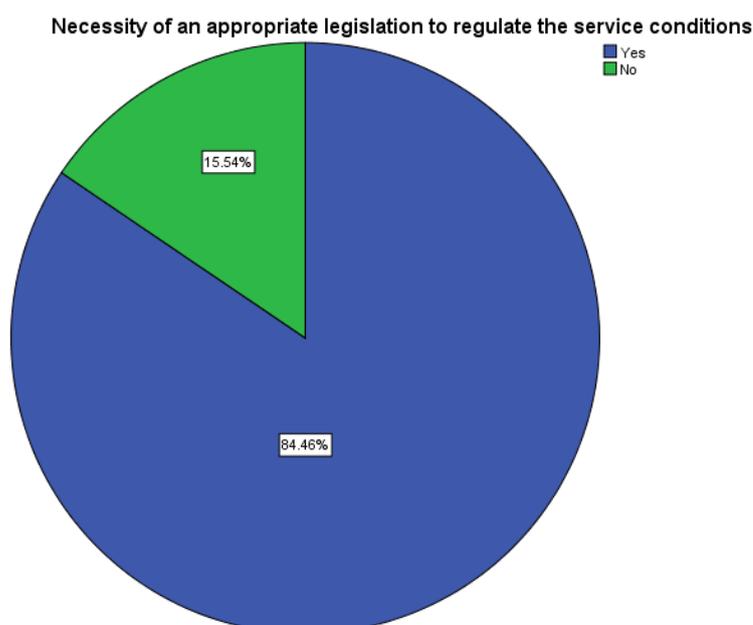
**Table 5.36.** Classification of Respondents Based on Their Opinion Regarding the Necessity of an Appropriate Legislation to Regulate the Service Conditions.

Appropriate Legislation is Needed	Frequency	Percent
Yes	489	84.5
No	90	15.5
Total	579	100
Missing	14	
Total	593	

Source: Survey Data.

The above table explains that 489 respondents, consisting of 84.5% of the total respondents, identified the necessity of an appropriate legislation from the part of the Government to regulate the service conditions of teachers working in unaided schools. Conversely, 90 respondents, comprising 15.5% of the total respondents, opined against the requirement of legislation. 14 respondents have not stated any opinion in this regard.

A proper legislation providing for a fair salary and reasonable service conditions is a dream for the private unaided school teachers. The strong desire of teachers to have better service conditions is clear from the figures in Table 5.36, where 85% of the teachers firmly supporting the need for enactment of an appropriate legislation.



**Figure 6.36.** Classification of Respondents According to Their Opinion Regarding the Necessity of an Appropriate Legislation to Regulate the Service Conditions.

## **5.12. Conclusion**

The field study conducted to find out the wages and other service conditions of private unaided school teachers in the State reveal their actual amount of salary and miserable service conditions. They are paid extremely low wages and not given any service benefits properly. Their workload is very heavy and there exist hardly any proper rules for the fixation of workload and staff strength. Even mandatory service benefits like maternity relief, provident fund, gratuity, insurance protection etc., are available only to a small section teachers working in these schools. Privileges like pension, commuted leave, half pay leave, paternity leave etc., are totally denied to them. Compulsory execution of bond between the management and teachers, though nominal in number, is also reported. Constitutional and statutory mandates pertaining to the rights of employees are grossly violated in a number of cases. Thus, the survey exposes the pathetic condition of the private unaided school teachers.

## **Chapter 6**

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# **WAGES AND SERVICE CONDITIONS OF GOVERNMENT / AIDED AND UNAIDED SCHOOL TEACHERS: A COMPARISON**

## Chapter 6

# WAGES AND SERVICE CONDITIONS OF GOVERNMENT / AIDED AND UNAIDED SCHOOL TEACHERS: A COMPARISON

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The detailed analysis of the survey in chapter 5 reveals the current position of wages and other service conditions of private unaided school teachers in the State. In order to find out the extent and nature of disparity between the Government, aided school teachers and private unaided school teachers with respect to their wages and service conditions, a comparative study is imperative. The comparison on different aspects of their service conditions would enable us to know the real status and standard of living enjoyed by the private unaided school teachers in the State. Therefore, for the purpose of this research, it is necessary to examine the present salary and other service conditions available to the teachers of Government, aided schools in the State in comparison with their counterparts in the private unaided schools.

According to Kerala Education Rules, Schools are generally classified as:

- i) schools for general education<sup>1</sup>
- ii) schools for special education<sup>2</sup>
- iii) schools for the education of particular categories of students<sup>3</sup> and

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<sup>1</sup> Kerala Education Rules 1959, Chapter II, Rule 1.

<sup>2</sup> *id.* Rule 3. (i) Training Schools providing instruction and training for Teacher's Certificate Examination. (ii) Fishery Schools (iii) Physical Training Schools. (iv) Music Schools including Music Academies.(v) Fine Arts Schools.

<sup>3</sup> *id.* Rule 4. (i) Schools for defective children such as the Deaf, the Dumb, the Blind, and the mentally handicapped. (ii) Leper Schools where admission is restricted to children affected

iv) other institutions connected with the educational system of the State.<sup>4</sup> At present, the school educational structure in the State has pre-primary schools at its bottom level and goes up to higher secondary schools.

Government schools are owned and administered by the Government and private schools by private individuals or establishments. Private aided schools are recognised and functioning with the financial support of the Government. The payment of salary in these schools is strictly in conformity with the rules and directions issued by the Government from time to time. The contribution made by the Government and aided schools towards the educational progress of the State is remarkable. The expenses of education in the Government and aided schools are largely met by the Government.<sup>5</sup> Since Government and aided schools are providing free education, a considerable number of children in the State are enrolled in these schools. Moreover, the majority of schools and teachers in the State are belonging to these two sectors.

## 6.1. Service Laws of Teachers

So far as the service conditions are concerned, the teachers in the Government and aided schools are governed by The Kerala Education Act, 1958, The Kerala Education Rules, 1959 and The Kerala Service Rules, 1959.<sup>6</sup> In terms of pay and allowances, there is no difference between Government and aided school teachers. Consequent to their appointment as teachers in schools run by the Government, their service conditions are governed by the following important rules.

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with leprosy. (iii) Schools for handicapped where admission is restricted to children affected with Polio, or other similar diseases.

<sup>4</sup> *id.* Rule 5. (i) The Bharat Scouts and Guides. (ii) The N. C. C (National Cadet Corps) and the A.C.C. (Auxiliary Cadet Corps).

<sup>5</sup> B. Hrudayakumari, "Schools in Kerala", in J.V. Vilanilam, Antony Palackal, Sunny Luke, *et.al.* (Eds.), *An Introduction to Kerala Studies*, International Institute for Scientific and Academic Collaboration, Inc. (IISAC), New Jersey, USA, (2012), p.633.

<sup>6</sup> Rules made under the proviso to Article 309 of the Constitution of India.

- (1) The Kerala State and Subordinate Service Rules, 1958
- (2) The Kerala Service Rules, 1959, Parts I, II, and III
- (3) The Kerala Education Rules, 1959 and
- (4) The Kerala Government Servant's Conduct Rules, 1960.

Kerala Service Rules, Parts I, II, and III deal with general conditions of service, travelling allowance and pension benefits of Government servants. The Kerala State and Subordinate Service Rules is concerned with matters like probation, promotion, increment etc. The 'do's and 'dont's with respect to character and conduct of the employees is dealt with in the Kerala Government Servants' Conduct Rules.

The matters related to appointment and job security of aided school teachers are dealt with in the "The Kerala Educational Rules". For effective administration and implementation of the rules and regulations framed by the Government, the Directorate of Public Instruction has constituted district offices in each of the 14 revenue districts headed by Deputy Directors, the District Educational Officers (DEOs) in the 36 educational districts and Assistant Educational Officers (AEOs) in the 161 educational sub-districts. The high school section is under the control and administration of the DEOs and the elementary sections are under the AEOs. Higher secondary teachers are under the administrative control of Director of Higher Secondary Education. Thus the employment of Government and aided school teachers are governed by various service laws.

On the other hand, there exists no proper law for the regulation of service of private unaided school teachers in the State. The Kerala Education Act and Rules are applicable to private unaided schools. But most of the provisions of these legislations, particularly relating to conditions of service, are not applicable to the teachers of these schools. Other service laws governing the employment of Government / aided school teachers are totally inapplicable to them. CBSE and

ICSE schools in the State are administered in accordance with the respective bye-laws and the employees including teachers working in these schools are governed by the service rules stated in it.

## 6.2. Appointment of Teachers

The ownership of Government schools is vested with the Government and that of aided schools with the Manager. In Government schools, the appointing authority of teachers is the Government.<sup>7</sup> The Government fixes the staff strength of each school according to the number of students studying in that school. The eligibility for appointment in terms of qualification, experience etc. has been determined by the Government.<sup>8</sup>

Identified posts or vacancies are reported to the Kerala Public Service Commission for recruitment. As per the instructions and norms received from the Government, the Commission which is a constitutional body prepares notification to invite applications for the vacant posts.<sup>9</sup> The notification prepared by the Kerala Public Service Commission will be published in the newspapers and other media. From all the applications received, applications of those candidates who meet the necessary eligibility requirement are selected to be called for a written test.<sup>10</sup> Except at higher secondary level, the notification of appointment of teachers is prepared on district wise in accordance with the vacancies reported from each district.

After the written test, a sufficient number of candidates, so as to fulfill the reported vacancies, are included in the short list and an interview and certificate

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<sup>7</sup> The Kerala State and Subordinate Service Rules 1958, Part II, General Rules, Rule 3 (a). All first appointments to the service shall be made by the appointing authority on the advice of the Public Service Commission in respect of posts falling within the purview of the Commission and in all other cases by the appointing authority from a list of approved candidates prepared in the prescribed manner.

<sup>8</sup> *id.* Rule 10 (a) (i). The educational or other qualifications, if any, required for a post for a post are normally specified in the special Rules applicable to the service in which that post is included or as specified in the executive orders of Government in cases where Special Rules have not been issued for the post/service.

<sup>9</sup> Kerala Public Service Commission, Rules of Procedure 1976, Part I, Rule 4(i), (ii).

<sup>10</sup> *id.* Rule 4 (iii).

verification are conducted for them. After this procedure, they are included in the rank list for appointment based on the marks obtained by them both in the written test and interview.<sup>11</sup>

Once the rank list is prepared by the Public Service Commission, advice memos are given by the Commission both to the candidates and to the education department.<sup>12</sup> The education department issues appointment orders to the candidates advised by the Commission. Deputy Director of Education is the appointing authority for high school teachers<sup>13</sup> and Director of Higher Secondary Education for higher secondary school teachers.<sup>14</sup> According to the rules currently prevailing in Kerala, teachers in the Government schools may continue in service up to the age of 56 years. They are to retire from service on attaining the above age.

Aided schools are governed by the managing committees of each school. The staff fixation is done by the management according to the number of students which shall be approved by the Government. Once the posts are approved by the Government, the Manager becomes the appointing authority.<sup>15</sup> The Manager gives advertisement in various newspapers for selection to the post and invites application from eligible candidates. They are called for an interview before a panel which is constituted for making the selection. Managers of private schools should appoint only those candidates who possess the qualification prescribed by the Government from time to time. As far as high school classes are concerned, the appointment shall be made with due regard to the requirement of subjects as determined by Director of Public Instruction with reference to the curricula of studies.<sup>16</sup>

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<sup>11</sup> *id.* Rule 12.

<sup>12</sup> *id.* Rules 14 & 15.

<sup>13</sup> G.O. (MS) No. 76/84/ G.Edn. Dated, Thiruvananthapuram, 25<sup>th</sup> April, 1984. (Appendix II).

<sup>14</sup> G.O. (P) No. 144/2001/G.Edn. Dated, Thiruvananthapuram, 16-04-2001.(Special Rules for the Kerala Higher Secondary Education State Service, Rule 4).

<sup>15</sup> Kerala Education Act 1958, Sec. 11.

<sup>16</sup> *supra* n.1, Chapter XIV (A), Rule 1(1).

Likewise, the appointing authority for the various categories of posts in an aided higher secondary school is the Manager.<sup>17</sup> Appointments to teaching post are made on the recommendation of a selection committee comprising of the Manager as chairman, Principal of the school and a representative of the Government selected by the Manager from a panel of officers not below the rank of a Deputy Collector or Deputy Secretary to Government prepared by the Director of Higher Secondary Education for every academic year.<sup>18</sup>

As soon as a teacher is selected, the Manager shall immediately issue an appointment order to the teacher<sup>19</sup> and the appointment is effective from the date on which the teacher is admitted to duty.<sup>20</sup> However the appointment made shall be subject to approval by the Government. Teachers appointed shall be on probation for a total period of one year within a continuous period of two years. On expiration of the probation period, the Manager may issue an order declaring that the teacher has satisfactorily completed his probation.<sup>21</sup> The retirement age of these teachers is also 56 just as in the case of Government school teachers.<sup>22</sup>

Regarding the approval of appointment of teachers by the management, the High Court of Kerala, in *J. Alphonsa and Another v. State of Kerala*,<sup>23</sup> held that the appointment of teachers by the Manager of an aided school without approval by the Government is not valid. The Court further clarified that an unapproved service is not recognised by any of the provisions of the Kerala Education Act and the Kerala Education Rules for any purpose including the determination of seniority of teachers.

Hence, it is clear from the above discussion that the rules and procedure for appointment of teachers in Government and aided schools are well defined in the

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<sup>17</sup> *id.* Chapter XXXII, Rule 5.

<sup>18</sup> G.O. (P) 38/2005/G. Edn dated: 4-02-05. (Published in Gazette dated 4<sup>th</sup> February, 2005).

<sup>19</sup> *supra* n.1, Form 27.

<sup>20</sup> *id.* Chapter XIV (A), Rule 7.

<sup>21</sup> *id.* Rule 6.

<sup>22</sup> *id.* Rule 1(2).

<sup>23</sup> 2012 (3) K.L.J.155.

respective legislations. While in the case of private unaided schools, there is no appropriate regulation for the appointment of teachers. The manager is the appointing authority of these schools. Usually, there is no system of giving proper appointment letter to the teachers concerned. Hence, most of them are working without any appointment order. The right of teachers to get proper appointment order, as required by various affiliation bye-laws, is seen violated in their case.

### **6.3. Workload and Staff Fixation of Teachers**

The working hours for every school (up to high school) are five hours in a day separated into forenoon and afternoon session.<sup>24</sup> It means the physical presence of a teacher is required for 6 hours a day during which five hours are used for instructional purposes.<sup>25</sup> Usually, a high school teacher engages 25 periods in a week.<sup>26</sup> Saturdays and Sundays are holidays. Thus each teacher is expected to spend a total time of 30 hours a week in school.

#### **6.3.1. Student's Strength and Staff Fixation**

The maximum strength of a class division is 45, but students up to 50 may be allowed in a class. When there are more than 50 students in a class, a second division is permitted, when the strength exceeds 95 a third division, and so on.<sup>27</sup> But for sufficient reasons, an Educational Officer can permit retention of excess strength over 50 in a class division.<sup>28</sup>

The staff fixation is done on the basis of teacher student ratio 1:45.<sup>29</sup> However, relaxation from this ratio<sup>30</sup> is allowed by the Government at appropriate

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<sup>24</sup> *supra* n.1, Chapter VIII, Rule 3.

<sup>25</sup> *ibid.*

<sup>26</sup> *id.* Chapter XXIII, Rule 6F.

<sup>27</sup> *id.* Chapter VI, Rule 23. (G.O (P) 391/64/Edn. dated: 25-07-1964 as per notification in Gazette dt. 4-8-1964).

<sup>28</sup> *ibid.* G.O. (P) 66/72/S. Edn. dated 5-5-1972. (Published in Gazette dt. 6-6-72).

<sup>29</sup> G.O. (P) No. 213/2015, Gen. Edn. (J), Thiruvananthapuram, 06/08/2015.

<sup>30</sup> G.O. (P) No. 191/2010, Gen. Edn. (J), Thiruvananthapuram, 22/09/2010.

times in order to protect the interest of teachers.<sup>31</sup> The students' strength of both Government and aided schools is verified by the Educational Officers. This is done by visiting the schools in the State on a single day fixed by the Director of Public Instruction. At present, 6<sup>th</sup> working day from the re-opening date in June is fixed for that purpose. Number of divisions and staff strength are fixed on the basis of the effective strength of the school. The actual attendance of the date of visit and five percent of the roll strength are taken together to calculate the effective strength. It is the duty of the Educational Officer to finalise the staff fixation before 15<sup>th</sup> July every year and that shall continue till 14<sup>th</sup> July of the succeeding year.<sup>32</sup>

### **6.3.2. Rules Regarding the Strength of Teaching Staff**

Kerala Education Rules contain definite provisions regarding the strength of teaching staff in various schools. A post of Headmaster is mandatory in every lower primary, upper primary and high school. The number of other teachers is determined on the basis of the total number of class divisions in the school. In a lower primary school, the number of permissible posts of lower primary school assistants is one less than the number of class divisions.<sup>33</sup> In an upper primary school, the number of posts of upper primary school assistants permissible is one less than the total number of class divisions in the upper primary section; whereas, the number of posts of lower primary school assistants in the lower primary section is equal to the number of class divisions in the lower primary section.<sup>34</sup> However in 2013, complying to the provisions of Right to Education Act, 2009 the Government of Kerala revised the Pupil – Teacher Ratio as 30:1 for lower primary schools and 35:1 for upper primary schools on the basis of the total strength of students and not based on divisions in a school.<sup>35</sup>

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<sup>31</sup> G.O. (P) No. 313/2013, Gen. Edn. (J), Thiruvananthapuram, 29/11/2013.

<sup>32</sup> *supra* n. 1, Chapter XXIII, Rule 12.

<sup>33</sup> *id.* Chapter XXIII, Rule 1.

<sup>34</sup> *id.* Rule 5.

<sup>35</sup> G.O.(Ms) No.154/2013/G.Edn. Dated, Thiruvananthapuram, 3.5.2013.

In every high school, posts of high school assistants are sanctioned in accordance with the number of divisions, periods of work and subject requirement. Number of teachers admissible in the lower and upper primary sections of a high school are equal to the number of class divisions in the respective sections.<sup>36</sup> An aggrieved manager is allowed to file an appeal to the Deputy Director of Education against the staff fixation order of the District Educational Officer or the Assistant Educational Officer as the case may be.<sup>37</sup>

It is obvious that the working time, workload, leisure and staff strength of Government and aided school teachers are precisely defined in the respective rules. The job security of teachers is also ensured. In private unaided schools, the workload and staff strength of teachers are generally fixed in accordance with the whims and fancies of the management. Majority of the teachers are required to take classes of 6 or more periods a day which amount to a workload of more than 30 periods in a week. This kind of overload work would probably affect the efficiency, health etc. of the private unaided school teachers. Besides, the provisions of affiliation bye-laws which stipulate the workload of teachers are plainly disregarded.

The appointment order issued to the Government and aided school teachers clearly specifies the designation of teachers such as high school teacher, upper primary school teacher etc. Thus the teachers are bound to instruct only in the teaching section to which they are appointed. Unlike in the Government / aided Schools, a considerable number of teachers in the unaided schools are compelled to teach in more than one class section and in some cases, it is up to four class sections. By way of such an arrangement, the management is earning a lot of money. However, this practice is definitely a burden and will affect the efficiency of teachers.

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<sup>36</sup> *Supra* n. 33, Rule 4.

<sup>37</sup> *id.* Rule 12D.

## 6.4. Pay and Other Allowances of Teachers

The Travancore-Cochin State introduced the system of direct payment of salaries to all private school teachers in December, 1951 and later on, this benefit has been extended to non-teaching staff in June, 1959.<sup>38</sup> The Kerala Education Rules mandate that the aided school teachers should be paid the same scale of pay as applicable to their counter parts in the Government schools.<sup>39</sup>

The pay and allowances of teachers are determined and revised by the Government from time to time through pay revisions. In Kerala, pay and allowances are usually revised in a period of 5 years. Increment benefit is also given to them every year. Apart from pay, Dearness Allowance (DA), House Rent Allowance (HRA), and City Compensatory Allowance (CCA) are the other benefits enjoyed by the teachers in the Government and aided schools.

### 6.4.1. House Rent Allowance and City Compensatory Allowance

Government and aided school teachers are entitled to get house rent allowance and city compensatory allowance. City compensatory allowance is allowed only to those teachers employed in B2 class cities in the State.<sup>40</sup> The amount of these allowances admissible to different categories of teachers is shown in Table 6.1 and Table 6.2.

**Table 6.1** House Rent Allowance

	<b>B Class Cities</b>	<b>Ordinary Cities</b>	<b>Other Places</b>
Primary Teacher	1500	1250	1000
High School Teacher	2000	1500	1250
Higher Secondary School Teacher	2000	1500	1250

<sup>38</sup> K.M.George, *The Malayalis, The People, their History and Culture*, Vol. 4, Malayali Social and Cultural Life, Cosmo Publications, New Delhi, (1<sup>st</sup> edn., 2002), p.218.

<sup>39</sup> *supra* n.1, Chapter XXVI, Rule 1.

<sup>40</sup> G.O/(P) No.7/2016/Fin. Dated, Thiruvananthapuram, 20-01-2016.

**Table 6.2: City Compensatory Allowance (Only in B Class Cities)**

Primary Teacher	350
High School Teacher	400
Higher Secondary School Teacher	400

### 6.4.2. Increment and Dearness Allowance

District or Assistant Educational officer, as the case may be, is the competent authority to sanction increments of aided school teachers as and when they fall due.<sup>41</sup> The Headmaster forwards the increment application to the Educational Officer through the Manager of the School. The Headmaster is the competent authority to sanction increments of Government school teachers. Normally an increment falls due in every year. The present increment of a newly appointed primary teacher is Rs.650 and high School teacher is Rs.700. Higher secondary school teachers (both senior and junior) are entitled to get increment at the rate of Rs.1000 and Rs.800 respectively.<sup>42</sup>

The Government and aided school teachers are also eligible to receive dearness allowance declared by the Government from time to time in accordance with the cost of living index. At present 12% of the basic pay is the dearness allowance in the existing pay scale.<sup>43</sup>

### 6.4.3. Scale of pay

The pay scales allowed to the teachers of Government and aided schools as per the latest pay revision<sup>44</sup> are the following.

<sup>41</sup> *supra* n. 1, Chapter XIV (A), Rule 61.

<sup>42</sup> *supra* n. 40.

<sup>43</sup> As per G.O. (P) No.6/2017/Fin. dt. Thiruvananthapuram, 19.01.2017. (w.e.f. 01.07.2016).

<sup>44</sup> *supra* n.40.

**Table 6.3**

Year	Date of Effect	Designation	Scale of Pay
2014	01.07.2014	Lower Primary School Teacher	25200-650-27800-700-29900-800-33900-900-37500-1000-42500-1100-48000-1200-54000.
2014	01.07.2014	Upper Primary School Teacher	25200-650-27800-700-29900-800-33900-900-37500-1000-42500-1100-48000-1200-54000.
2014	01.07.2014	High School Teacher	29200-700-29900-800-33900-900-37500-1000-42500-1100-48000-1200-54000-1350-59400-1500-62400
2014	01.07.2014	Higher Secondary School Teacher (Senior)	39500-1000-42500-1100-48000- 1200-54000-1350-59400-1500-65400-1650-72000-1800-81000-2000-83000
2014	01.07.2014	Higher Secondary School Teacher (Junior)	32300-800-33900-900-37500- 1000-42500-1100-48000-1200- 54000-1350-59400-1500-65400-1650-68700

It is clear from the Table 6.3 that an upper and lower primary school teacher entering State service for the first time in Government or aided school in Kerala, the total amount of salary admissible to him presently is Rs. 29474 which includes the basic pay (25200), dearness allowance (3024)<sup>45</sup> and the house rent allowance (1250).<sup>46</sup>

<sup>45</sup> 12% of the basic pay.

<sup>46</sup> Rate applicable in ordinary cities.

The total amount of salary admissible to a high school teacher, appointed for the first time in Government or aided school, at present is Rs. 34204 which includes the basic pay (29200), dearness allowance (3504)<sup>47</sup> and the house rent allowance (1500).<sup>48</sup>

The total salary permissible to a higher secondary school teacher (senior), entering the service for the first time in Government or aided school, is Rs. 45740 which includes the basic pay (39500), dearness allowance (4740)<sup>49</sup> and the house rent allowance (1500).<sup>50</sup>

A higher secondary school teacher (junior) entering the service for the first time in Government or aided school in Kerala, the total salary permissible to him currently is Rs. 37676 which includes the basic pay (32200), dearness allowance (3876)<sup>51</sup> and the house rent allowance (1500).<sup>52</sup>

Hence, it is evident from the above figures that the teachers in the Government and aided schools are getting adequate salary and other allowances for their employment. In contrast, there is no proper scale of pay for the majority of teachers in the private unaided schools. Dearness allowance, house rent allowance, city compensatory allowances etc., are entirely unknown to them. Consolidated pay is given to them in most cases. Only a small section of teachers are fortunate to get the salary of a last grade servant in the Government service.<sup>53</sup> Government and aided School teachers are receiving an annual increment in proportion to their scale of pay which is far above the meagre rate of increment given to the private unaided

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<sup>47</sup> *supra* n.45.

<sup>48</sup> *supra* n.46.

<sup>49</sup> *supra* n.45.

<sup>50</sup> *supra* n.46.

<sup>51</sup> *supra* n.45.

<sup>52</sup> *supra* n.46.

<sup>53</sup> *supra* n.40. A last grade servant entering the Government service for the first time in Kerala, the total salary admissible to him at present is Rs. 19730 which include the basic pay (16500), dearness allowance (1980) and the house rent allowance (1250).

school teachers. Thus fair and reasonable wages remained as a dream for private unaided school teachers.

## 6.5. Service and Retirement Benefits

The rules regarding retirement benefits of Government servants including teachers and the conditions for granting these benefits are laid down in Part III of the Kerala Service Rules. These rules as amended from time to time are *mutatis-mutandis* applicable to the aided school teachers also.<sup>54</sup>

### 6.5.1 Pension

The Supreme Court of India, in *State of Kerala and Others v. M. Padmanabhan Nair*,<sup>55</sup> held that pension is a valuable right of an officer in recognition of his/her satisfactory discharge of duties and responsibilities while in service. According to Kerala Service Rules, unless the context otherwise requires, pension includes monthly pension, gratuity and death cum retirement gratuity.<sup>56</sup>

Teachers who entered service on or before 31.03.2013 have the benefit of statutory pension after retirement. Statutory pension means the Government will provide pension after retirement without taking any contribution from the beneficiaries. A teacher is eligible for payment of pension and gratuity on retirement while attaining the age of superannuation<sup>57</sup> or on voluntary retirement after completing qualifying years of service.<sup>58</sup> He is also entitled to receive pension on his discharge from the employment due to the abolition of the post<sup>59</sup> or on discharge due to invalidation on medical grounds.<sup>60</sup> Minimum years of qualifying

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<sup>54</sup> *supra* n. 1, Chapter XVII (B), Rule 3.

<sup>55</sup> A.I.R. 1985, S.C. 356.

<sup>56</sup> *supra* n. 6, Part I, Rule 12 (24).

<sup>57</sup> *id.* Part III, Rule 55.

<sup>58</sup> *id.* Rule 56.

<sup>59</sup> *id.* Rule 33.

<sup>60</sup> *id.* Rule 42(2).

service required for pension is 10 years.<sup>61</sup> In the case of a teacher, who completed ten years of qualifying service, retires on superannuation gets superannuation pension at the rate of 50% of average emoluments (average of last 10 months pay) / 30 x qualifying service.<sup>62</sup>

In 2013, in accordance with the national pattern adopted by the Central Government and various State Governments, the Government of Kerala introduced Contributory Pension Scheme<sup>63</sup> (with effect from 01.04.2013) in which 10 percent of the gross salary of an employee is deducted towards the Pension Fund formed under Pension Fund Regulatory and Development Authority.<sup>64</sup> Its scheme is that the Government too will deposit an equal amount of money that has been deposited by the employee. The pension funds of the Government servants will be managed by Pension Fund Managers nominated by the PFRDA and the records will be maintained by the National Security Depository Limited that functions as the central record keeping agency of the scheme.

### **6.5.2. Death-cum-Retirement Gratuity**

This is a lump sum amount payable to the teacher on his retirement or to his family on his death. The amount of death cum retirement gratuity is equal to half of the emoluments last drawn by the teacher x number of years of qualifying service.<sup>65</sup>

### **6.5.3. Provident Fund**

All teachers in the Government and aided schools have the benefit of provident fund. Government school teachers are governed by the provisions of The General Provident Fund (Kerala) Rules and aided school teachers by the Kerala Education Rules (Chapter XXX) as far as the provident fund is concerned.

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<sup>61</sup> *id.* Rule 57.

<sup>62</sup> *id.* Rule 64.

<sup>63</sup> G.O.(P) No. 20/2013 /Fin. Dated, Thiruvananthapuram, 07/01/2013.

<sup>64</sup> Here in after referred to as PFRDA.

<sup>65</sup> *supra* n. 6, Part III, Rule 68.

Teachers deposit money as per their wish but not less than 6 percent<sup>66</sup> of their basic pay to this fund every month.<sup>67</sup> The maximum amount that may be deposited in the provident fund is the basic salary of an employee. A subscriber can avail loan<sup>68</sup> from the amount accumulated in his provident fund account including interest thereon.<sup>69</sup>

#### **6.5.4. Insurance Protection**

All teachers in the Government and aided schools are required to insure their life in accordance with the provisions of Kerala State Life Insurance Rules. They have to remit a minimum monthly premium towards the policy and it is deducted from their monthly salary.<sup>70</sup> They are also required to take additional policies when they move to the higher pay range.<sup>71</sup> The amount guaranteed under the policy shall be payable to a teacher on his/her retirement or at his/her death whichever is earlier.<sup>72</sup>

The above mentioned social security measures provided to the teachers in the Government and aided schools certainly protect their service life, retired life and family in case of any mishap. On the contrary, it is clear from the survey that only half of the private unaided school teachers are given the benefits of social security legislations of any kind. Most of them are having the benefit of the provident fund only. Pension and gratuity are available only to a minimum number of teachers. It shows that most of the teachers in the unaided schools are working without the backing of the provisions of the social security legislations. Lack of attention from the part of the Government, grave disregard by the management and

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<sup>66</sup> The General Provident Fund (Kerala) Rules 2012, Rule 9 (1) (b).

<sup>67</sup> *supra* n.1, Chapter XXX, Rule 10 (b).

<sup>68</sup> *id.* Rule 15.

<sup>69</sup> *supra* n.66, Rule 14.

<sup>70</sup> The Kerala State Life Insurance Rules 1988, Rule 4(3).

<sup>71</sup> *id.* Rule 4(2).

<sup>72</sup> *id.* Rule 4(4).

lack of awareness among the teachers of unaided schools can be cited as the main reasons for the emergence of such a situation.

## **6.6. Leave Rules of Teachers**

Leave cannot be claimed as a matter of right. When the demands of public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.<sup>73</sup>

In the matter of casual leave and all other kinds of leave, the teachers of aided schools are governed by the rules applicable to teachers of Government schools for the time being in force.<sup>74</sup> The various types of leave available to the Government and aided school teachers as per the provisions of Kerala Service Rules are as follows.

### **6.6.1. Casual Leave**

It is not expressly provided in the Kerala Service Rules as it is not recognised as a leave. Technically, therefore, a teacher on casual leave is not treated as absence from duty and his pay and allowances are not interrupted. The maximum number of leave permitted under this head in a calendar year is 15.<sup>75</sup>

### **6.6.2. Half pay leave**

This leave is earned at the rate of 20 days for each completed year of service.<sup>76</sup> Half pay leave is granted either for private affairs or on medical grounds. It is granted without any limit subject to availability of leave in his credit. Leave salary will be equal to half of the pay, the teacher would get, had he been on duty during the period of leave. It includes an increment that falls due during the period of half pay leave.<sup>77</sup>

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<sup>73</sup> *supra* n.6, Part I, Chapter IX, Rule 65.

<sup>74</sup> *supra* n.1, Chapter XIV (A) Rule 56.

<sup>75</sup> G.O. (P) 622/79/Fin.dt. 19/07/1979.

<sup>76</sup> *supra* n.6, Part I, Chapter IX, Rules 82 & 83.

<sup>77</sup> *id.* Rule 93.

### **6.6.3. Commuted Leave**

Commutated leave is a conversion of half pay leave into full pay leave. Twice the amount of half pay leave is debited for each commuted leave. All permanent teachers and those who have completed three years of continuous service are eligible for this leave. No medical certificate is necessary for the grant of this leave.<sup>78</sup>

### **6.6.4. Earned Leave**

It is available to teachers if they were denied their vacation period for performance of any special duty.<sup>79</sup> They can earn earned leave under formula  $N/V \times 30$ , where 'N' represents the number of days prevented from enjoying and 'V' total period of vacation. The rate of earned leave is full pay if the person had been on duty.

### **6.6.5. Leave Not Due**

This is half pay leave granted in advance.<sup>80</sup> Only permanent teachers are eligible to avail this leave. This is granted only when no other leave is at credit and the leave sanctioning authority is satisfied that there is reasonable prospect of the employee returning to duty on the expiry of the leave and earning an equal amount of half pay leave thereafter for adjusting the leave granted. During the entire service, the maximum amount of leave not due should not exceed 360 days. Out of which, 180 days can be granted without a medical certificate and it should not exceed 90 days at a time. The remaining 180 days should be on medical grounds.

### **6.6.6. Leave Without Allowance / Extraordinary Leave**

Leave without allowance is granted to teachers in regular employment when there is no other leave at credit or there is leave at credit but applies for

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<sup>78</sup> *id.* Rules 84 & 86A.

<sup>79</sup> *id.* Rules 80, 81 & 86.

<sup>80</sup> *id.* Rule 85.

Leave Without Allowance (LWA).<sup>81</sup> It is also to be noted that the period of leave without allowance exceeding 4 months requires the sanction of the Government.

### **6.6.7. Maternity Leave**

This leave is granted only to female teachers on full pay for a maximum period of 180 days.<sup>82</sup> It is also granted for miscarriage including abortion for a period not exceeding six weeks and for hysterectomy (uterus removal) for 45 days.<sup>83</sup>

### **6.6.8. Child Adoption Leave**

Adoptive mothers, with less than 2 surviving children are eligible for 180 days leave similar to maternity leave from the date of legal adoption of a child up to one year of age. Any other eligible leave can also be combined with this leave in the case of maternity leave and the benefits are same as that of maternity leave.<sup>84</sup>

### **6.6.9. Paternity Leave**

Paternity Leave<sup>85</sup> for 10 days each for two children is allowed to male employees for serving their wives at the time of delivery.

### **6.6.10. Special Casual Leave**

It is granted to cover the period of infectious diseases suffered by the employees. Normally, it is available for a period of 21 days in a year and under special circumstances, it can be extended up to 30 days.<sup>86</sup>

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<sup>81</sup> *id.* Rules 64, 86A & 88.

<sup>82</sup> *id.* Rule 100.

<sup>83</sup> *id.* Rule 101.

<sup>84</sup> *id.* Rule 102A.

<sup>85</sup> G.O.(P) No.85/11/Fin. dated 26.2.2011.

<sup>86</sup> *supra* n. 6, Part I&II, Appendix VII, Rule 2.

From the above discussion, it is clear that adequate number and various categories of leave are provided to the teachers of Government and aided schools. On the other hand, only nominal number of teachers in the unaided schools have the privilege of maternity leave with salary. Among them, very few are getting a full period of maternity leave with salary. The Constitutional and statutory mandate of maternity benefit is negated to the teachers of unaided schools.

Other forms of leave like half pay, leave without allowance, leave on medical grounds, commuted leave, casual leave etc., are available only to a small number of teachers in the private unaided schools and that too in very limited manner. Adequate time for leisure and eligible leave are necessary for the protection of competence of teachers and it is seen unavailable in the case of private unaided school teachers.

## **6.7. Prospects of Promotion**

Time bound higher grades are ensured to teachers in the Government and aided schools. Kerala Education Rules, Special Rules for the Education Department and, various pay revision orders of the Government deal with these matters. The provisions relating to the promotion of Government and aided school teachers are discussed as follows.

### **6.7.1. Lower Primary and Upper Primary Teachers**

Grade promotions are allowed to the lower primary and upper primary school teachers into the levels of Grade I, Senior Grade and Selection Grade on completion of 8, 15 and 22 years of service respectively as Lower Primary School Assistant or Upper Primary School Assistant (L.P.S.A or U.P.S.A) in the scales of pay of 27800-59400, 30700-65400, 32300-68700 respectively.<sup>87</sup>

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<sup>87</sup> *supra* n.40.

### **6.7.2. High School Teachers**

Grade promotions are granted to High School Assistants into the levels of High School Assistant (Higher Grade), High School Assistant (Senior Grade), High School Assistant (Selection Grade) on completion of 7, 15 and 22 years of service as High School Assistant in the scales of pay of Rs. 32300-68700, 35700-75600, and 36600-79200 respectively.<sup>88</sup>

### **6.7.3. Higher Secondary School Teachers**

Promotions to the higher grade are provided to Higher Secondary School Teachers on completion of 8 and 15 years of service with the scales of pay of 40500-85500 and 42500-87000 respectively as Higher Secondary School teacher (Higher Grade) and Higher Secondary School teacher (Selection Grade). Similarly a Higher Secondary School Teacher (Junior) is also entitled to get grade promotion on completion of 8 and 15 years of service with the pay scales of 39500-83000 and 40500-85000 respectively.<sup>89</sup>

The career advancement scheme of Government and aided school teachers as explained above obviously provides sufficient prospects for promotion to the higher grades. The private unaided school teachers are qualified, but grade promotions are totally denied to them. The Kerala Education Rules or other regulations issued by the Government do not contain any provision which sanctions the promotion of private unaided school teachers. The affiliation bye-laws which insist for the promotion of teachers are also not complied with. How a teacher can improve his effectiveness as a teacher without getting an adequate incentive like promotion in his/her service is a question of great relevance in the case of private unaided school teachers.

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<sup>88</sup> *ibid.*

<sup>89</sup> *ibid.*

## 6.8. Qualification of Teachers

The necessary qualifications to become teachers in the lower primary, upper Primary, high School and higher secondary sections in the aided and Government schools are clearly stated in the Kerala Education Rules.<sup>90</sup>

### 6.8.1. Qualification of Higher Secondary school Teachers

The following are the essential qualifications necessary for the post of higher secondary school teachers both in Government<sup>91</sup> and aided<sup>92</sup> schools.

- a) Masters Degree in the concerned subject with not less than 50% marks from any of the Universities in Kerala or a qualification recognised as equivalent thereto in the respective subject by any University in Kerala;
- b) B. Ed. in the concerned subject acquired after a regular course of study from any of the Universities in Kerala or a qualification recognised as equivalent there to by a University in Kerala and
- c) Pass in the State Eligibility Test for the post of Higher Secondary School Teacher conducted by the Government of Kerala or by the Agency authorised by the State Government.

### 6.8.2. Qualification of High School Teachers

A Degree in the concerned subject with B.Ed./B.T conferred or recognised by the Universities in Kerala is prescribed as the qualification for a High School teachers.<sup>93</sup>

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<sup>90</sup> G.O/(P) No. 76/80/G. Edn. Dated, Thiruvananthapuram, 6<sup>th</sup> June, 1980.

<sup>91</sup> *supra* n.14, Rule 5.

<sup>92</sup> *supra* n.1, Chapter XXXII, Rule 6.

<sup>93</sup> *id.* Chapter XXXI, Rule 2 (2) (a).

### **6.8.3. Qualification of Upper Primary School Teachers**

A pass in S.S.L.C., Pre-degree, Higher Secondary or any other examination recognised by Government as equivalent there to and a pass in T.T.C. Examination conducted by the Commissioner for Government Examinations, Kerala or a degree in any subject and B.Ed./B.T conferred by or recognised by the Universities in Kerala or a pass in the Pre-degree examination with Pedagogy as an elective subject conducted by the University of Kerala are the necessary qualifications for an upper primary school teacher.<sup>94</sup>

### **6.8.4. Qualification of Lower Primary School Teachers**

A Lower Primary School Teacher<sup>95</sup> must have passed S.S.L.C., Pre-degree, Higher Secondary or any other examination recognised by Government as equivalent there to and a pass in T.T.C. Examination conducted by the Commissioner for Government examinations, Kerala or a pass in Pre-degree examination with Pedagogy as an elective subject conducted by the University of Kerala as qualification for the post.

From the above, it is clear that teachers in the Government and aided schools are well qualified and their required qualifications are clearly defined in the respective rules. The teachers of private unaided schools are also equally qualified like that of the Government and aided school teachers. More than 80% of the teachers have degrees or higher qualifications to their credit. Most of the teachers in the private unaided schools are highly qualified and they possess the qualifications prescribed by the Government for getting an appointment in the Government and aided Schools. Even NET and Ph.D. holders are employed in these schools. But unfortunately, they have no pay parity with Government school teachers. The employment of highly qualified teachers in the unaided schools can be ascribed to the high rate of educated unemployment in the State.

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<sup>94</sup> *id.* Rule 3(1).

<sup>95</sup> *id.* Rule 4(1).

## **6.9. Scheme of Syllabus**

Government and aided schools are generally following the syllabus prescribed by the State Government. The medium of instruction in these schools is English or Malayalam. So there is uniformity regarding the syllabus of instruction in Government and aided schools. On the other hand, private unaided schools in the State are following the syllabus of different school boards. More than 3/4<sup>th</sup> of the private unaided schools are following C. B. S. E. and I. C. S. E. syllabus. Very few schools are also running classes with more than one syllabus in the same campus. It is very difficult for a teacher to instruct in classes where different streams of curriculum are followed. The reason behind the introduction of different syllabus is to attract more students to the institution. Mainly, these schools resort to English as their medium of the instruction. So there is a considerable difference in the case of scheme of syllabus followed by the schools in the Government / aided sector and unaided schools.

## **6.10. Teaching Experience**

An adequate number of experienced as well as new teachers are employed in every Government and aided Schools. Their job is secured and the salary and allowances paid to them are attractive. Thus, the majority of the teachers working in these schools are preferred to stay there untill their retirement. But it is clear from the survey that most of the teachers in private unaided schools are freshers. Only 1/10<sup>th</sup> of the teachers are having a teaching experience of more than 15 years. It is quite natural that as and when a teacher gets a better job, then he leaves the employment in the unaided school and join for the more secure job. Hence, teachers with long experience are very few in the case of private unaided schools in the State.

### **6.11. Execution of Bond by Teachers**

There is no compulsory execution of bond between the Government and teachers of Government and aided Schools while in service. However, it is observed from the survey that there are some practices in the unaided schools which restrict the teacher from enjoying his basic rights and freedoms. Practices like holding back of certificates, payment of lump sum money when there is a breach of period of the contract, prohibition to join any trade union etc., are the hostile practices reported by the teachers. These types of practices, though very minimum, certainly make an impact on the self-esteem and confidence of the teachers. Furthermore, the right of a citizen to practice any trade, profession or occupation as guaranteed under Article 19 (1) (g) of the Constitution is clearly violated as far as the private unaided school teachers are concerned.

### **6.12. Holidays and Vacations**

Adequate leisure is necessary for the efficiency of employees in any kind of employment. Usually, two weekly holidays are allowed for the teachers working in the Government and aided Schools. Two months annual vacation and 9 days term vacation each for Onam and Christmas are permitted for teachers in the Government and aided schools but the school office will remain open on all working days during the vacations. Full salary is provided to the Government and aided school teachers during vacations.

It is obvious from the survey that more than half of the private unaided school teachers are getting two weekly holidays. 3/4<sup>th</sup> of the teachers are having the privilege of annual vacation for a period of more than one month which may extend to two months in certain cases. 1/4<sup>th</sup> of the private unaided school teachers are gaining annual vacation for a period of less than one month. Only a negligible number of teachers are out of the domain of this benefit. As far as the term vacations are concerned, almost all the teachers in the unaided schools are given this advantage. Thus, the privilege of holidays and vacations is granted to most of

the teachers in the unaided schools, but the full rate of vacation salary is given only to a section of them.

### **6.13. Disbursement of Salary**

In Government and aided schools, salary is disbursed to the teachers by way of account transfer and no deductions are made from it other than the amount needed for the payment of a contribution to provident fund, state life Insurance, group insurance scheme etc. It is true that in unaided schools, the teachers are generally paid salary without any deductions. However, the social security benefits granted to them is minimal. Regarding the mode of disbursement of salary, nearly half of the teachers of unaided schools are receiving monthly salary by way of cash and the other part by means of account transfer. Only a small percentage of unaided school teachers are getting salary through cheque. The obligation on the part of the unaided school managements to disburse the salary of the employees through cheque or bank transfer in accordance with the provisions of Kerala Education Rules<sup>96</sup> and the affiliation bye-laws of various school boards and that too without making any illegal deductions is not fully complied with so far.

### **6.14. Disciplinary Proceedings Against Teachers**

As far as disciplinary actions are concerned, Government is the competent authority in case of Government school teachers and Manager in case of aided school teachers. The respective rules in the Kerala Service Rules and Kerala Education Rules are normally applied in such cases. The application of the principles of natural justice is ensured before inflicting any kind of penalty.

Every teacher is allowed to file an appeal before the higher authority against the order of Educational officers with regard to any dispute between the teacher and the manager.<sup>97</sup> He / She is also entitled to file an appeal against an order

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<sup>96</sup> *supra* n.1, Chapter XIV AA, Rule 2.

<sup>97</sup> *id.* Chapter XIV (A) Rule 64.

imposing penalties on him to the next higher authority to which the former authority is subordinate.<sup>98</sup>

The question as to when an Educational Officer can take disciplinary action against teachers of an aided school came for consideration before the High Court of Kerala in *Yamuna, P.R. v. State of Kerala and Others*.<sup>99</sup> In this case, the petitioner who is a teacher of an aided school challenged the order passed by the Assistant Educational Officer in disciplinary proceedings and also the orders of the superior officers confirming the order of the Assistant Educational Officer. Here, the petitioner contended that the Assistant Educational Officer has acted *ultra vires*, as he has issued a notice to the petitioner proposing penalty and that such a notice cannot be issued without conducting an enquiry. She further argued that the Educational Officer can take disciplinary action only if the Manager does not take action, despite direction to do so.

On tracing the legislative history of Section 12A of the Kerala Education Act<sup>100</sup> and Rule 75A, Chapter XIV A of the Kerala Education Rules<sup>101</sup> and

<sup>98</sup> *id.* Chapter XIV (A) Rule 80.

<sup>99</sup> MANU/KE/0852/2007.

<sup>100</sup> *supra* n.15, Sec.12 A. The Section reads as follows: 1) Notwithstanding anything contained in section 11 or section 12 and subject to such rules as may be prescribed, the Government or such officer not below the rank of an Educational Officer, as may be authorised by the Government in this behalf, shall have power to take disciplinary proceeding against a teacher of an aided school and to impose upon him all or any of the penalties specified in the rules made under this Act. (2) The Government or [the officer authorised] under sub-section (1) as the case may be, may suspend a teacher of an aided school when any disciplinary proceedings is proposed to be taken against him under that sub-section or when such disciplinary proceedings are pending: Provided that:- (a) before exercising the powers under sub-section (1) the Government or [the authorised officer] as the case may be, may intimate the Manager regarding the circumstances requiring disciplinary action against the teacher concerned and give the Manager a reasonable opportunity of taking disciplinary action; and (b) if the Manager fails to take appropriate action it shall be open to the Government or [the authorised officer] to take appropriate disciplinary action against the teacher concerned.

<sup>101</sup> *supra* n.1, Chapter XIV A, Rule 75A. The Rule reads as follows: Notwithstanding anything contained in rule 75, if a manager does not initiate appropriate action against the teacher, within a month from the date of intimation as specified in section 12(A) or after intimation of the disciplinary proceeding he is not completing the disciplinary proceedings within two months from the date of intimation of the disciplinary action. 166[or if according to Government or the authorised officer the manager dropped the disciplinary proceedings without sufficient grounds

precedents, the learned Judge observed that the authority to initiate disciplinary action against the teachers of aided schools still rest with the manager and only if, despite directions of the educational authorities to do so, the manager fails to initiate disciplinary action, the educational officer gets jurisdiction to take disciplinary action and not otherwise. Hence, the Court held that disciplinary proceedings are illegal as the Educational Authority had far exceeded his powers. Government or the Manager, as the case may be, cannot terminate or suspend or impose penalties against a teacher without any reasonable ground. Systematic procedures of the Department should be followed before imposing any punishment.

The above case illustrates that the disciplinary action against teachers in aided and Government schools can be taken only after following the prescribed procedure. Therefore, their security of tenure is ensured and any type of arbitrary action from the side of the authorities is thereby prevented. The affiliation bye-laws of CBSE, CISCE, as well as chapter XIVAA of the Kerala Education Rules, prescribe certain steps to be taken by the management which includes giving show cause notice, providing opportunity to the employee concerned to defend his case etc., before initiating a disciplinary action against an employee in the private unaided schools. But in most cases, the managements are taking disciplinary actions, including termination from employment, against the employees even without following the principles of natural justice. Since the teachers are not issued proper appointment orders, they may not be in a position to defend their case. Further, the non extension the Industrial Disputes Act, 1947 to teachers disentitles the Government to refer their disputes to adjudication machinaries.

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or imposed a penalty not proportionate to the gravity of charges proved] then the Government or the authorised officer as the case may be shall take appropriate disciplinary action against the teacher concerned. But in extraordinary cases for reasons to be recorded in writing the Director may on the application of the manager extend the time allowed to the manager to complete the disciplinary action. The procedure prescribed in rule 75 shall mutatis mutandis be followed by the Government or the prescribed authority in the matter of imposing major penalties].

### 6.15. The Trade Union and Political Activities

Teachers working in the Government<sup>102</sup> or aided sectors<sup>103</sup> have the freedom to engage in Trade union Activities. There are about 24 associations and unions functioning in this sector.<sup>104</sup> These unions and associations have political inclinations. Kerala School Teachers Association (K.S.T.A.), Government School Teachers Union (G.S.T.U.), K.A.P.T.U.<sup>105</sup> etc., are the major ones. They have the freedom to engage in the activities related to these trade unions. Trade Union activities help them to be united and it gives them a chance to redress their issues collectively and highlight their requirements in front of the authorities. In the matter of preventing exploitation, trade unions play a vital role. Right to form associations or unions is an important right envisaged in the Constitution of India.<sup>106</sup> Moreover, teachers and employees working in the aided schools are also permitted to contest elections.<sup>107</sup>

As an organised sector, teachers in the Government and aided schools have all the civil and political rights permitted by the Constitution of India. It is explicit from the facts that most of the teachers in private unaided schools are compelled to work against their will. Even the fundamental right to form associations or unions<sup>108</sup> is denied to them. Besides, the majority of the private unaided school teachers not satisfied with their job and working environment. In fact, they are continuing in the present employment without any job satisfaction. Constitutional mandate is negated in the case of these teachers.

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<sup>102</sup> The Kerala Government Servant's Conduct Rules 1960, Rules 76, 77.

<sup>103</sup> *supra* n.1, Chapter XIV C, Rules 50, 51.

<sup>104</sup> *supra* n.5, p.636.

<sup>105</sup> Kerala Aided Primary Teachers Union.

<sup>106</sup> The Constitution of India 1950, Art. 19 (1) (C).

<sup>107</sup> G.O.(P) No.231/67/Edn. dated 29/05/1967.

<sup>108</sup> *supra* n. 106.

### **6.16. Job Satisfaction and Job Security**

Government and aided school teachers are earning sufficient salary and it is revised in every period of five years. They are free to engage in the trade union activities. Proper mechanism to redress their grievances is provided in the respective service rules. Thus, their employment is secured and they are relatively satisfied with the current employment. On the other hand, nearly 80 percent of the private unaided school teachers consider that their current employment has no security of tenure. Majority of the teachers are not satisfied with the working environment, salary and are actually working without job satisfaction. Only a small group of them have the permission to associate with the activities of trade unions. Further, it is explicit from the survey that most of the teachers in the private unaided schools are compelled to work against their will.

### **6.17. Governmental and Judicial Interventions**

Government and aided school teachers are organised and have collective strength to coerce the authorities to accept their demands and needs. The Government and Judiciary are always taking constructive steps to protect their interest. However, in the case of private unaided school teachers, more than 3/4<sup>th</sup> of them are unhappy with the interventions made by the Government and Judiciary so far. Most of them expect that the Government will intervene and fix fair and reasonable salary in the near future. Furthermore, the vast majority of them are prospectively looking forward to an appropriate legislation by the Government to resolve their issues. Hence, it is clear that private unaided school teachers are anticipating more productive interventions from the part of Government and Judiciary.

### **6.18. Conduct of Teachers**

Teachers working in the Government and aided schools have to observe certain rules for maintaining good conduct. Teachers of Government schools are

governed by the provisions of The Government Servants' Conduct Rules, 1960, whereas Chapter XIV C of the Kerala Education Rules is binding in the case of aided school teachers as far as their code of conduct is concerned. Some of the rules prescribed in the respective regulations for upholding good conduct of the teachers are mentioned below.

### **6.18.1. Government Servants Conduct Rules, 1960**

Teachers are not permitted to collect money from the public except when authorized by Government or obtained permission from the Government.<sup>109</sup> However, the Head of the Department can grant permission to staff to collect money from them to provide relief to the family of a deceased Government servant.<sup>110</sup>

Government school teachers must submit to the Government not later than 15<sup>th</sup> January every year, a statement showing all the immovable properties possessed at the close of the preceding calendar year.<sup>111</sup>

No Government school teacher can except with the previous sanction of the Government engage directly or indirectly in trade or business. Without such sanction, honorary work of a social or charitable nature or occasional work of literary, artistic or scientific character can be undertaken. However, he shall discontinue such work if so desired by the Government<sup>112</sup>

They are not allowed to take part in politics or election to the legislatures, university bodies etc.,<sup>113</sup> The teachers can become members of only those associations which are not a threat to the sovereignty or integrity of India.<sup>114</sup> Recognition of service organizations of Government employees is being done by

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<sup>109</sup> *supra* n.102, Rule 14.

<sup>110</sup> G.O. (MS) 228/71 PD dated 09-08-1971.

<sup>111</sup> *Supra* n.102, Rule 37.

<sup>112</sup> *id.* Rule 48.

<sup>113</sup> *id.* Rule 71.

<sup>114</sup> *id.* Rule 76.

the Government on the basis of certain norms fixed like participation of the employees, their numerical strength *vis-a-vis* the total number of employees in that category<sup>115</sup>

Rules also prohibit Government Servants from approaching the Governor or the ministers with personal representations.<sup>116</sup> It is certainly desirable and proper that Government Servants make their representations only through proper channel. However, no disciplinary action is taken for presenting petitions direct to the ministers.<sup>117</sup>

### **6.18.2. Chapter XIV C of Kerala Education Rules**

As per the Kerala High Court judgment in *Chandrasekharan Nair v. State of Kerala & Others*<sup>118</sup> the aided school employees are treated as public servants and they are also liable for corrupt practices in connection with their employment.

Teachers are not permitted to engage in the business of money- lending.<sup>119</sup> They are at liberty to become members of, make deposits in, and take part in the promotion of Co-operative Societies.<sup>120</sup> For engaging directly or indirectly in any

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<sup>115</sup> *id.* Rule 77.

<sup>116</sup> *id.* Rule 94.

<sup>117</sup> Letter No 43928/SD 6/67/PD dated 13/03/1968.

<sup>118</sup> 1999 (1) K.L.J. 373. In this case the petitioners are members of the teaching and non-teaching staff (headmistress and clerk of the same school) in an aided school whose salary is being paid by the Government as provided under Section 9 of the Kerala Education Act. The above mentioned employees are charged with section 409 IPC (Criminal breach of trust) by the police and the petitioners contended before the Court that they are not public servants and not amenable to the section 409 of IPC. Therefore the court discussed the issue, Whether the Headmistress and clerk in the aided school squarely fall within the ambit of public servant? After hearing both the parties the Court held that the petitioners herein who are the Headmistress and clerk in the aided school squarely fall within the ambit of public servant as defined in Sec. 21 of the Indian Penal Code. Hence, the contention of the petitioners that they being not public servants as defined under Sec. 21 of the Indian Penal Code is illegal and is absolutely unsustainable.

<sup>119</sup> *supra* n.1, Chapter XIV C, Rule 14.

<sup>120</sup> *id.* Rule 24.

business or trade or undertaking any outside employment, the teacher should obtain prior permission from the Government.<sup>121</sup>

A teacher is not permitted to publish any book without obtaining the previous permission of the Government. The Director of Public Instruction is authorised to exercise this power in respect of teachers.<sup>122</sup> A teacher cannot give evidence before a public committee except with the previous sanction of the Government.<sup>123</sup>

Teachers are not allowed to join or continue to be a member of an association, the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality.<sup>124</sup> No association of teachers or association purporting to represent teachers or any class thereof shall be recognised by the Government unless it represents not less than 25% of the total strength of that class.<sup>125</sup>

It is improper for a teacher who makes any representation to Government through the official channel to approach the Governor or the ministers with advance copies thereof or with personal representations. Provided that a teacher who has not received any reply to a representation made to the appropriate authority within three months may make a written representation to Government with a copy of the representation sent to the appropriate authority and also with a statement that no reply has been received to that representation.<sup>126</sup>

Therefore, the major difference in the conduct rules of Government and aided schools is that private aided school teachers can involve in active politics and contest elections, whereas Government school teachers cannot. Moreover, a Government school teacher is required to submit to the Government at the

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<sup>121</sup> *id.* Rule 28.

<sup>122</sup> *id.* Rule 29.

<sup>123</sup> *id.* Rule 42.

<sup>124</sup> *id.* Rule 50.

<sup>125</sup> *id.* Rule 51.

<sup>126</sup> *id.* Rule 65.

beginning of every year a statement showing his possession of immovable properties acquired during the previous year.

Thus, the teachers of Government and aided schools in the State have to make sure that they conform to the common expectations of the society and they also refrain from the activities that are expressly prohibited by the conduct rules.

The private unaided school teachers, working in the schools that follow State board syllabus, are obliged to obey the conduct rules stated in the Kerala Education Rules. Teachers employed in the CBSE schools are required to comply with the conduct rules provided in the affiliation bye-laws of CBSE. Teachers, whether Government or unaided, are the most esteemed community in the society. Hence, their activities should conform to the position they occupy in the society. The conduct rules are undoubtedly helpful for them to lead a dignified and peaceful life in the society. But the imposition of these rules on private unaided school teachers who are deprived of proper salary and other emoluments may not be justifiable.

### **6.19. Teaching Staff Dying in Harness**

The dependents of Government and aided school teachers are entitled to get employment in case of teachers dying in harness. It is the duty of the manager to give employment to dependents of teachers of an aided school dying in harness.<sup>127</sup> Government orders relating to employment assistance to the dependents of Government servants dying in harness<sup>128</sup> shall, *mutatis mutandis*, apply in the matter of such appointments.<sup>129</sup> However, there is no law compelling the unaided school managements to provide employment in case of teachers dying in harness in their institutions.

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<sup>127</sup> *supra* n. 1, Chapter XIVA, Rule 51B.

<sup>128</sup> G.O. (MS) No. 20/70/PD dated 21-01-1970.

<sup>129</sup> G.O. (MS) No. 15/97/G.Edn. Dated, Thiruvananthapuram, 16-01-1997.

## 6.20. Conclusion

Thus, it is true that the Government and aided school teachers in Kerala are well considered by the Government through the Acts, Rules and Orders made / issued from time to time. They are getting a relatively good salary, emoluments and other amenities for their subsistence. Their tenure is sufficiently protected and cannot be terminated without any misconduct from their part. While taking disciplinary action against them the principles of natural justice shall be followed by the authorities. They are enjoying the benefits of all social security legislations and also having sufficient prospects of promotion. The teachers in the aided schools are participating in different democratic processes and can contest elections. Both the Government and aided school teachers are indulging in trade union activities. Moreover, no exploitation is seen taking place in these schools.

To conclude, the comparative study reveals the real position and status of private unaided school teachers in the State. They are not at all comparable with their counterparts in the Government and aided schools in all respects. Although the qualifications and other Governmental mandates are largely uniform, it can be seen that there is a clear disparity in payment of salary, social security benefits, job security, working environment etc. The Constitutional and other statutory provisions command equal pay for equal work, decent wages and other social security benefits for the employees. Yet measures to ensure these benefits are not seen taken in the case of private unaided school teachers so far.

## **Chapter 7**

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# **CONCLUSIONS AND SUGGESTIONS**

## Chapter 7

# CONCLUSIONS AND SUGGESTIONS

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Education is a process through which development of persons who are useful to the society is moulded. Proper education is needed to create a civilized community. Education is a continuous process that happens at different levels. School education which is the lengthiest, therefore, should facilitate and promote the above-said objective. In partial fulfillment of this requirement, we find the establishment of a large number of schools in the State of Kerala. The rulers at all times encouraged the starting of schools at all levels be it public or private. The advent of Christian Missionaries has cited as a new era for private school education in Kerala.

There are various types of schools in Kerala administered by different regulatory agencies. The ownership and management of these schools also widely vary. Government schools are functioning under the control of State Government. Private schools are either private aided or private unaided. Private aided schools are recognised and the salary of the teaching and non-teaching staff working in these schools are met by the Government. Private unaided schools are running without receiving any financial support from the Government and all administrative decisions including the appointment of staff and their payments are made by the management of the schools themselves.

At present, the growth of private unaided schools in the State is very fast as compared to Government and aided schools. Better discipline and performance in the academic and other activities is the main reason for the increase in student enrolment in these schools. In fact, the actual strength behind the success of private

unaided schools is the sincerity and dedication of the teachers working there. The wages and other service conditions of teachers have an important role in the proper functioning of any quality education system. Fair wages and reasonable conditions of service are necessary for the better performance of teachers in their vocation. This is exactly true in the case of private unaided school teachers also. But unfortunately, these kinds of privileges or benefits are rarely seen in the private unaided schools in the State. Media reports and study reports of Committees appointed by Government also indicate the inadequacy of basic service conditions and incidence of exploitation in this sector.

The study undertaken for gathering information about the present salary and other service conditions of private unaided school teachers shows their pathetic condition. Meager salary is paid to them and even the essential service benefits are denied to a large majority of teachers. Their workload is heavy compared to their counterparts in the Government schools. The benefits like pension, gratuity, commuted leave, earned leave, maternity leave with wages etc., are largely denied to the private unaided school teachers.

It is true that the Government of Kerala has initiated various measures for the protection and welfare of employees of unaided schools. Major interventions made in this sector are the introduction of Chapter XIV (AA) to the Kerala Education Rules, fixation of minimum salary for unaided school employees, appointment of Committees to study the real issues involved in this sector, introduction of new guidelines that have to be complied with by the management to obtain no objection certificate from the Government etc. However, the positive steps taken by the Government did not yield the intended result.

Judicial interventions relating to the service and working conditions of unaided school employees, especially regarding the salary and other benefits, have exposed the actual issues in this sector to the society. Yet, in many cases, the Courts in India have failed to appreciate the issues of the employees, mainly

teachers, working in the unaided schools and were given only a literal interpretation to the available statutory provisions and rules.

Furthermore, the provisions in the affiliation bye-laws of various school boards insist the payment of salary and other service benefits paid to the Government teachers also to the teachers working in unaided schools. But this provision still remains as a provision in paper only. No effective measures have been taken so far both by the Central and State Governments or the concerned school boards to implement the above provisions stated in the affiliation bye-laws.

### **7.1. Major Findings of the Study**

The major findings of the study are as follows:

1. Three-fourth of the total number of teachers in the unaided schools in Kerala are women. Ironically, only a small number of female teachers are given the benefit of maternity leave with salary as prescribed under the Maternity Benefit Act, 1961. This will certainly affect the health and well-being of the mother and the child. Provisions in the Act are grossly violated in most of the cases. Paternity leave which is available in Government and aided schools is totally unknown to this sector.
2. Teachers working in this sector are equally qualified like those in the Government and aided schools. Besides, a good number of teachers are youngsters. Unfortunately, salary and increment paid to them are very minimal. It is about one fourth of the salary of their counterparts in the Government and aided schools. Fair and reasonable salary is essential for them to lead a decent life since salary is their main source of income. Poor salary would definitely affect their sincerity and enthusiasm to the job which may reflect on the quality of education provided through them.
3. The workload of teachers in private unaided schools is comparatively higher than in the Government and aided schools. Proper rules are framed

for the calculation of workload and fixation of staff strength in the Government and aided schools. The rules stated in the affiliation bye-laws which prescribe the workload of teachers are largely violated in most of the cases. The workload and fixation of staff strength are determined by the management according to their whims and fancies. Teachers are also compelled to teach in more than one scheme of syllabus in a day. These practices undoubtedly lead to the loss of efficiency of teachers and ultimately affect the students.

4. Majority of the teaching staff in the private unaided schools do not have the freedom to associate with the activities of various teacher's associations and unions functioning in this sector. Managements seem to be afraid of the collective strength and unity of employees. In order to resist their claims and demands, managements usually obtain an assurance from teachers at the time of joining, to desist from trade union activities. Due to this, their bargaining power gets weakened and as a result, better service conditions are negated to them. This attitude of the management is against the fundamental right of the employees to form associations or unions guaranteed under Article 19 (1) (c) of the Constitution of India. Moreover, a small number of teachers in the private unaided schools are forced to execute some kind of bond with the management. It is also against the fundamental freedom to practice any trade, profession or occupation as assured under Article 19(1) (g) of the Indian Constitution. Constitutional mandates are seen violated in these cases.
5. Formal appointment orders and promotion orders that specify the scale of pay are totally unknown to this sector. Almost all teachers are working without proper appointment order and scale of pay. Only consolidated pay is allowed to the employees. Promotion and promotion benefits are only a dream for them. Even in the matter of fixation of minimum salary for the employees in this sector, Government have prescribed only the consolidated pay not a scale of pay. Therefore, it is difficult for the teachers to raise any

dispute as to their service conditions due to absence of proper appointment order and scale of pay.

6. Number of casual leave and weekly holidays, duration granted for term and annual vacations and vacation salary of teachers of private unaided schools are nowhere near the benefits enjoyed by their counterparts in the Government and aided schools. Privileges like commuted leave, half pay leave, leave for study purpose, earned leave and leave surrender are absolutely strange to the teachers in unaided schools.
7. Social security legislations are a blessing for the working people. But the fruits of such legislations are rarely available to the teachers of private unaided schools in the State. Provident fund benefits are offered only to a section of teachers in this sector. Benefits like retirement pension and gratuity are entirely out of the realm of the private unaided schools.
8. Teachers working in private unaided schools have no security of tenure. Since there exists no proper terms of employment, the continuance of their service is largely dependent on the mercy of the management. Majority of the teachers are unhappy with their present salary and other minimal benefits accorded to them. The working environment and terms of service, in fact, made the teachers dissatisfied with their job in private unaided schools.
9. The decisions of the Supreme Court of India, in *Bangalore Water Supply and Sewage Board v. Rajappa and Others*,<sup>1</sup> and in *A. Sundarambal v. Government of Goa, Daman and Diu and Another*,<sup>2</sup> excluded the teaching community from claiming the status of 'workman' under section 2(s) of the Industrial Disputes Act, 1947. Thus, the Government is unable to refer their disputes with the management for adjudication. However, the non-teaching

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<sup>1</sup> A.I.R. 1978 S.C. 548.

<sup>2</sup> A.I.R. 1988 S.C. 1700.

staff are covered under the definition of 'workman' and therefore the Government can refer their disputes for adjudication.

10. The Supreme Court of India, in *Haryana Unrecognised Schools Association v. State of Haryana*,<sup>3</sup> excluded teachers from the definition 'employee' under section 2 (i) of the Minimum Wages Act, 1948. This disabled the appropriate Government from fixing minimum wages for teachers in the private unaided schools. On the other hand, there is no restraint for the appropriate Government to fix minimum wages to the non-teaching staff in private unaided schools, because they are brought within the definition of the term 'employee' under the Act. But, the minimum wages fixed by the Government for the welfare of non-teaching community is also not adequate enough to satisfy their minimum needs.
11. The interventions made by the Government and Judiciary for the improvement of the working and service conditions of employees of private unaided schools so far have not produce the desired result. Therefore, the teachers in this sector are looking for an effective intervention from the Government for mitigating the poor conditions of unaided school teachers. Enactment of a suitable legislation for regulating the service conditions is one among their dreams.
12. The Right of Children to Free and Compulsory Education Act is applicable to private unaided schools also. The Central and State Rules framed for the implementation of the Act clearly specify that the salary and other allowances of the unaided school teachers are to be accordance with the regulations and guidelines issued by the appropriate Government from time to time. The State Government is empowered to issue guidelines in this respect to all schools within its territory since the appropriate Government is the State Government as per the Act. But the Supreme Court of India held in *Society for Un-aided Private Schools of Rajasthan V. Union of India and*

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<sup>3</sup> A.I.R. 1996 S.C. 2108.

*Another*<sup>4</sup> that the rights of children to free and compulsory education guaranteed under Article 21A of the Constitution and Right to Education Act, 2009 could be enforced against schools defined under Section 2(n) of Act except unaided minority schools not receiving any kind of aid or grants to meet their expenses from appropriate governments or local authorities, since the Act infringed the fundamental freedom guaranteed to unaided minority schools under Article 30 (1) of the Constitution of India. Unfortunately, this judgement is a setback for the private unaided school teachers in Kerala because majority of unaided schools in the state are run by the minority communities.

13. Fair and reasonable salary is the most important concern of the teachers working in the private unaided schools in Kerala. Matters related to their workload, job security and other service benefits also require equal attention from the part of the authorities. Reasonable salary with a moderate scale of pay will resolve their issues to a great extent. Welfare legislations like The Employees Provident Fund and (Miscellaneous) Provisions Act, 1952, the Employees State Insurance Act, 1948, the Payment of Gratuity Act, 1972 and the Maternity Benefit Act, 1961 though applicable to private unaided school teachers are not effectively implemented so far.
14. Absence of proper mechanism to redress the grievances of private unaided school teachers is another finding of the study. Though the Right of Children to Free and Compulsory Education Act, 2009 prescribed certain provisions for resolving the grievances of school teachers, yet it is not implemented in most of the unaided schools in Kerala.

## **7.2. Recommendations for Better Service Conditions**

On the basis of the conclusions, the following suggestions are made particularly with respect to the salary, service benefits, grievance settlement etc.,

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<sup>4</sup> A.I.R. 2012 S.C. 3445.

for the creation of a better working environment in the private unaided schools and to protect the teachers working there in from exploitation and degradation.

### **1. Amendment to the Minimum Wages Act, 1948.**

The exclusion of teachers from the definition of ‘employee’ under Section 2(i) of the Minimum Wages Act, 1948 by the Apex Court in India prevented the private unaided school teachers from getting the minimum wages under the Act. The decision of the Supreme Court is based on the ground that imparting education cannot be interpreted as skilled, semi-skilled or unskilled manual work or clerical work. But in fact, teaching is considered as a career which demands a high degree of skill and dedication. It is an undisputed truth that only a skilled teacher can impart effective instruction. Special ability to do something is described as the meaning of the term ‘skill’ in the Cambridge International Dictionary of English, which definitely put the work of teachers within the scope of the definition of ‘employee’ as defined under Section 2(i) of Minimum Wages Act. The right to claim minimum wage is a basic right of all wage earners and the same has been denied to the teaching community by virtue of this decision. It is highly unjust and illogical. The Supreme Court decision is unfortunate and disappointing as far as the unaided school teachers are concerned.

The Supreme Court ought to have adopted a liberal interpretation instead of a strict one in interpreting social welfare legislations since the object of those legislations is to widen the benefits to maximum number of employees. It is also the need of the hour to include ‘teachers in educational institutions’ within the definition of ‘employee’ under Section 2(i) of the Minimum Wages Act. If the teachers are included within in the definition of ‘employee’, then there would have been a possibility of getting them at least the minimum wages fixed by the Government. Thus, the Central Government may take necessary steps to amend Section 2(i) of the Minimum Wages Act so as to include teachers also into the definition.

## **2. Amendment of the Industrial Disputes Act, 1947**

The decisions of the Apex Court in India that ‘teachers’ are not workmen within the meaning of section 2(s) of the Industrial Disputes Act as they are not performing any skilled, clerical or semi skilled job operates as a barrier for the private unaided school teachers as far as their service disputes redressal are concerned. But in reality, skill is necessary for an effective teaching. Therefore, they are doing a skilled job that enables them to the protection of Industrial Disputes Act. So, it is high time for the Central Government to amend Section 2(s) of the Act by including teachers within the scope of the definition of ‘workman’ which will empower the appropriate Government to refer the service disputes of teachers for adjudication. This amendment would be really beneficial to the private unaided school teachers since they have no appropriate mechanism to address their grievances.

## **3. Enforcement of the Affiliation Bye-laws of School Boards**

The affiliation bye-laws of various school boards insist for the payment of Government salary and other benefits to the teachers working in the private unaided schools. It is one of the main prerequisites to be complied with for getting the affiliation to start a new school. Usually, this assurance is obtained from the part of management at the time of submission of an application for affiliation. Violation of this rule results in withdrawal of affiliation. If the affiliation boards take stringent actions, including withdrawal of affiliation of schools against such non payment of salary and other benefits at par with Government teachers, there would have been a chance to get a proper salary to them. But in practice, no affiliation boards are concerned with the importance of this condition. No scrutiny or supervision over the payments made by the private school management to their teachers is made by the boards. Once the affiliation is granted, it is considered to have been granted forever. There is no proper system for these boards to monitor and make sure that the schools are functioning in accordance with the declaration submitted by the concerned managements.

The affiliation bye-laws of CBSE, CISCE and the guidelines issued by the Government of Kerala for granting recognition to state syllabus schools clearly state the need for payment of Government salary and other service benefits to the teachers of private unaided schools. There are many other provisions helpful for the better protection of the teachers are contained in those Regulations. The Supreme Court in *T.M.A. Pai Foundation & Others v. State of Karnataka*,<sup>5</sup> held that it is open to the Government, University or affiliation boards to prescribe necessary pre-conditions, which are essential to maintain good academic standards, for the affiliation or recognition of educational institutions. It is applicable to unaided minority institutions also.

The High Court of Kerala has pointed out in *State of Kerala v. The Mythri Vidya Bhavan English Medium School*,<sup>6</sup> that the unaided minority schools are obliged to follow the affiliation bye-laws of the concerned boards on the basis of which they are affiliated. It is true that unaided minority schools are exempted from the application of the Right to Education Act. But the affiliation bye-laws of the school boards were in existence well before the implementation of the Right to Education Act. Therefore, the private unaided minority schools cannot escape from the responsibility of paying Government salary, which is prescribed by all education boards, to the teachers working in those institutions.

One thing to be noted here is that only the concerned affiliation board can take effective measures against schools which are violating the provisions of the affiliation bye-laws. Government and Judiciary have limited powers in this regard. Affiliation bye-laws of all school boards have penal provisions that can be imposed against those schools not complying with the affiliation rules. Hence, the affiliation boards may take steps to detect the schools that are functioning in violation of the rules for affiliation and strict measures, including cancellation of affiliation be taken against them.

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<sup>5</sup> A.I.R. 2003 S.C. 355.

<sup>6</sup> 2012 (4) K.H.C.321.

#### ***4. Government Should Impose Reasonable Conditions for Granting No Objection Certificate***

Both the Central and State Government can also play a constructive role in the matter of service conditions of teachers in the private unaided schools. While giving no objection certificate, which is the prerogative of the appropriate Government, the Government may impose rational conditions and obtain an assurance from the school authorities that they will function strictly in accordance with the conditions laid down by the Government. An undertaking to pay decent salary and allowances to the employees and provision for the cancellation of no objection certificate in case of violations etc., could be included as pre-conditions for issuing no objection certificate. The Government can also demand the affiliation boards to take necessary action against those schools which are functioning without considering the provisions of affiliation bye-laws.

#### ***5. Implementation of Equality in Pay With Government School Teachers***

The provisions relating to equality in pay with Government teachers are embodied in the affiliation bye-laws of CBSE, CISCE etc. However no follow up action is seen taken by the concerned education boards to implement equality in pay to teachers in unaided CBSE or ICSE schools. On the contrary, the Kerala Education Act and Rules do not contain any provision that assures equality in pay to private unaided school teachers in the State syllabus. Therefore, necessary provisions may be incorporated in the Kerala Education Rules so as to ensure equality in pay to teachers of private unaided schools.

Support of a statutory provision or an executive order is necessary for implementing the pay parity. An attempt in this regard has been made by the Government of Kerala through executive orders, including the provisions of pay parity, issued particularly for the purpose of granting no objection certificate to CBSE, ICSE schools and for giving recognition to State syllabus schools. However, these orders were challenged by the management before the High Court

of Kerala and the Court has stayed the operation of many of the provisions of the order. Measures may be taken by the Government to get the order of the High Court vacated and to implement equality in pay with Government school teachers on the basis of affiliation bye-laws and Government orders.

#### ***6. Provision for Performance Grant to Private Unaided Schools***

It is one of the prime duties of the Government to provide free and compulsory education to children below the age of 14. At present this requirement is largely met through the private unaided schools in the State. Hence, the Government is under an obligation to make sure that the employees of private unaided schools are adequately paid and students are levied with reasonable fees. Government intervention in this sector is essential for the successful functioning of these schools. The Government can think of providing grants to private unaided schools on the basis of their performance through an assessment based on objective criteria. Reimbursement of a certain percentage of fees to students belonging to economically weaker sections of the society and sharing a certain percentage of additional costs of the management occurred due to the payment of reasonable scale of pay to its employees can also be considered by the Government. Such actions of the Government would foster the maintenance of proper academic standards in such institutions.

Funds needed for providing grant and other financial assistance to these private unaided schools can be adjusted against money saved by the State while closing down the uneconomic schools in the State. In Kerala, it is an approved fact that in every year a good number of Government and aided schools are closed down due to the shortage of students. The money saved by the Government by the discontinuance of financial assistance to those un-economic schools can be utilised for the betterment of the students and teachers of private unaided schools. It is justified because the Government's responsibility to provide free and compulsory education is mainly shared by private unaided schools.

There can be a Committee in each educational district of the State to recommend the amount of grant and names of schools and students entitled to the aid of the Government. This Committee may consist of District Education Officer the Convenor of the Committee with Assistant Education Officers, representatives of management and teachers equal in numbers along with two prominent educational experts nominated by the Government as members.

A state level committee under the chairmanship of a retired High Court judge can also be formed by the Government to recommend a scale of pay for private unaided school employees including teachers commensurate with the actual cost of living incurred at the appropriate time. On the basis of their recommendation, Government can fix the pay scale of employees. The scale of pay once fixed shall be revised in every period of five years. The Committee shall include the representatives of the Education, Law and Labour departments, representatives of the managements and teachers who are equal in numbers, representatives of Affiliation boards and three eminent educational experts. There shall be a system of constant monitoring from the part of this Committee to ensure that the pay thus fixed is paid to the employees in the private unaided schools in Kerala. The Committee shall also scrutinize the fee structure of private unaided schools and make sure that it is reasonable. Necessary measures shall also be taken by the Government for the implementation of the above-mentioned recommendations.

### ***7. Right to Education Act, 2009 and Private Unaided Minority Schools***

Article 21A of the Constitution guarantees free and compulsory education to all children in India between 6-14 years of age. The Right of Children to Free and Compulsory Education Act was passed by the Central Government in 2009 to implement this fundamental right. As per Sections 23(3) and 38 of the Act, the appropriate Government is empowered to prescribe rules regarding the salary and other service conditions of teachers working in different schools in the State following the syllabus of CBSE, CISCE, State Board etc. Rule 20(3) of the

Central Rules and Rule 17(1) of the State Rules framed for the implementation of the Act also emphasized the authority of the appropriate Government to lay down salary and other allowances of the teachers working in unaided schools.

But, private unaided schools belonging to minority communities are excluded from the application of the Act by the Supreme Court of India in *Society for Unaided Private Schools of Rajasthan v. Union of India*<sup>7</sup> on the ground that it violates Article 30(1) of the Constitution of India, which provides minority communities the right to establish and administer educational institutions of their choice. The right guaranteed under Article 30(1) includes the right to appoint and determine the service conditions of employees working in such schools. Later on, a 'Five Member' Bench of the Apex Court, in *Pramati Educational and Cultural Trust (Registered) and others v. Union of India and others*<sup>8</sup> held that the power under Article 21A of the Constitution is vested in the State cannot extend to making any law which will abrogate the right of the minorities to establish and administer schools of their choice. Therefore, the 2009 Act insofar it is made applicable to minority schools referred to in clause (1) of Article 30 of the Constitution is *ultra vires* the Constitution. The Court further observed that the majority judgment of this Court in *Society for Un-aided Private Schools of Rajasthan v. Union of India and Another*<sup>9</sup> in so far as it holds that the 2009 Act is applicable to aided minority schools is not correct and held that the verdict passed by the 'three member' bench of the Apex Court in the above-mentioned case is to be overruled to some extent, asserting the minority status and consequence.

In fact, the Right to Education Act authorizes the appropriate Government to regulate all schools including private unaided schools following State syllabus or other syllabus and also to stipulate the terms of service of teachers working there. If the provisions of the Act are made applicable to the private unaided minority schools also, then it would have been possible for the Government to make rules

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<sup>7</sup> *supra* n. 4.

<sup>8</sup> A.I.R. 2014 S.C. 2114.

<sup>9</sup> *supra* n. 4.

for the better service conditions of the teachers employed in such schools. Such a situation would definitely help in solving the main issues persisting in this sector.

It is true that the responsibility of providing free and compulsory education is on the shoulders of the appropriate Government. Both Central and State governments are under an obligation to provide free and compulsory education up to the age of 14 years. The private unaided schools both minority and non-minority have no responsibility to give free education to children in this Country as they are functioning without any kind of aid from the Government. On the other hand, the Government is unable to provide free education to all because the financial position of the State is not sound enough to meet that requirement.

The right of minorities to establish and administer educational institutions does not mean that they have also a right to pay a low rate of salary to the employees working there and charge exorbitantly. According to the decision of the Supreme Court in *T.M.A. Pai Foundation case*,<sup>10</sup> determination of fee structure of students is purely the prerogative of the management of private minority unaided schools. But they should fix the fee in accordance with the standard of education, the curricular and co-curricular activities available to the students, the expenditure on the salary of its teaching and non-teaching staff, maintenance of campus, water and electricity charges etc. They cannot impose an excessive fee on the student community.

Likewise, the management has the right to determine the terms of service especially the salary of the teachers and other staff working in the private unaided schools. But they also have an obligation from their part to pay a reasonable salary to the staff working there because it is necessary to maintain the proper academic standards of the school. Payment of fair and reasonable salary is essential to get able and qualified teachers to serve the school. Therefore, it is the duty of the Government to see that everything is properly done including the payment of proper salary in such private unaided minority schools. If there is a flaw from the

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<sup>10</sup> *supra* n. 5.

part of the minority management to ensure the standards of education, then the Government can put certain regulatory measures to correct the same. This is clearly stated by the Supreme Court in *T.M.A. Pai case*<sup>11</sup> that the right to establish an educational institution can be regulated; but such regulatory measures must, in general, to be ensure the maintenance of proper academic standards, atmosphere, and infrastructure and the prevention of mal-administration by those in charge of management.

Reasonable salary for the teachers working in the private unaided minority schools is a necessary pre-condition to preserve good educational standards. Qualified and experienced teachers do not continue in such schools where payment is very nominal. This, in turn, affects the quality of education and thereby a genuine ground for the Government to intervene. Complaints and reports of low payment of salary to the employees in the private unaided schools are common and in most cases, it is genuine as evident from the survey conducted. Hence, it is up to the Central government to take steps to extend the provisions of the Right of Children to Free and Compulsory Education Act, which deal with qualification, salary, duties, grievance redressal of teachers and power of the appropriate Government to make rules for the implementation of the aforesaid provisions to private unaided minority schools so as to empower the appropriate Government to prescribe reasonable salary and other allowances of teachers in such schools in accordance with the current living conditions.

It is more rational to exempt private unaided minority schools only from the application of those provisions of the Act which are directly affecting their fundamental rights rather than excluding them from the Act in its entirety. The provisions of the Act, such as section 12, section 18 etc., which likely curtail the rights of minority communities as guaranteed under Article 30 of the Constitution should definitely be exempted from application to minority schools. The provisions of the Act stating conditions to maintain good academic standards can be made

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<sup>11</sup> *ibid.*

applicable to private unaided minority schools. The rules that prescribe qualification, salary, service conditions etc. of private unaided school teachers would certainly come within the ambit of the required academic standards. There exists no impediment applying these provisions to private unaided minority schools. Therefore, steps may be taken by the Central Government to extend those provisions of the Right to Education Act which are intended for the maintenance of good academic standards in schools to private unaided minority schools in the country.

#### ***8. Comprehensive Legislation to Resolve the Issues of Private Unaided School Teachers in the State***

The rules made by the State Government for the protection of unaided school teachers are not generally applicable to those schools which follow CBSE or CISCE syllabus. Only schools that follow State syllabus are governed by such rules. The Government of Kerala introduced a chapter in Kerala Education Rules to regulate the functioning of private unaided schools in the State. The rules stated in the chapter mainly prescribe the qualification of teachers, mode of payment of salary and procedure for termination of employees in private unaided schools. But, even after 26 years of the introduction of the chapter, the condition of private unaided school employees remain the same; no progress is seen achieved in terms of any of their service conditions.

Since most of the private unaided schools in the State are following the syllabus of various Central boards, it may not be possible for the State Government to frame rules for the regulation of such schools. At present, the State Government has the power only to prescribe reasonable conditions for issuing no objection certificate to an agency intending to start a new school with a syllabus other than the one prescribed by the State Board. If those conditions are satisfied, Government will issue no objection certificate and after that, the Government has, in fact, no control over such institutions.

The disparity between employees in the state syllabus and other schools regarding their service terms may seem illogical. Therefore, it is rational to provide salary and other service benefits to them uniformly without having any difference between schools that follow various curriculums. Besides, there is no proper legislation empowering the State Government to monitor and take action against schools that follow CBSE, ICSE syllabus as and when the school authorities commit defaults. At this juncture, it is essential to have a comprehensive legislation empowering the State Government to fix the terms of service of employees working in private unaided schools including those of minorities.

While fixing the salary and other allowances, the appropriate Government may consider the financial burden of the management, fee structure of the students, the economic condition of the Government, the right of children to get a quality education etc. A suitable scale of pay with adequate rate of an increment can be fixed for the teachers in this sector. A mere fixation of pay is not enough. An effective mechanism to implement the same and to take penal actions against violations made by private school managements can also be put in place. Thus, the Government may take adequate measures to fix and implement a uniform scale of pay and other service benefits to teachers and non-teaching staff in this sector.

### ***9. Welfare Legislations and Employees of Private Unaided Schools***

The Employees Provident Fund Act, 1952, The Payment of Gratuity Act, 1972, The Employees State Insurance Act, 1948 are applicable also to teachers of private unaided schools in the country. Necessary steps may be taken to ensure that the benefits of these legislations are properly implemented in this sector. Enforcement agencies appointed under the Act may be entrusted with the duty of ascertaining whether the provisions of these welfare legislations are complied with in the private unaided schools. The Government can also play a constructive role in giving necessary administrative instructions which will enable the effective implementation of the provisions of the legislations.

### **10. *Maternity Leave and Private Unaided Schools***

Maternity Benefit Act, 1961 is a welfare legislation enacted for the well being of the mother employee and child. The female teachers working in private unaided schools are entitled to maternity leave benefits. At present, the employees of Government and aided schools are getting 180 days of maternity leave with salary. This benefit should be extended to the private unaided sector. It is a basic right of a woman employee to take care of her new born baby at least for a period of six months. Presence of mother is essential for the health and happiness of the child. It is very cruel to allow leave without giving salary to the woman employee during the period of maternity. How can she nurture her child without having an income? Denial of salary during the period of maternity or refusal of maternity leave are clear cases of human rights violations.

Therefore, it is the duty of the Government to make sure that proper maternity leave benefit is made available to female employees in private unaided schools. An adequate number of staffs should be appointed or delegated to make sure that no human rights violations are taking place in any such institutions. Imposition of strict penalties may be ensured against those institutions which are not providing prescribed maternity leave with salary.

### **11. *Pension and Teachers in Private Unaided Schools***

The pension is really a support for an employee during his retired life. Appropriate pension scheme may be implemented for the benefit of employees including teachers in this sector. The Government may introduce a contributory pension scheme in which a certain percentage of the gross salary of employees is deducted and an equal amount is also contributed to the pension fund by the management.

## ***12. Teachers of Private Unaided Schools and Trade Unions***

The relationship of teachers with a union of teachers will definitely raise the confidence level and the strength of their bargaining power. As most of the teachers in this sector are women, it is essential to have some sort of protection for them from exploitation. Trade unions generally work as a shield over them to guard against the unfair actions of the management. Further, it is their fundamental right to form associations or unions under Article 19 (1) (c) of the Constitution of India. Action may be taken against school managements which impose restrictions on teachers from exercising this fundamental right.

Teachers represent the lone major set of educated and professionally trained employees in the country. Good educational qualifications and low rate of salary is a peculiar feature that we find in the case of private unaided school teachers and which is totally invisible in other classes of employment. A State cannot become a welfare State without caring and considering the aspirations of depressed and exploited class of people in the country. As a welfare State, it is the duty of the Government to provide social justice and adequate welfare measures for the protection of its subjects. Therefore, it is the need of the hour to take appropriate action from the part of the Government for wiping the tears of poor unaided school teachers.

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# **APPENDIX**

## **WAGES AND OTHER SERVICE CONDITIONS OF PRIVATE UNAIDED SCHOOL TEACHERS IN KERALA**

Respected Sir/Madam,

This questionnaire is meant to know about the wages and other service conditions of private unaided school teachers in Kerala as part of my Ph.D. work in Law at School of Legal Studies, Cochin University of Science and Technology, Kochi under the guidance of Dr. V. S. Sebastian, Dean, Faculty of Law, Cochin University of Science and Technology, Kochi. I shall be grateful if you could spend some time to help me in this effort and all the information provided by you will be kept confidential and used only for my research purpose.

Thanking you,  
Yours faithfully,

Kochi,  
30-01-2016.

Regi Joseph,  
Research Scholar, School of Legal Studies,  
Cochin University of Science &  
Technology, Kochi, Ph. 9446953121

## QUESTIONNAIRE

Please indicate your responses in the appropriate columns

1. What is your age group?

Below 30 years	Between 31-40 years	Between 41-50 years	Above 50 years

2. What is your gender?

Male	Female

3. What is your qualification?

SSLC with T T C	Plus Two/Pre-Degree with T T C	Bachelors Degree with B.Ed.	Post Graduate Degree with B.Ed.	Other qualifications like Ph.D. , NET, SET etc.(Specify)

4. In which standard are you teaching at present?

Class 1-4	Class 5-7	Class 8-10	Class 11-12

5. Which scheme of syllabus is following in your school?

State	C B S E	I C S E	Others (Specify)

6. How long have you been working in the school?

Below 5 years	Between 6-10 years	Between 11-15 years	Above 15 years

7. (a) Did you execute any bond with the management at the time of joining?

Yes	No

(b) If yes, give details of the bond:

8. Average number of periods you engage a day

Less than 4	4	5	6 or above

9. Number of holidays per week

Two	One	Nil

10. Total days of annual vacation you get a year?

2 months	1.5-2 months	1- 1.5 month	Less than 1 month

11. Total days of term vacations you get a year? (Onam & Christmas vacations)

9 days each for Onam & Christmas	6-8 days each for Onam & Christmas	Less than 5 days for Onam & Christmas

12. How many casual leave you get a year?

Above 15	13-15	10-12	Less than 10

13. (a) Do you get any service benefits like Provident Fund, Gratuity etc. ?

Yes	No

(b) If yes, give details:

14. (a) Do you have any maternity leave benefits? (In case of female employees)

Yes	No

(b) If yes, state the duration of leave with salary

180 days	Between 121-179 days	Between 61-120 days	Less than 60 days

15. (a) Do you get any leave other than casual and maternity leave?

Yes	No

(b) If yes, give details:

17. What is your monthly salary?

<b>Below 7000</b>	<b>7000-11000</b>	<b>11001-15000</b>	<b>15001-20000</b>	<b>Above 20000</b>

18. Are you getting salary regularly without any deductions?

<b>Yes</b>	<b>No</b>

19. (a) Do you have salary during vacations?

<b>Yes</b>	<b>No</b>

(b) If yes, rate of salary during vacations

<b>Full salary</b>	<b>Half salary</b>	<b>Quarter salary</b>	<b>Less than quarter</b>

20. What is your mode of disbursement of salary?

<b>By cash</b>	<b>By cheque</b>	<b>By account transfer</b>	<b>Any other mode</b>

21. (a) Do you have annual increments?

<b>Yes</b>	<b>No</b>

(b) If yes, rate of annual increment

<b>400 and above</b>	<b>201-399</b>	<b>100-200</b>	<b>Less than 100</b>

22. Is the salary received from your institution sufficient to meet your livelihood?

State your opinion

<b>Yes</b>	<b>No</b>

23. Do you have permission to associate with any trade unions?

<b>Yes</b>	<b>No</b>

24. Do you feel that your job is secure?

<b>Yes</b>	<b>No</b>

25. Are you satisfied with your working environment and service conditions?

<b>Yes</b>	<b>No</b>

26. Are you satisfied with the governmental and judicial interventions in this sector so far?

Yes	No

27. Do you expect an urgent intervention from the part of Government for the fixation of minimum or reasonable salary in this sector?

Yes	No

28. Do you think an appropriate legislation from the part of Government is required to regulate the service conditions of employees in this sector?

Yes	No

29. State your suggestions to improve the service conditions of employees in the unaided schools. (Write in detail)

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