Rajbala & Ors vs State Of Haryana & Ors on 10 December, 2015

Equivalent citations: AIR 2016 SUPREME COURT 33, 2016 (2) SCC 445, (2016) 1 GUJ LH 580, (2016) 1 MAD LJ 351, (2016) 1 PAT LJR 466, (2016) 1 RECCIVR 371, (2015) 13 SCALE 424(2), (2016) 1 JLJR 313, (2016) 1 ALL WC 775, 2016 (1) KLT SN 57.2 (SC)

Bench: J. Chelameswar, Abhay Manohar Sapre

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 671 OF 2015

Rajbala & Others … Petitioners

Versus

State of Haryana & Others … Respondents

J U D G M E N T

Chelameswar, J.

1. The challenge is to the constitutionality of the Haryana Panchayati Raj (Amendment) Act, 2015 (Act 8 of 2015), hereinafter referred to as the “IMPUGNED ACT”.

2. Even prior to advent of the Constitution of India under the Government of India Act, 1935 certain local bodies with elected representatives were functioning. Such local bodies did not, however, have constitutional status. They owed their existence, constitution and functioning to statutes and had been subject to the overall control of provincial governments.

3. Article 40 of the Constitution mandates-

“40. Organisation of village panchayats - The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.” To effectuate such obligation of the State, Constitution authorised (even prior to the 73rd Amendment) State Legislatures under Article 246(3) read with Entry 5 of List II to make laws with respect to;

"5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration." Laws have been made from time to time by State Legislatures establishing a three-tier Panchayat system by 1980's. It was felt desirable that local bodies be given constitutional status and the basic norms regarding the establishment and administration of a three-tier Panchayati Raj institutions be provided under the Constitution. Hence, the 73rd Amendment of the Constitution by which Part IX was inserted with effect from 24.4.1993.

4. Under Article 243B[1], it is stipulated that there shall be constituted in every State, Panchayats at the village, intermediate and district levels (hereinafter collectively referred to as PANCHAYATS) in accordance with provisions of Part IX. PANCHAYAT is defined under Article 243(d)[2].

5. The composition of Panchayats is to be determined by the legislature of the concerned State by law subject of course to various stipulations contained in Part IX of the Constitution; such as reservations of seats in favour of scheduled castes and scheduled tribes etc. The duration of the Panchayat is fixed under Article 243E for a maximum of five years subject to dissolution in accordance with law dealing with the subject. There is a further stipulation under Article 243E that election to constitute a Panchayat be completed before the expiry of its tenure[3].

6. The broad contours of the powers and functions of Panchayats are also spelt out in Article 243G and 243H. Such powers and responsibilities are to be structured by legislation of the State. The establishment of an autonomous constitutional body to superintend the election process to the PANCHAYATS is stipulated under Article 243K.

7. The Haryana Panchayati Raj Act, 1994 (hereinafter referred to as "THE ACT") was enacted to bring the then existing law governing PANCHAYATS in the State in tune with the Constitution as amended by the 73rd amendment. As required under Article 243B[4], a three tier Panchayat system at the Village, 'Samiti' and District level is established under THE ACT with bodies known as Gram Panchayat, Panchayat Samiti and Zila Parishad. Part V Chapter XX of THE ACT deals with provisions relating to elections to the PANCHAYATS.

8. Section 162 of THE ACT stipulates that PANCHAYAT areas shall be divided into wards[5].

9. Section 165[6] declares that every person entitled to be registered as voter in the relevant part of the electoral rolls of the Assembly is entitled to be registered as a voter for the purpose of PANCHAYATS elections.

10. Section 175 mandates that persons suffering from any one of the disqualifications mentioned in Section 175 are neither eligible to contest the election to any one of the offices under the Act nor can they continue in office if they incur any one of the disqualifications, after having been elected. The categories so specified runs into a long list, such as, convicts of certain categories of offences, adjudicated insolvent, people of unsound mind, people who hold any office of profit under any one of the three categories of Panchayats etc.

11. By the IMPUGNED ACT[7], five more categories of persons are rendered incapable of contesting elections for any one of the elected offices under THE ACT. These categories are: (i) persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years, (ii) persons who fail to pay arrears, if any, owed by them to either a Primary Agricultural Cooperative Society or District Central Cooperative Bank or District Primary Agricultural Rural Development Bank, (iii) persons who have arrears of electricity bills, (iv) persons who do not possess the specified educational qualification and lastly (v) persons not having a functional toilet at their place of residence.

12. On 8.9.2015, the second respondent (State Election Commission) issued a notification specifying the election schedule for the PANCHAYATS of Haryana.

13. The three petitioners herein claim to be political activists interested in contesting the local body elections, but would now be disabled to contest as none of them possess the requisite educational qualification.

14. The petitioners challenge the IMPUGNED ACT principally on the ground that the enactment is violative of Article 14 of the Constitution. It is argued on behalf of the petitioners that (i) the impugned provisions are wholly unreasonable and arbitrary and therefore violative of Article 14 of the Constitution. They create unreasonable restrictions on the constitutional right of voters to contest elections under the ACT[8]; (ii) they create an artificial classification among voters (by demanding the existence of certain criteria which have no reasonable nexus to the object sought to be achieved by the ACT), an otherwise homogenous group of people who are entitled to participate in the democratic process under the Constitution at the grass-roots level; and (iii) the classification sought to be made has no legitimate purpose which can be achieved[9].

15. Though not very specifically pleaded in the writ petition, elaborate submissions are made on the questions (i) whether the stipulations contained in the impugned amendment are in the nature of prescription of “qualifications” or “disqualifications” for contesting the elections under THE ACT; (ii) if the impugned stipulations are in the nature of a prescription of qualifications whether the State legislature is competent to make such stipulations consistent with the scheme of the Constitution, as can be culled out from the language of Article 243F and other related provisions of the Constitution.

16. On the other hand, the learned Attorney General appearing for the respondents submitted that nobody has a fundamental right to contest an election under our Constitution and it is really not necessary in the present case to decide whether the right to contest an election to the PANCHAYATS is a constitutional right. He argued that even assuming for the sake of argument that there is a constitutional right to contest an election to the PANCHAYATS, such right is expressly made subject to qualifications/disqualifications contemplated under Article 243F which authorises the State legislature to prescribe disqualifications for contesting election to any PANCHAYAT. Prescription of qualifications to contest an election based on criteria such as minimal educational accomplishment etc. cannot be said to be either arbitrary or irrelevant having regard to the nature of duties required to be discharged by persons elected to any one of the offices under THE ACT.

17. The learned Attorney General also submitted that the legislature best comprehends the needs of the society[10]. The decision to prescribe such a qualification is in the realm of wisdom of the legislature[11] and the Courts do not sit in review of such wisdom on the ground that the legislative decision is arbitrary[12].

18. Answers to questions raised by the petitioners in this writ petition, in our opinion, inevitably depend upon answer to the question whether right to vote or the right to contest an election to any of the constitutional bodies is a constitutional or a statutory right, since the extent to which curtailment or regulation of such right is permissible depends upon the nature of the right.

19. Prior to the 73rd Amendment of the Constitution, the Constitution contemplated elections to the office of the President, Vice-President, the two Houses of the Parliament known as Rajya Sabha and Lok Sabha and the State Legislatures. The Legislatures in certain States are bicameral. They are known as Legislative Assembly and Legislative Council while other States are unicameral (only the legislative Assembly). After the 73rd and 74th Amendments of the Constitution, PANCHAYATS and Municipal bodies specified under Parts IX & IXA of the Constitution respectively were added to the above-mentioned.

20. The nature of the right to vote at or the right to contest to any one of the abovementioned elections has been a vexed question.

21. A bench of three judges (M.B. Shah, P. Venkatarama Reddi and D.M. Dharamadhikari, JJ.) of this Court in People's Union for Civil Liberties (PUCL) & Another v. Union of India & Another, (2003) 4 SCC 399 considered the validity of the Representation of the People (Third Amendment) Act, 2002 (4 of 2002). By the said amendment, a candidate contesting an election (to which the Representation of the People Act, 1951 applies) is required to furnish certain information at the time of filing of nomination. In that context, Justice P.V. Reddi examined in some detail the nature of the right to vote in the background of the observations made in two earlier decisions of this Court, in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal, Salem, AIR 1952 SC 64 and Jyoti Basu & Others v. Debi Ghosal & Others, (1982) 1 SCC 691 and recorded the categoric conclusion that the "right to vote" if not a fundamental right is certainly a "constitutional right" and "it is not very accurate to describe it as a statutory right, pure and simple". The learned Judge recorded nine of his conclusions in para 123. The 2nd conclusion reads as follows:

> "(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter." A conclusion with which Justice Dharamadhikari expressly agreed[13]. The third learned judge Justice M.B. Shah recorded no disagreement.

22. Following the PUCL case, one of us held in Desiya Murpokku Dravida Kazhagam (DMDK) & Another v. Election Commission of India, (2012) 7 SCC 340: "..... every citizen of this country has a

constitutional right both to elect and also be elected to any one of the legislative bodies created by the Constitution …….".[14] No doubt, it was a part of the dissenting opinion. It was a case dealing with allotment of election symbols and the right of a political party to secure "……. an election symbol on a permanent basis irrespective of its participation and performance judged by the vote share it commanded at any election."[15] Though, the majority held that a political party cannot claim an election symbol on a permanent basis unless it satisfied norms stipulated under the symbols order issued by the Election Commission of India. Their Lordships did not record any disagreement regarding the conclusion that the right to participate in electoral process, either as a voter or as a candidate is a constitutional right.

23. Therefore, in our opinion, the question whether the right to vote at an election for either the Lok Sabha or the Legislative Assembly is a statutory right or a constitutional right is no more res integra and stands concluded by the abovementioned judgments, in PUCL and DMDK cases (supra).

24. However, the learned Attorney General brought to our notice certain observations in some of the judgments to the effect that rights to vote and contest elections are purely statutory. The context and the precedentiary value of those judgments need examination.

25. In Shyamdeo Prasad Singh v. Nawal Kishore Yadav, (2000) 8 SCC 46, a Bench of three learned Judges observed:

> "20. ... It has to be remembered that right to contest an election, a right to vote and a right to object to an ineligible person exercising right to vote are all rights and obligations created by statute...." It was a case dealing with election to the Legislative Council of Bihar from the Patna Teacher's Constituency. The limited question before this Court was whether the High Court in an election petition could examine the legality of the inclusion of certain names in the electoral roll? We are of the opinion that the said judgment leaves open more questions than it answers. The correctness of the judgment requires a more closer scrutiny in an appropriate case for more than one reason. One of them is that the inquiry in the said judgment commenced with the examination of Article 326 which has no application to elections to the Legislative Councils. The text of Article 326 is express that it only deals with the adult suffrage with respect to Lok Sabha and Legislative Assemblies. In our opinion the statement (extracted earlier from para 20 of the said judgment) is made without analysis of relevant provisions of the Constitution apart from being unnecessary in the context of the controversy before the Court and is further in conflict with the later judgment in PUCL's case.

26. In K. Krishna Murthy (Dr.) & Others v. Union of India & Another, (2010) 7 SCC 202 para 77, speaking for a Constitution Bench of this Court, Balakrishnan, CJ. recorded that: "…… it is a well-settled principle in Indian Law, that the right to vote and contest elections does not have the status of fundamental rights. Instead, they are in the nature of legal rights…….". For recording such conclusion reliance was placed on certain observations made in an earlier judgment (decided by a bench of two judges) of this Court in Mohan Lal Tripathi v. District Magistrate, Rai Bareilly &

Others, (1992) 4 SCC 80.

27. The challenge before this Court in K Krishna Murthy case was regarding the legality of Article 243D(6) and Article 243T(6) which enabled reservation of seats in favour of backward classes etc.[16] The challenge to the abovementioned provisions is that they "are violative of principles such as equality, democracy and fraternity, which are part of the basic structure doctrine".[17]

28. The decision in PUCL case was unfortunately not noticed by this Court while deciding K. Krishna Murthy case. Further a specific request "to reconsider the precedents wherein the rights of political participation have been characterized as statutory rights" was not given any consideration[18]. Their Lordships also failed to notice that the observations made in Mohan Lal case, prior to the 74th Amendment of the Constitution regarding the nature of the electoral rights with regard to the elections to the Municipal bodies are wholly inapplicable and without examining provisions of the Constitution as amended by the 74th Amendment.

29. They relied upon observation[19] from Mohan Lal case, in our opinion, are too sweeping and made without any appropriate analysis of law. The limited issue before this Court in Mohan Lal case was the legality of a 'no confidence motion' moved against the President of Rai Bareilly Municipal Board who was elected directly by voters of the municipality. The U.P. Municipalities Act provided for removal of the President so elected through the process of a no confidence motion moved by the Councilors who themselves, in turn, are elected representatives of the territorial divisions of the municipality. The question whether the right to vote in or contest an election is a constitutional or statutory right was not in issue. Mohan Lal case was dealing with provisions of the U.P. Municipalities Act, 1916 as amended by Act 19 of 1990, i.e. prior to 74th Amendment of the Constitution[20]. Therefore, the right to vote and contest at an election for a municipality was certainly a statutory right by the date of the judgment[21] in Mohan Lal case.

30. Again in Krishnamoorthy v. Sivakumar & Others, (2015) 3 SCC 467, this court observed that the right to contest an election is a plain and simple statutory right[22].

31. We are of the opinion that observations referred to above are in conflict with the decisions of this Court in PUCL case and DMDK case, which were rendered after an elaborate discussion of the scheme of the Constitution. We are of the clear opinion that the Constitution recognises the distinction between the 'Right to Vote' at various elections contemplated under the Constitution and the 'Right to Contest' at such elections. There are various other electoral rights recognised or created by the statutes and the Representation of the People Act, 1951 recognises the same[23].

Right to Vote

32. Prior to the 73rd and 74th amendments, the Constitution contemplated elections to be held to offices of the President and the Vice President under Articles 54 and 66 respectively. It also contemplated elections to the two chambers of Parliament i.e. Rajya Sabha and Lok Sabha. A small fraction of the Members of the Rajya Sabha are nominated by the President while other Members are elected[24]. In the case of the Lok Sabha, subject to stipulations contained in Article 331

providing for nomination of not more than two Members belonging to the Anglo Indian Community all other Members are required to be elected. In the case of the Legislative Council, in States where they exist, a fraction of the Members of the Council are required to be nominated by the Governor under Article 171(2)(e) and the rest of the Members are to be elected from various constituencies specified under Article 171 (3)(a), (b), (c), (d). Legislative Assemblies shall consist of only elected members subject to provisions for nomination contained in Article 333 in favour of the Anglo Indian Community.

33. The right to vote of every citizen at an election either to the Lok Sabha or to the Legislative Assembly is recognised under Articles 325 and 326 subject to limitations (qualifications and disqualifications) prescribed by or under the Constitution. On the other hand the right to vote at an election either to the Rajya Sabha or to the Legislative Council of a State is confined only to Members of the Electoral Colleges specified under Article 80(4) & (5) and Article 171 (3)(a), (b), (c), (d)[25] respectively. In the case of election to the Rajya Sabha, the Electoral College is confined to elected members of Legislative Assemblies of various States and representatives of Union Territories[26]. In the case of the Legislative Council, the Electoral College is divided into four parts consisting of; (i) Members of various local bodies specified under Article 171 (3)(a); (ii) certain qualified graduates specified under Article 171 (3)(b); (iii) persons engaged in the occupation of teaching in certain qualified institutions described under Article 171 (3)(c); and (iv) Members of the Legislative Assembly of the concerned State. Interestingly, persons to be elected by the electors falling under any of the above- mentioned categories need not belong to that category, in other words, need not be a voter in that category[27].

34. The Electoral College for election to the Office of the President consists of elected members of both Houses of Parliament and elected members of the Legislative Assemblies of the State while the Electoral College with respect to the Vice President is confined to Members of both Houses of Parliament.

Right to Contest

35. The Constitution prescribes certain basic minimum qualifications and disqualifications to contest an election to any of the above mentioned offices or bodies. Insofar as election to the Office of the President and Vice President are concerned, they are contained under Articles 58 and 66 respectively. Insofar as Parliament and the State Legislatures are concerned, such qualifications are stipulated under Articles 84 and 173, and disqualifications under Articles 102 and 191 respectively. The Constitution also authorises Parliament to make laws prescribing both further qualifications and disqualifications.

36. Interestingly, insofar as elections to Office of the President and Vice President are concerned, the Constitution does not expressly authorise either Parliament or Legislative Assemblies of the State to prescribe any further qualifications or disqualifications to contest an election to either of these Offices. It stipulates only two conditions which qualify a person to contest those Offices, they are - citizenship of the country and the minimum age of 35 years. Under Articles 58(1)(c) and 66(3)(c), it is further stipulated that a person who was otherwise eligible to contest for either of the

above mentioned two Offices shall not be eligible unless he is qualified for election as a Member of the Lok Sabha or the Rajya Sabha respectively.

37. An examination of the scheme of these various Articles indicates that every person who is entitled to be a voter by virtue of the declaration contained under Article 326 is not automatically entitled to contest in any of the elections referred to above. Certain further restrictions are imposed on a voter's right to contest elections to each of the above mentioned bodies. These various provisions, by implication create a constitutional right to contest elections to these various constitutional offices and bodies. Such a conclusion is irresistible since there would be no requirement to prescribe constitutional limitations on a non existent constitutional right.

38. Articles 84 and 173 purport to stipulate qualifications for membership of Parliament and Legislatures of the State respectively. Articles 102 and 191 purport to deal with disqualifications for membership of the above mentioned two bodies respectively. All the four Articles authorise the Parliament to prescribe further qualifications and disqualifications, as the case may be, with reference to the membership of Parliament and Legislatures of the State as the case may be.

39. The distinction between the expressions qualification and disqualification in the context of these four Articles is little intriguing. There is no clear indication in any one of these four Articles or in any other part of the Constitution as to what is the legal distinction between those two expressions. In common parlance, it is understood that a qualification or disqualification is the existence or absence of a particular state of affairs, which renders the achievement of a particular object either possible or impossible. Though there are two sets of Articles purporting to stipulate qualifications and disqualifications, there is neither any logical pattern in these sets of Articles nor any other indication which enables discernment of the legal difference between the two expressions. We reach such a conclusion because citizenship of India is expressly made a condition precedent under Articles 84 and 173 for membership of both Parliament and State Legislatures. Lack of citizenship is also expressly stipulated to be a disqualification for membership of either of the above mentioned bodies under Articles 102 and 191. In view of the stipulation under Articles 84 and 173 - citizenship is one of the requisite qualifications for contesting election to either Parliament or the State Legislature, we do not see any reason nor is anything brought to our notice by learned counsel appearing on either side to again stipulate under the Articles 102 and 191 that lack of citizenship renders a person disqualified from contesting elections to those bodies. Learned counsel appearing on either side are also unanimously of the same opinion. We are, therefore, of the opinion that the distinction between qualifications and disqualifications is purely semantic[28].

40. We, therefore, proceed on the basis that, subject to restrictions mentioned above, every citizen has a constitutional right to elect and to be elected to either Parliament or the State legislatures.

41. Insofar as the Rajya Sabha and the Legislative Councils are concerned, such rights are subject to comparatively greater restrictions imposed by or under the Constitution. The right to vote at an election to the Lok Sabha or the Legislative Assembly can only be subjected to restrictions specified in Article 326. It must be remembered that under Article 326 the authority to restrict the right to vote can be exercised by the 'appropriate legislature'. The right to contest for a seat in either of the

two bodies is subject to certain constitutional restrictions and could be restricted further only by a law made by the Parliament.

42. The next question is – whether such constitutional rights exist in the context of elections to the PANCHAYATS? Having regard to the scheme of Part IX of the Constitution, the purpose[29] for which Part IX came to be introduced in the Constitution by way of an amendment, we do not see any reason to take a different view.

43. On the other hand, this Court in Javed & Others v. State of Haryana & Others, (2003) 8 SCC 369, held that "right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right ..." .

44. We need to examine contours of the two rights, i.e. the right to vote (to elect) and the right to contest (to get elected) in the context of elections to PANCHAYATS. Part IX of the Constitution does not contain any express provision comparable to Article 326 nor does it contain any express provisions comparable to Article 84 and Article 173. The text of Article 326 does not cover electoral rights with respect to PANCHAYATS. Therefore, questions arise:

> i) Whether a non-citizen can become a voter or can contest and get elected for PANCHAYATS?
>
> ii) In the absence of any express provision, what is the minimum age limit by which a person becomes entitled to a constitutional right either to become a voter or get elected to PANCHAYATS?
>
> iii) Are there any constitutionally prescribed qualifications or disqualifications for the exercise of such rights?

Questions No.(i) and (ii) do not arise on the facts of the present case. Therefore, we desist examination of these questions.

45. In contradiction to Article 326, Constitution does not contain any provision which stipulates that a person to be a voter at elections to PANCHAYAT is required to be either (i) a citizen of India or (ii) of any minimum age. Similarly, in the context of right to contest an election to PANCHAYATS, Part IX is silent regarding qualifications required of a candidate. All that the Constitution prescribes is disqualification for membership of PANCHAYATS:

> "243F. Disqualifications for membership. - (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat – if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

> Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;
>
> if he is so disqualified by or under any law made by the Legislature of the State.
>
> (2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

46. It appears from the above, that any person who is disqualified by or under any law for the time being in force for the purposes of elections to the Legislatures of the State concerned is also disqualified for being a member of PANCHAYAT. In other words qualifications and disqualifications relevant for membership of the Legislature are equally made applicable by reference to the membership of PANCHAYATS. Though such qualifications and disqualifications could be stipulated only by Parliament with respect to the membership of the Legislature of a State, Article 243F authorises the concerned State Legislature also to stipulate disqualifications for being a member of PANCHAYAT.

47. The right to vote and right to contest at an election to a PANCHAYAT are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate Legislature directly. Parliament can indirectly curtail only the right to contest by prescribing disqualifications for membership of the Legislature of a State.

48. It is a settled principle of law that curtailment of any right whether such a right emanates from common law, customary law or the Constitution can only be done by law made by an appropriate Legislative Body. Under the scheme of our Constitution, the appropriateness of the Legislative Body is determined on the basis of the nature of the rights sought to be curtailed or relevant and the competence of the Legislative Body to deal with the right having regard to the distribution of legislative powers between Parliament and State Legislatures. It is also the settled principle of law under our Constitution that every law made by any Legislative Body must be consistent with provisions of the Constitution.

49. It is in the abovementioned background of the constitutional scheme that questions raised in this writ petition are required to be examined.

50. Section 173(1)[30] of THE ACT stipulates that every person whose name is in the "list of voters" shall be qualified "to vote at the election of a member for the electoral division to which such list pertains" unless he is otherwise disqualified. Persons who are qualified to be registered as voters and "list of voters" are dealt with under Sections 165 and 166, the details of which are not necessary for the present purpose. Under Section 173(2)[31] every person whose name is in the list of voters subject to a further condition that he has attained the age of 21 years is qualified to contest at an election to any PANCHAYAT unless such a person suffers from a disqualification prescribed by law.

51. Section 175 of THE ACT stipulates that "No person shall be a Sarpanch[32] or a Panch[33] of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such", if he falls within the ambit of any of the clauses of Section 175. Section 175 reads as follows:

> "Section 175. Disqualifications.—(1) No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who—
>
> (a) has, whether before or after the commencement of this Act, been convicted—
>
> (i) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or
>
> (ii) of any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release; or (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years;
>
> (b) has been adjudged by a competent court to be of unsound mind; or
>
> (c) has been adjudicated an insolvent and has not obtained his discharge;

or

(d) has been removed from any office held by him in a Gram Panchayat, Panchayat Samiti or Zila Parishad under any provision of this Act or in a Gram Panchayat, Panchayat Samiti or Zila Parishad before the commencement of this Act under the Punjab Gram Panchayat Act, 1952 and Punjab Panchayat Samiti Act, 1961, and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the Government notified in the Official Gazette been relieved from the disqualifications arising on account of such removal from office; or

(e) has been disqualified from holding office under any provision of this Act and the period for which he was so disqualified has not elapsed; or

(f) holds any salaried office or office of profit in any Gram Panchayat, Panchayat Samiti, or Zila Parishad; or

(g) has directly or indirectly, by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad;

(h) has directly or indirectly, by himself or, his partner share or interest in any transaction of money advanced or borrowed from any officer or servant or any Gram Panchayat; or

(i) fails to pay any arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram Panchayat, Panchayat Samiti or Zila Parishad subordinate thereto or any sum recoverable from him in accordance with the Chapters and provisions of this Act, within three months after a special notice in accordance with the rules made in this behalf has been served upon him;

(j) is servant of Government or a servant of any Local Authority; or

(k) has voluntarily acquired the citizenship of a Foreign State or is under any acknowledgement of allegiance or adherence to a Foreign state; or

(l) is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed; or

(m) is a tenant or lessee holding a lease under the Gram Panchayat, Panchayat Samiti or Zila Parishad or is in arrears of rent of any lease or tenancy held under the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(n) is or has been during the period of one year preceding the date of election, in unauthorised possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(o) being a Sarpanch or Panch or a member of Panchayat Samiti or a Zila Parishad has cash in hand in excess of that permitted under the rules and does not deposit the same along with interest at the rate of twenty-one percentum per year in pursuance of a general or special order of the prescribed authority within the time specified by it; or

(p) being a Sarpanch or Panch or a Chairman, Vice-Chairman or Member, President or Vice-President or Member of Panchayat Samiti or Zila Parishad has in his custody prescribed records and registers and other property belonging to, or vested in, Gram Panchayat, Panchayat Samiti or Zila Parishad and does not handover the same in pursuance of a general or special order of the prescribed authority within the time specified in the order; or

(q) x x x

(r) admits the claim against Gram Panchayat without proper authorization in this regard;

(s) furnishes a false caste certificate at the time of filing nomination:

> Provided that such disqualifications under clauses (r) and (s) shall be for a period of six years.
>
> (t) fails to pay any arrears of any kind due to him to any Primary Agriculture Co-operative Society, District Central co-operative Bank and District Primary

co-operative Agriculture Rural Development Bank; or (u) fails to pay arrears of electricity bills;

(v) has not passed matriculation examination or its equivalent examination from any recognized institution/board:

Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass:

Provided further that in case of a woman candidate belonging to Scheduled Caste contesting election for the post of Panch, the minimum qualification shall be 5th pass; or (w) fails to submit self declaration to the effect that he has a functional toilet at his place of residence.

Explanation 1. – A person shall not be disqualified under clause (g) for membership of a Gram Panchayat, Panchayat Samiti or Zila Parishad by reason only of such person,--

(a) having share in any joint stock company or a share or interest in any society registered under any law for the time being in force which shall contract with or be employed by or on behalf of Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of a Gram Panchayat, Panchayat Samiti or Zila Parishad may be inserted; or

(c) holding a debenture or being otherwise concerned in any loan raised by or on behalf of any Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(d) being professionally engaged on behalf of any Gram Panchayat, Panchayat Samiti or Zila Parishad as a Legal Practitioner; or

(e) having any share or interest in any lease of immovable property in which the amount of rent has been approved by the Gram Panchayat, Panchayat Samiti or Zila Parishad in its own case or in any sale or purchase of immovable property or in any agreement for such lease, sale or purchase ; or

(f) having a share or interest in the occasional sale to the Gram Panchayat, Panchayat Samiti or Zila Parishad of any article in which he regularly trades or in the purchase from the Gram Panchayat of any article, to a value in either case not exceeding in any year one thousand rupees.

Explanation 2. – For the purpose of clause (1)-

A person shall not be deemed to be disqualified if he has paid the arrears or the sum referred to in clause (i) of this sub-section, prior to the day prescribed for the nomination of candidates;

x x x."

52. By the IMPUGNED ACT five more contingencies specified in clauses (aa), (t), (u), (v) and (w) have been added which render persons falling in the net of those contingencies disqualified from contesting elections.

53. At the outset, we must make it clear that neither learned counsel for the petitioners nor other learned counsel (who were permitted to make submissions though they are not parties, having regard to the importance of the matter) made any specific submission regarding constitutionality of sub- section (1)(aa) of Section 175 which prescribes that "(1) No person shall be a ..... or continue as such who ... (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years". The challenge is confined to clauses (t), (u), (v) and (w) of Section 175(1).

54. We first deal with the submission of violation of Article 14 on the ground of arbitrariness.

55. The petitioners argued that the scheme of the Constitution is to establish a democratic, republican form of Government as proclaimed in the Preamble to the Constitution and any law which is inconsistent with such scheme is irrational and therefore 'arbitrary'.

56. In support of the proposition that the Constitution seeks to establish a democratic republic and they are the basic features of the Constitution, petitioners placed reliance upon His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Another, (1973) 4 SCC 225 para 1159 and Indira Nehru Gandhi v. Raj Narain, (1975) Supp SCC 1, paras 563 and 578. There cannot be any dispute about the proposition.

57. In support of the proposition that a statute can be declared unconstitutional on the ground that it is arbitrary and therefore violative of Article 14, petitioners relied upon judgments of this Court reported in Subramanian Swamy v. Director, Central Bureau of Investigation & Another, (2014) 8 SCC 682, Indian Council of Legal Aid v. Bar Council of India, (1995) 1 SCC 732, B. Prabhakar Rao & Others v. State of Andhra Pradesh & Others, 1985 (Supp) SCC 432 and D.S. Nakara & Others v. Union of India, (1983) 1 SCC 305 and certain observations made by Justice A.C. Gupta in his dissenting judgment in R.K. Garg v. Union of India, (1981) 4 SCC 675.

58. In our opinion, none of the abovementioned cases is an authority for the proposition that an enactment could be declared unconstitutional on the ground it is "arbitrary".

59. In Subramanian Swamy case, the dispute revolved around the constitutionality of Section 6A of the Delhi Special Police Establishment Act 1946, which was introduced by an amendment in the year 2003. It stipulated that the Delhi Special Police Establishment shall not conduct any 'enquiry' or 'investigation' into any offence falling under the Prevention of Corruption Act 1988, alleged to have been committed by certain classes of employees of the Central Government etc. The said provision was challenged on the ground it was arbitrary and unreasonable[34] and therefore violative of Article 14. The submission was resisted by the respondent (Union of India) on the ground that such a challenge is impermissible in view of the decision in State of Andhra Pradesh v. McDowell & Co., (1996) 3 SCC 709. But the Constitution Bench eventually declared the impugned

provision unconstitutional not on the ground of it being arbitrary but on the ground it makes an unreasonable classification of an otherwise homogenous group of officers accused of committing an offence under the Prevention of Corruption Act without there being reasonable nexus between the classification and the object of the Act.[35]

60. Coming to the Indian Council of Legal Aid & Advice & Others v. Bar Council of India & Others, (1995) 1 SCC 732, it was a case where the legality of a rule made by the Bar Council of India prohibiting the enrolment of persons who completed the age of 45 years was in issue. The rule was challenged on two grounds. Firstly, that the rule was beyond the competence of the Bar Council of India as the Advocates Act 1961 did not authorise the Bar Council of India to prescribe an upper age limit for enrolment. Secondly, that the rule is discriminatory and thirdly, the fixation of upper age limit of 45 years is arbitrary.

61. On an examination of the scheme of the Advocates Act, this Court came to a conclusion that the impugned rule was beyond the rule making power of the Bar Council of India and, therefore, ultra vires the Act. This Court also held that the rule was "unreasonable and arbitrary"[36].

62. We are of the opinion that in view of the conclusion recorded by the Court that the rule is beyond the competence of Bar Council of India, it was not really necessary to make any further scrutiny whether the rule was unreasonable and arbitrary. Apart from that, in view of the conclusion recorded that the rule was clearly discriminatory, the inquiry whether the choice of the upper age limit of 45 years is arbitrary or not is once again not necessary for the determination of the case. At any rate, the declaration made by this Court in the said case with regard to a piece of subordinate legislation, in our view, cannot be an authority for the proposition that a statute could be declared unconstitutional on the ground that in the opinion of the Court the Act is arbitrary.

63. Now we shall examine Prabhakar Rao case.

The facts of the case are that the age of superannuation of employees of the State of Andhra Pradesh was 55 till the year 1979. In 1979, it was enhanced to 58 years. The Government of Andhra Pradesh in February, 1983 decided to roll back the age of superannuation to 55 years and took appropriate legal steps which eventually culminated in passing of Act 23 of 1984. The said Act came to be amended by Ordinance 24 of 1984, again enhancing the age of superannuation to 58 years which was followed up by Act 3 of 1985. While enhancing the age of superannuation to 58 for the second time by the above-mentioned Ordinance 24 of 1984 and Act 3 of 1985, benefit of the enhanced age of superannuation was given to certain employees who had retired in the interregnum between 20.2.1983 and 23.08.1984; while others were denied such benefit. Prabhakar Rao and others who were denied the benefit challenged the legislation. This Court placing reliance on D.S. Nakara Case concluded that the impugned Act insofar as it denied the benefit to some of the employees who retired in the interregnum between two dates mentioned above was unsustainable and held as follows:-

> "The principle of Nakara clearly applies. The division of Government employees into two classes, those who had already attained the age of 55 on February 28, 1983 and

those who attained the age of 55 between February 28, 1983 and August 23, 1984 on the one hand, and the rest on the other and denying the benefit of the higher age of superannuation to the former class is as arbitrary as the division of Government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only. ..." (Para 20) The Bench also observed:-

"Now if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realized that injustice had been done and it was decided that steps should be taken to undo what had been done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because of the delay in taking the remedial action already decided upon. We do not doubt that the Judge's friend and counselor, "the common man", if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The commonsense response that may be expected from the common man, untrammeled by legal lore and learning, should always help the Judge in deciding questions of fairness, arbitrariness etc. Viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory." (Para 20)

64. Petitioners placed reliance on the last sentence which said that the "action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory" in support of their submission that an Act could be declared unconstitutional on the ground that it is arbitrary.

65. We are of the opinion that Prabhakar Rao case is not an authority on the proposition advanced by the petitioners. The ratio of Prabhakar Rao case is that there was an unreasonable classification between the employees of the State of Andhra Pradesh on the basis of the date of their attaining the age of superannuation.

66. Observations by Justice Gupta in R.K. Garg Case[37] no doubt indicate that the doctrine propounded by this Court in E.P. Royappa v. State of Tamil Nadu & Another[38] and Maneka Gandhi v. Union of India & Another[39] that arbitrariness is antithetical to the "concept of equality" is also relevant while examining the constitutionality of a statute but such observations are a part of the dissenting judgment and not the ratio decidendi of the judgment.

67. Learned Attorney General heavily relied upon para 43 of the State of Andhra Pradesh & Others v. McDowell & Co., (1996) 3 SCC 709 which dealt with the question of declaring a statute unconstitutional on the ground it is arbitrary.

"43. Sri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in State of Tamil Nadu & Ors. v. Ananthi Ammal & Others [(1995) 1 SCC 519]. Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, Parliament is supreme. There are no limitations upon the power of Parliament. No Court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness - concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterized, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary[40]* or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety [See Council of Civil Services Union v. Minister for Civil Services (1985 A.C.374) which decision has been accepted by this Court as well]. The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. [See the opinions of Lords Lowry and Ackner in R. v. Secretary of State for Home Department ex p Brind, [1991 AC 696 at 766-67 and 762]. It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be

struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in Ananthi Ammal, we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Acts 1978 as violative of Articles 14, 19 and 300A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded Rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed:

> "7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.
>
> 44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labeled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."
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> 68. From the above extract it is clear that courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is "arbitrary" since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. To undertake such an examination would amount to virtually importing the doctrine of "substantive due process" employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. As pointed out in the above extract, even in United States the doctrine is currently of doubtful legitimacy. This court long back in A.S. Krishna & Others v. State of Madras, AIR 1957 SC 297 declared that the doctrine of due process has no application under the Indian Constitution[41]. As pointed out by Frankfurter, J., arbitrariness became a mantra.
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> 69. For the above reasons, we are of the opinion that it is not permissible for this Court to declare a statute unconstitutional on the ground that it is 'arbitrary'.

70. We shall examine the next facet of the challenge i.e. each of the four impugned clauses have created a class of persons who were eligible to contest the elections to Panchayats subject to their satisfying the requirements of law as it existed prior to the IMPUGNED ACT but are rendered now ineligible because they fail to satisfy one of the other conditions prescribed under clauses (t), (u), (v) and (w) of Section 175(1) of the Act. The case of the petitioners is that such a classification created by each of the impugned clauses amount to an unreasonable classification among people who form one class but for the IMPUGNED ACT, without any intelligible difference between the two classes and such classification has no nexus with the object sought to be achieved.

71. Learned Attorney General submitted that the object sought to be achieved is to have "model representatives for local self government for better administrative efficiency which is the sole object of the 73rd constitutional amendment".

72. In the light of the above submissions, we shall now deal with the challenge to each of the abovementioned four clauses.

73. Clause (v) prescribes a minimum educational qualification of matriculation[42] for anybody seeking to contest an election to any one of the offices mentioned in the opening clause of Section 175(1). However, the minimum educational qualification is lowered insofar as candidates belonging to scheduled castes and women are concerned to that of "middle pass" whereas a further relaxation is granted in favour of the scheduled caste woman insofar as they seek to contest for the office of Panch.

74. It is argued that stipulation of minimum educational qualification would have the effect of disqualifying more than 50% of persons who would have otherwise been qualified to contest elections to PANCHAYATS under the law prior to the IMPUGNED ACT. It is further submitted that poorer sections of the society, women and scheduled castes would be worst hit by the impugned stipulation as a majority of them are the most unlikely to possess the minimum educational qualification prescribed in the IMPUGNED ACT.

75. On the other hand, it is stated in the affidavit filed on behalf of respondent as follows:

"10. That as per the National Population Register 2011, total rural population in the State is 1.65 cr out of which 96 lac are above 20 years of age. Further 57% of such population, who are over 20 years of age, is eligible to contest even after the introduction of impugned disqualification in respect of having minimum education qualification."

76. According to the Annexure-5 (to the said affidavit of the respondents) the details of the educational qualification of the persons above 20 years of age (under Section

173(2)[43] of THE ACT the minimum qualifying age for contesting any PANCHAYAT election is 21 years) are as follows:

NATIONAL POPULATION REGISTER – 2011 Number of persons above 20 years of age vis-à-vis their educational qualification | |Total Population |SC Population | |Total | |Males | |Females | |Total | |Males | |Females | | |Illiterate |3660892 |38% |1211555 |24% |2449337 |53% |980908 |48% |367755 |34% |613153 |63% | |Unspecified Literate & below primary |494348 |5% |291058 |6% |203290 |4% |125442 |6% |77233 |7% |48209 |5% | |Primary/Middle/Matric & above |5458464 |57% |3489821 |70% |1968643 |43% |949306 |46% |631180 |59% |318126 |32% | |Total Population above 20 years of age |9613704 | |4992434 | |4621270 | |2055656 | |1076168 | |979488 | | |Total Rural Population |16509359 | |8774006 | |7735353 | |3720109 | |1973294 | |1746815 | | |77. It can be seen from the above extract that the total rural population[44] of the State of Haryana is 1.65 crores approximately. (All figures to be mentioned hereinafter are 'approximate')

78. Of the 1.65 crore rural population, 96 lakhs are in the age group of

20 years and above. In other words, dehors the IMPUGNED ACT, 96 lakhs would be eligible to contest elections to various PANCHAYATS subject of course to other qualifications and disqualifications prescribed by law. Of the 96 lakhs, 36 lakhs are illiterate and about 5 lakhs are literate but below primary level of education. The remaining 54.5 lakhs are educated, though the chart does not clearly indicate the exact break-up of the above 54.5 lakhs and their respective educational qualifications i.e. whether they are educated up to primary or middle or matriculation level and above. The said 54.5 lakhs constitute 57% of the rural population who are otherwise eligible to contest PANCHAYATS election by virtue of their being in the age group of 20 years and above. Of the 96 lakhs of rural population, 50 lakhs are men and 46 lakhs are women. Of them, 35 lakhs men, 20 lakhs women are literate above primary level, though exact break-up of educational qualification is not available. Even if we assume all the 20 lakhs women are matriculate and, therefore, eligible to contest any election under THE ACT, they would contribute less than 50% of the otherwise eligible women.

79. The abovementioned figures include all classes of the population including scheduled caste.

80. Coming to the statistics regarding scheduled caste population, the total scheduled caste population of Haryana, it appears, is 21 lakhs of which 11 lakhs are men and 10 lakhs are women of which only 6.3 lakhs men and 3.1 lakhs women constituting 59% and 32% respectively are educated. In other words, 68% of the scheduled caste women and 41% of the scheduled caste men would be ineligible to contest PANCHAYAT elections.

81. An analysis of the data in the above table indicates that a large number of women (more than 50% of the otherwise eligible women) in general and scheduled caste women in particular would be disqualified to contest PANCHAYAT elections by virtue of the IMPUGNED ACT. Even with regard to men, the data is not very clear as to how many of the literate men would be qualified to contest

the elections for PANCHAYATS at various levels. Because for men belonging to general category (39 lakhs), a uniform requirement of matriculation is prescribed in respect of posts for which they seek to contest. Coming to men candidates belonging to the scheduled caste, a uniform academic qualification of "middle pass" is prescribed. How many men under these categories would be qualified to contest is not clear, as the exact data regarding their respective educational qualifications is not available on the record.

82. Coming to scheduled caste women and the proviso to clause (v) of Section 175(1), though educational qualification required is 5th (primary) pass, such a qualification only entitles them to contest an election for the post of PANCH of a village but to no other post. Therefore, if a scheduled caste woman desires to contest either to the post of SARPANCH or any other post at 'Samiti' or District level, she must be "middle pass". The exact number of scheduled caste women who possess that qualification is not available on record. Even assuming for the sake of argument that all educated scheduled caste women indicated in the Annexure-5 are middle pass, they only constitute 32% of the scheduled caste women. The remaining 68% of the women would be disqualified for contesting any election under the IMPUGNED ACT.

83. The question is - whether the impugned provision which disqualifies a large number of voter population and denies their right to contest for various offices under THE ACT is discriminatory and therefore constitutionally invalid for being violative of Article 14.

84. The learned Attorney General referred to Section 21 of THE ACT which catalogues the functions and duties of Gram Panchayat falling under 30 broad heads. To demonstrate the range of those heads, he pointed out some of the duties of a Gram Panchayat[45] and submitted that in the light of such responsibilities to be discharged by members elected to the Gram Panchayat, the legislature in its wisdom thought it fit to prescribe a minimum educational qualification and such a prescription cannot be said to be making an unreasonable classification among the voters attracting the wrath of Article 14. Several judgments of this Court are referred to emphasise the importance of education[46].

85. The impugned provision creates two classes of voters - those who are qualified by virtue of their educational accomplishment to contest the elections to the PANCHAYATS and those who are not. The proclaimed object of such classification is to ensure that those who seek election to PANCHAYATS have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the PANCHAYATS. The object sought to be achieved cannot be said to be irrational or illegal or unconnected with the scheme and purpose of THE ACT or provisions of Part IX of the Constitution. It is only education which gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration of the PANCHAYATS. The classification in our view cannot be said either based on no intelligible differentia unreasonable or without a reasonable nexus with the object sought to be achieved.

86. The only question that remains is whether such a provision which disqualifies a large number of persons who would otherwise be eligible to contest the elections is unconstitutional. We have

already examined the scheme of the Constitution and recorded that every person who is entitled to vote is not automatically entitled to contest for every office under the Constitution. Constitution itself imposes limitations on the right to contest depending upon the office. It also authorises the prescription of further disqualifications/qualification with respect to the right to contest. No doubt such prescriptions render one or the other or some class or the other of otherwise eligible voters, ineligible to contest. When the Constitution stipulates[47] undischarged insolvents or persons of unsound mind as ineligible to contest to Parliament and Legislatures of the States, it certainly disqualifies some citizens to contest the said elections. May be, such persons are small in number. Question is not their number but a constitutional assessment about suitability of persons belonging to those classes to hold constitutional offices.

87. If it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, in our opinion should make no difference for determining whether prescription of such disqualification is constitutionally permissible unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely impossible. We, therefore, reject the challenge to clause (v) to Section 175(1).

88. We shall now deal with the challenge to clauses (t) and (v) of Section 175(1) of THE ACT. These two clauses disqualify persons who are in arrears of amounts to cooperative bodies specified in clause (t) and the electricity bills. These provisions are challenged on the ground that they impose unreasonable burden on voters who are otherwise eligible to contest the election and therefore create an artificial and unreasonable classification which has no nexus to the objects sought to be achieved by the ACT.

89. Constitution makers recognised indebtedness as a factor which is incompatible in certain circumstances with the right to hold an elected office under the Constitution. Article 102(1)(c)[48] and Article 191(1)(c)[49] declare that an undischarged insolvent is disqualified from becoming a Member of Parliament or the State Legislature respectively. By virtue of the operation of Article 58(1)(c) and 66(1)(c), the same disqualification extends even to the seekers of the offices of the President and the Vice-President.

90. The expression “insolvency” is not defined under the Constitution. In the absence of a definition, the said expression must be understood to mean a person who is considered insolvent by or under any law made by the competent legislature. Sections 6[50] of the Provincial Insolvency Act, 1920 and Section 9[51] of the Presidency – Towns Insolvency Act, 1909 declare various activities which constitute acts of insolvency. It is an aspect of indebtedness - a specified category of indebtedness. If the Constitution makers considered that people who are insolvent are not eligible to seek various elected public offices, we do not understand what could be the constitutional infirmity if the legislature declares people who are indebted to cooperative bodies or in arrears of electricity bills to be ineligible to become elected representatives of the people in PANCHAYATS. It must be remembered that insolvency is a field over which both the Parliament as well as the legislatures of the State have a legislative competence concurrently to make laws as it is one of the topics indicated under Entry 9[52], List III of the Seventh Schedule to the Constitution.

91. The submission is that rural India is heavily indebted and particularly agriculturists who constitute a majority of our rural population are deeply indebted and reportedly a large number of agriculturists have been committing suicides as they are not able to bear the burden of indebtedness. Therefore, prescriptions under clauses (t) and

(v) of Section 175(1) of the Act is an arbitrary prescription creating a class of persons who would become ineligible to contest Panchayat elections and such classification has no rational nexus to the object of the Panchayati Raj Act whose constitutional goal is to empower the rural population by enabling them to play a role in the decision making process of the units of local self government, is the contention.

92. No doubt that rural India, particularly people in the agricultural sector suffer the problem of indebtedness. The reasons are many and it is beyond the scope of this judgment to enquire into the reasons. It is also a fact that there have been cases in various parts of the country where people reportedly commit suicides unable to escape the debt trap. But, it is the submission of the respondents that such incidents are very negligible in the State of Haryana as the agricultural sector of Haryana is relatively more prosperous compared to certain other parts of the country. We do not wish to examine the statistical data in this regard nor much of it is available on record. In our view, such an enquiry is irrelevant for deciding the constitutionality of the impugned provision. We are also not very sure as to how many of such people who are so deeply indebted would be genuinely interested in contesting elections whether at PANCHAYAT level or otherwise. We can certainly take judicial notice of the fact that elections at any level in this country are expensive affairs. For that matter, not only in this country, in any other country as well they are expensive affairs. In such a case the possibility of a deeply indebted person seeking to contest elections should normally be rare as it would be beyond the economic capacity of such persons. In our opinion, the challenge is more theoretical than real. Assuming for the sake of argument that somebody who is so indebted falling within the prescription of clauses

(t) and (v) of Section 175(1) of the Act is still interested in contesting the PANCHAYAT elections, nothing in law stops such an aspirant from making an appropriate arrangement for clearance of the arrears and contest elections. At this stage, an incidental submission is required to be examined. It is submitted that there could be a genuine dispute regarding the liability falling under the clauses (t) and (v) and therefore it would be unjust to exclude such persons from the electoral process even before an appropriate adjudication. Justness of such a situation is once again in the realm of the wisdom of the legislation. We do not sit in the judgment over the same. But we must make it clear nothing in law prevents an aspirant to contest an election to the PANCHAYAT to make payments under protest of the amounts claimed to be due from him and seek adjudication of the legality of the dues by an appropriate forum. We do not see any substance in the challenge to clauses (t) and (v) of Section 175(1) of the Act.

93. Clause (w) disqualifies a person from contesting an election to the Panchayat if such a person has no functional toilet at his place of residence. Once again the submission on behalf of the petitioners is that a large number of rural population simply cannot afford to have a toilet at their residence as it is beyond their economic means. To render them disqualified for contesting elections

to the PANCHAYATS would be to make an unreasonable classification of otherwise eligible persons to contest elections to PANCHAYAT and, therefore, discriminatory.

94. It is submitted on behalf of respondents that the submission of the petitioner is without any factual basis. According to statistical data available with the State, there are approximately 8.5 lakhs house holders classified as families falling below poverty line (BPL) in the State of Haryana. It is further submitted that right from the year 1985 there have been schemes in vogue to provide financial assistance to families desirous of constructing a toilet at their residence[53]. In the initial days of such a scheme Rs.650/- was given by the State and from time to time the amount was revised and at present Rs.12000/- is provided by the State to any person desirous of constructing a toilet. As per the data available with the State, of the abovementioned 8.5 lakhs households, classified to be below the poverty line, approximately 7.2 lakhs households had availed the benefit of the above scheme. Therefore, according to the respondents if any person in the State of Haryana is not having a functioning toilet at his residence it is not because that he cannot afford to have a toilet but because he has no intention of having such facility at his residence. It is very forcefully submitted by the learned Attorney General that a salutary provision designed as a step for eliminating the unhealthy practice of rural India of defecating in public, ought not to be invalidated.

95. It is a notorious fact that the Indian[54] population for a long time had this unhealthy practice of defecating in public. The Father of the Nation wrote copiously on this aspect on various occasions. He took up with a missionary zeal the cause to eradicate this unhealthy practice. At some point of time, he even declared that the priority of this country should be to get rid of such unhealthy practice than to fight for independence. It is unfortunate that almost a hundred years after Gandhiji started such a movement, India is still not completely rid of such practice. The reasons are many. Poverty is one of them. However, this unhealthy practice is not exclusive to poorer sections of rural India. In a bid to discourage this unhealthy practice, the State has evolved schemes to provide financial assistance to those who are economically not in a position to construct a toilet. As rightly pointed by the respondents, if people still do not have a toilet it is not because of their poverty but because of their lacking the requisite will. One of the primary duties of any civic body is to maintain sanitation within its jurisdiction. Those who aspire to get elected to those civic bodies and administer them must set an example for others. To the said end if the legislature stipulates that those who are not following basic norms of hygiene are ineligible to become administrators of the civic body and disqualifies them as a class from seeking election to the civic body, such a policy, in our view, can neither be said to create a class based on unintelligible criteria nor can such classification be said to be unconnected with the object sought to be achieved by the Act.

96. For the above-mentioned reasons, we see no merit in this writ petition, and the same is dismissed.

.....J. (J. Chelameswar) .....J. (Abhay Manohar Sapre) New Delhi;

December 10, 2015 REPORTABLE [IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION WRIT PETITION No.671 OF 2015 Rajbala & Ors. .....Petitioner(s) VERSUS State

of Haryana & Others .....Respondent(s) J U D G M E N T Abhay Manohar Sapre, J.

1. I have had the advantage of going through the elaborate, well considered and scholarly draft judgement proposed by my esteemed brother Jasti Chelmeswar J. I entirely agree with the reasoning and the conclusion, which my erudite brother has drawn, which are based on remarkably articulate process of reasoning. However, having regard to the issues involved which were ably argued by learned counsel appearing in the case, I wish to add few lines of concurrence.

2. While examining the question of constitutionality of the impugned amendment made under Section 175 (1) of the Haryana Panchayati Raj Act (for short "the Act"), which are under attack in this writ petition, the question arose regarding the true nature of the two rights of the citizen -

> "Right to Vote" and "Right to Contest" viz- whether they are statutory right or constitutional right?

3. A three Judge Bench in PUCL vs. Union of India [(2003) 4 SCC 399] examined the question regarding nature of "Right to Vote". The learned Judge P.V. Reddi, in his separate opinion, which was concurred by Justice D.M. Dharmadhikari, examined this question in great detail and in express terms, answered it holding that the "Right to Vote" is a constitutional right but not merely a statutory right. We are bound by this view taken by a three Judge Bench while deciding this question in this writ petition.

4. Similarly, another three Judge Bench in Javed vs. State of Haryana [(2003) 8 SCC 369] examined the question regarding the nature of "Right to Contest" while examining the constitutional validity of certain provisions of The Act. The learned Judge R.C. Lahoti (as his Lordship then was) speaking for the Bench held that right to contest an election is neither a Fundamental Right nor a common right. It is a right conferred by statute. His Lordship went on to hold that "at the most, in view of Part IX having been added in the Constitution, a right to contest the election for an office in Panchayat may be said to be a constitutional right. We are bound by this view taken by a three Judge Bench while deciding this question in this writ petition.

5. In the light of aforementioned two authoritative pronouncements, we are of the considered opinion that both the rights namely "Right to Vote"

> and "Right to Contest" are constitutional rights of the citizen.

6. Indeed, my learned brother rightly took note of the few decisions, which had while deciding the main questions involved in those cases also incidentally made some observations on these two issues, which we feel were not in conformity with the law, laid down in the aforementioned two decisions.

7. Coming now to the question of constitutional validity of Section 175 (1)(v) of the Act which provides that candidate must possess certain minimum educational qualification if he/she wants to contest an election. In my opinion, introduction of such provision prescribing certain minimum

educational qualification criteria as one of the qualifications for a candidate to contest the election has a reasonable nexus with the object sought to be achieved.

8. In fact, keeping in view the powers, authority and the responsibilities of Panchayats as specified in Article 243-G so also the powers given to Panchayats to impose taxes and utilization of funds of the Panchayats as specified in Article 243-H, it is necessary that the elected representative must have some educational background to enable him/her to effectively carry out the functions assigned to Panchyats in Part IX. It is the legislative wisdom to decide as to what should be the minimum qualifications, which should be provided in the Act.

9. No one can dispute that education is must for both men and women as both together make a healthy and educated society. It is an essential tool for a bright future and plays an important role in the development and progress of the country.

10. In my view, therefore, Section 175 (v) of the Act is intra vires the Constitution and is thus constitutionally valid.

11. Now coming to the question regarding constitutionality of Section 175(w) of the Act, which provides that if a person has no functional toilet at his place of residence, he/she is disqualified to contest the election. In my view, this provision too has reasonable nexus and does not offend any provision of the Constitution.

12. Indeed, there are no grounds much less sustainable grounds available to the petitioners to question the validity of this provision. This provision in my view is enacted essentially in the larger public interest and is indeed the need of the hour to ensure its application all over the country and not confining it to a particular State. Moreover, the State having provided adequate financial assistance to those who do not have toilet facility for construction of toilet, there arise no ground to challenge this provision as being unreasonable in any manner. Since this issue has already been elaborately dealt with by my learned brother, therefore, I do not wish to add anything more to it.

13. In the light of the foregoing discussion agreeing with my learned brother, I also hold that Section 175 (v) is intra vires the Constitution and is thus constitutionally valid.

14. In my view, therefore, the writ petition deserves to be dismissed and is accordingly dismissed. As a consequence, interim order stands vacated.

..……..J.
[ABHAY MANOHAR SAPRE]

New Delhi;
December 10, 2015.

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[1] Article 243B. Constitution of Panchayats

(1) There shall be constituted in every State, Panchayats at the village, intermediate and district

levels in accordance with the provisions of this Part (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs [2] Article 243(d). "Panchayat" means an institution (by whatever name called) of self- government constituted under article 243B, for the rural areas;

[3] Article 243E. Duration of Panchayats, etc - (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

> Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.
>
> (4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.
>
> [4] See Footnote 1 [5] Section 162. Electoral division: – Every sabha area, block and district shall be divided into wards as referred in sections 8(3), 58(2) and 119(b) of this Act.

[6] Section 165. Persons qualified to be registered as voters.- Every person who is entitled to be registered as voter in the relevant part of the electoral rolls of the Assembly under the Representation of People Act, 1950, shall be entitled to be registered as a voter in the list of voters for the electoral division to be prepared under section 164. [7] Initially, an ordinance known as "Haryana Panchayat Raj (Amendment) Ordinance, 2015 was promulgated on 14.8.2015 now replaced by the Impugned Act which was passed by the Haryana Legislature on 7.9.2015 and subsequently notified.

[8] "That the Respondents have passed the impugned Act and Notification without any consideration, regard or appreciation for the empirical data pertaining to the number of people that would be prevented from contesting Panchayati Raj elections by its actions. That the Respondents' actions have the effect of disqualifying 56.80% of the population who would need to be

matriculation pass (69,86,197) and 79.76% of the population who would need to be middle-pass (10,83,052), in order to contest elections. That by its actions, the Respondents have prevented an overwhelming majority of the population from contesting elections, in contravention of Article 14, without any regard for Constitutional principles." [See: Ground 'G' of the Petition] [9] "no reasonable nexus between the impugned classifications set out in the impugned Act, and the object of the Act. That the imposition of disqualifications on the grounds laid down by the impugned Act are entirely irrelevant to, and have no bearing whatsoever on the ability of potential candidates to effectively discharge their duties and perform their functions as members/heads of Panchayati Raj institutions." [See: Ground 'A' of the Petition] [10] Maru Ram v. Union of India & Others, (1981) 1 SCC 107 [11] In Re: The Kerala Education Bill, 1957, (1959) SCR 995 [12] State of A.P. & Others v. Mcdowell & Co. & Others, (1996) 3 SCC 709 [See para 43] [13] Para 131. With these words, I agree with Conclusions (A) to (E) in the opinion of Brother Shah, J. and Conclusions (1), (2), (4), (5), (6), (7) and (9) in the opinion of Brother P.V. Reddi, J.

[14] Para 101. In my opinion, therefore, subject to the fulfillment of the various conditions stipulated in the Constitution or by an appropriate law made in that behalf, every citizen of this country has a constitutional right both to elect and also be elected to any one of the legislative bodies created by the Constitution—the "straight conclusion" of Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, "that every Indian has a right to elect and be elected—subject to statutory regulation", which rights can be curtailed only by a law made by the appropriate legislation, that too on grounds specified under Article 326 only.

For complete discussion - see paras 86 to 104.

[16] Para 57. All these petitions filed either under Article 32 or under Article 136 raise certain common and substantial questions of law as to the interpretation of the Constitution. The lis, essentially, is between the Election Commission of India, a creature of the Constitution under Article 324, on the one hand and various bodies claiming to be political parties and some of their functionaries, on the other hand. The essence of the dispute is whether a political party is entitled for the allotment of an election symbol on a permanent basis irrespective of its participation and performance judged by the vote share it commanded at any election.

[17] Para 12. However, the petitioners raised strong objections against the other aspects of the reservation policy contemplated under Articles 243- D and 243-T. Initially, they had assailed the reservation of seats in favour of women, which has been enabled by Articles 243-D(2) and (3) with respect to rural local bodies, and by Articles 243-T(2) and (3) with respect to urban local bodies. However, this challenge was given up during the course of the arguments before this Court and the thrust of the petitioner's arguments was directed towards the following two aspects:

> Firstly, objections were raised against Article 243-D(6) and Article 243-T(6) since they enable reservations of seats and chairperson posts in favour of backward classes, without any guidance on how to identify these beneficiaries and the quantum of reservation.

Secondly, it was argued that the reservation of chairperson posts in the manner contemplated under Articles 243-D(4) and 243-T(4) is unconstitutional, irrespective of whether these reservations are implemented on a rotational basis and irrespective of whether the beneficiaries are SCs, STs and women. The objection was directed against the very principle of reserving chairperson posts in elected local bodies.

[18] See Para 13 of K. Krishna Murthy case [19] Para 79. The petitioners have asked us to reconsider the precedents wherein the rights of political participation have been characterised as statutory rights. It has been argued that in view of the standard of reasonableness, fairness and non-discrimination required of governmental action under Article 21 of the Constitution, there is a case for invalidating the restrictions that have been placed on these rights as a consequence of reservations in local self-government. We do not agree with this contention.

Para 80. In this case, we are dealing with an affirmative action measure and hence the test of proportionality is a far more appropriate standard for exercising judicial review. It cannot be denied that the reservation of chairperson posts in favour of candidates belonging to the Scheduled Castes, Scheduled Tribes and women does restrict the rights of political participation of persons from the unreserved categories to a certain extent. However, we feel that the test of reasonable classification is met in view of the legitimate governmental objective of safeguarding the interests of weaker sections by ensuring their adequate representation as well as empowerment in local self-government institutions. The position has been eloquently explained in the respondents' submissions, wherein it has been stated that "the asymmetries of power require that the chairperson should belong to the disadvantaged community so that the agenda of such panchayats is not hijacked for majoritarian reasons". (Cited from the submissions on behalf of the State of Bihar, p. 49.) [20] Para 2. Democracy is a concept, a political philosophy, an ideal practised by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly. But electing representatives to govern is neither a 'fundamental right' nor a 'common law right' but a special right created by the statutes, or a 'political right' or 'privilege' and not a 'natural', 'absolute' or 'vested right'. 'Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied.' Right to remove an elected representative, too, must stem out of the statute as 'in the absence of a constitutional restriction it is within the power of a legislature to enact a law for the recall of officers'. Its existence or validity can be decided on the provision of the Act and not, as a matter of policy.

[21] Introduced Part IX-A of the Constitution dealing with Municipalities w.e.f. 1.6.1993 [22] The judgment of Allahabad High Court is dated 19.2.1991 and the appeal in this Court is decided on 15.5.1992.

[23] Para 60. "The purpose of referring to the same is to remind one that the right to contest in an election is a plain and simple statutory right..." [24] Section 123(2).

Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

[25] Article 80. Composition of the Council of States.- (1) The Council of States shall consist of (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and (b) not more than two hundred and thirty eight representatives of the States and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the fourth Schedule.

(3) The members to be nominated by the President under sub clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:

Literature, science, art and social service.

(4) The representatives of each State in the council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the Union Territories in the council of States shall be chosen in such manner as Parliament may by law prescribe.

[26] Article 171(3) Of the total number of members of the Legislative council of a State:

(a) as nearly as may be, one third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5) [27] Article 80(4). The representatives of each State in the council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

[28] G. Narayanaswami v. G. Pannerselvam & Others [(1972) 3 SCC 717] "Para 14. Whatever may have been the opinions of Constitution- makers or of their advisers, whose views are cited in the judgment under appeal, it is not possible to say, on a perusal of Article 171 of the Constitution, that the Second Chambers set up in nine States in India were meant to incorporate the principle of what is known as "functional" or "vocational" representation which has been advocated by Guild-Socialist and Syndicalist Schools of Political Thought. Some of the observations quoted above, in the judgment under appeal itself, militate with the conclusions reached there. All that we can infer from our constitutional provisions is that additional representation or weightage was given to persons possessing special types of knowledge and experience by enabling them to elect their special representatives also for Legislative Councils. The concept of such representation does not carry with it, as a necessary consequence, the further notion that the representative must also possess the very qualifications of those he represents.

[29] Manoj Narula v. Union of India, (2014) 9 SCC 1 Para 110. Article 84 of the Constitution negatively provides the qualification for membership of Parliament. This Article is quite simple and reads as follows:

"84. Qualification for membership of Parliament – A person shall not be qualified to be chosen to fill a seat in Parliament unless he – is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

is, in the case of a seat in the Council of States, not less than thirty years of age, in the case of a seat in the House of the People, not less than twenty-five years of age; and possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament." [30] Bhanumati & Others v. State of U.P., (2010) 12 SCC 1 Para 33. The Panchayati Raj institutions structured under the said amendment are meant to initiate changes so that the rural feudal oligarchy lose their ascendancy in village affairs and the voiceless masses, who have been rather amorphous, may realise their growing strength. Unfortunately, effect of these changes by way of constitutional amendment has not been fully realised in the semi-feudal set-up of Indian politics in which still voice of reason is drowned in an uneven conflict with the mythology of individual infallibility and omniscience. Despite high ideals of constitutional philosophy, rationality in our polity is still subordinated to political

exhibitionism, intellectual timidity and petty manipulation. The Seventy-third Amendment of the Constitution is addressed to remedy these evils.

[31] Section 173. Persons qualified to vote and be elected. – (1) Every person whose name is in the list of voters shall, unless disqualified under this Act or any other law for the time being in force, be qualified to vote at the election of a Member for the electoral division to which such list pertains.

[32] Section 173(2). Every person who has attained the age of twenty- one years and whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be disqualified to be elected from any electoral division. [33] Section 2 (lvi) “Sarpanch” means a Sarpanch of Gram Panchayat elected under this Act.

[34] Section 2 (xli) "Panch" means a member of a Gram Panchayat elected under this Act.

[35] “Para 3(3). …….. The Learned Senior Counsel contends that it is wholly irrational and arbitrary to protect highly-placed public servants from inquiry or investigation in the light of the conditions prevailing in the country and the corruption at high places as reflected in several judgments of this Court including that of Vineet Narain. Section 6-A of the Act is wholly arbitrary and unreasonable and is liable to be struck down being violative of Article 14 of the Constitution is the submission of learned amicus curiae.

(4). In support of the challenge to the constitutional validity of the impugned provision, besides observations made in the three-Judge Bench decision in Vineet Narain case reliance has also been placed on various decisions including S.G. Jaisinghani v. Union of India [(1967) 2 SCR 703], Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212], Ajay Hasia v.

Khalid Mujib Sehravardi [(1981) 1 SCC 722] and Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In Mardia Chemicals case a three- Judge Bench held Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to be unreasonable and arbitrary and violative of Article 14 of the Constitution. Section 17(2) provides for condition of deposit of 75% of the amount before an appeal could be entertained. The condition has been held to be illusory and oppressive. Malpe Vishwanath Acharya v. State of Maharashtra [(1998) 2 SCC 1], again a decision of a threeJudge Bench, setting aside the decision of the High Court which upheld the provisions of Sections 5(10)(b), 11(1) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 pertaining to standard rent in petitions where the constitutional validity of those provisions was challenged on the ground of the same being arbitrary, unreasonable and consequently ultra vires Article 14 of the Constitution, has come to the conclusion that the said provisions are arbitrary and unreasonable.”

[36] "Para 64. ..... We are also clearly of the view that no distinction can be made for certain class of officers specified in Section 6-A who are described as decision making officers for the purpose of inquiry/investigation into an offence under the PC Act, 1988. There is no rational basis to classify the two sets of public servants differently on the ground that one set of officers is decision making officers and not the other set of officers. If there is an accusation of bribery, graft, illegal gratification or criminal misconduct against a public servant, then we fail to understand as to how the status of offender is of any relevance. Where there are allegations against a public servant which amount to an offence under the PC Act, 1988, no factor pertaining to expertise of decision making is involved. Yet, Section 6-A makes a distinction. It is this vice which renders Section 6-A violative of Article 14. Moreover, the result of the impugned legislation is that the very group of persons, namely, high ranking bureaucrats whose misdeeds and illegalities may have to be inquired into, would decide whether the CBI should even start an inquiry or investigation against them or not. There will be no confidentiality and insulation of the investigating agency from political and bureaucratic control and influence because the approval is to be taken from the Central Government which would involve leaks and disclosures at every stage.

Para 99. In view of our foregoing discussion, we hold that Section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to (a) the employees of the Central Government of the level of Joint Secretary and above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26 (c) of the Act 45 of 2003 to that extent is also declared invalid." [37] Para 13. The next question, is the rule reasonable or arbitrary and unreasonable? The rationale for the rule, as stated earlier, is to maintain the dignity and purity of the profession by keeping out those who retire from various government, quasi-government and other institutions since they on being enrolled as advocates use their past contacts to canvass for cases and thereby bring the profession into disrepute and also pollute the minds of young fresh entrants to the profession. Thus the object of the rule is clearly to shut the doors of profession for those who seek entry in to the profession after completing the age of 45 years. In the first place, there is no reliable statistical or other material placed on record in support of the inference that ex-government or quasi- government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only such persons from entry in to the profession but those who have completed 45 years of age on the date of seeking enrolment. Thirdly, those who were enrolled as advocates while they were young and had later taken up some job in any government or quasi-government or similar institution and had kept the sanad in abeyance are not debarred from reviving their sanads even after they have completed 45 years of age. There may be a large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practise at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practising. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrolment while allowing another group to revive and continue practice even after crossing the age

of 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of government or quasi-government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principle of equality enshrined in Article 14 of the Constitution.

[38] (1981) 4 SCC 675 [39] (1974) 4 SCC 3 [40] (1978) 1 SCC 248 [41] An expression used widely and rather indiscriminately - an expression of inherently imprecise import. The extensive use of this expression, in India reminds one of what Frankfurter,J. said in Hattie Mae Tiller v. Atlantic Coast Line Railroad Co., 87 L.Ed. 610. "The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas", said the learned Judge.

[42] In Municipal Committee Amritsar v. State of Punjab, (1969) 1 SCC 475, at para 7, this Court clearly ruled out the application of the doctrine of “due process” employed by the Court adjudicating the constitutionality of the legislation.

But the rule enunciated by the American Courts has no application under our Constitutional set up. The rule is regarded as an essential of the "due process clauses" incorporated in the American Constitution by the 5th & the 14th Amendments. The Courts in India have no authority to declare a statute invalid on the ground that it violates the "due process of law". Under our Constitution, the test of due process of law cannot be applied to statutes enacted by the Parliament or the State legislatures. This Court has definitely ruled that the doctrine of "due process of law" has no place in our Constitutional system: A. K. Gopalan v. State of Madras, 1950 SCR.

88. Kania, C.J., observed (at p. 120):-

> "There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. . . . . it is only in express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can join a safe and solid ground for the authority of Courts of Justice to declare void any legislative enactment."

[43] “(v) has not passed matriculation examination or its equivalent examination from any recognized institution/board:

> Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass:
>
> Provided further that in case of a woman candidate belonging to Scheduled Caste contesting election for the post of Panch, the minimum qualification shall be 5th pass;” [44] Section 173 (2). Every person who has attained the age of twenty- one

years and whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected from any electoral division.

[45] The expression "rural population" is used by the respondents in their counter affidavit to mean people living in areas falling within the territorial limits of some PANCHAYAT.

[46] "Section 21. Functions and duties of Gram Panchayat.—Subject to such rules as may be made, it shall be the duty of the Gram Panchayat within the limits of the funds at its disposal, to make arrangements for carrying out the requirements of sabha area in respect of the following matters including all subsidiary works and buildings connected therewith:--

XI. Non-conventional Energy Sources-

(1) Promotion and Development of non-conventional energy schemes. (2) Maintenance of community non-conventional energy devices, including bio-gas plants and windmills.

(3) Propagation of improved chulhas and other efficient devices.

XXI. Social Welfare including Welfare of the Handicapped and Mentally Retarded-

(1) Participation in the implementation of the social welfare programmes including welfare of the handicapped, mentally retarded and destitute.

(2) Monitoring of the old age and widows pension scheme." [47] We are of the opinion that it is not really necessary to examine the various observations made by this Court regarding the importance of education for two reasons, firstly, nobody is disputing the general proposition that education plays a great role in the evolution of the personality of a human being. Secondly, none of the cases referred to by the AG dealt with the relevance of education in the context of the right to contest any election contemplated by the Constitution. [See: Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel, (2012) 9 SCC 310; Avinash Mehrotra v. Union of India, (2009) 6 SCC 398; P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537; T.R. Kothandaramam v. T.N. Water Supply & Drainage Board; (1994) 6 SCC 282; Unni Krishnan v. State of Andhra Pradesh, (1993) 1 SCC 645; Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi, (1991) 2 SCC 716; and State of J&K v. Triloki Nath Khosa, (1974) 1 SCC 19].

[48] Articles 102(1)(c) and 191(1)(c).

[49] Article 102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament – **** **** **** **** **** ****

(c) – if he is an undischarged insolvent;

[50] Article 191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State –
**** **** **** **** **** ****

(c) if he is an undischarged insolvent.

[51] Section 6. Acts of insolvency.—(1) A debtor commits an act of insolvency in each of the following cases, namely:-

> (a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
>
> (b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
>
> (c) if in India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged an insolvent;
>
> (d) if with intent to defeat or delay his creditors,-

he departs or remains out of the territories to which this Act extends;

he departs from his dwelling-house or usual place of business or otherwise absents himself;

he secludes himself so as to deprive his creditors of the means of communicating with him;

(e) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(f) if he petitions to be adjudged an insolvent under the provisions of this Act;

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; or

(h) if he is imprisoned in execution of the decree of any Court for the payment of money.

(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein:

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice-

in a case where such application is allowed by the District Court, he shall not be deemed to have committed an act of insolvency under this sub- section; and in a case where such application is rejected by the District Court, he shall be deemed to have committed an act of insolvency under this sub- section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:

[52] Section 9. Acts of insolvency.- (1) A debtor commits an act of insolvency in each of the following cases, namely;-

if, in the States or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

if, in the States or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

if, in the States or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged an insolvent;

if, with intent to defeat or delay his creditors,-- he departs or remains out of the States, he departs from his dwelling-house or usual place of business or otherwise absents himself, he secludes himself so as to deprive his creditors of the means of communicating with him;

if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money;

if he petitions to be adjudged an insolvent;

if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

if he is imprisoned in execution of the decree of any Court for the payment of money.

(2) Without prejudice to the provisions of sub- section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub- section (3) and the debtor does not comply with that notice within the period specified therein:

> Provided that where a debtor makes an application under sub- section (5) for setting aside an insolvency notice--

in a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub- section; and in a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub- section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:

> Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therefor.

[53] 9. Bankruptcy and Insolvency.

[54] Paras 4 & 5 of the Addl. Affidavit of Respondents 1 to 3 That the main objective of the programme is to ensure access of toilets to all rural families so as to achieve Open Defecation Free (ODF) status. For this purpose, both the Center and State of Haryana have also been providing financial incentive to the people below poverty line (BPL) in the rural areas of State of Haryana. Besides few other Above Poverty Line (APL) household categories namely, all SCs, small farmers, marginal farmers, landless labourers with homestead, physically handicapped and women headed households were also identified for the purpose of granting financial incentive since 01.04.2012 under the said scheme.

That the financial incentive is also being provided to Below Poverty Line (BPL) households for the construction and usage of individual household latrines (IHHL) in recognition of their achievements. In Haryana total rural BPL households are 8,56,359 and against it, 7,21,038 households have been provided incentive for the construction of IHHL. Similarly, Above Poverty Line (APL) households restricted to SCs/STs, small and marginal farmers, landless labourers with homestead, physically handicapped and women headed households have also been provided financial assistance w.e.f. 04.04.2012. Presently, w.e.f. 02.10.2014 the financial incentive is being given to above category of households @ Rs.12000 (Rs.9000 from Centre and Rs.3000 from State Government). Out of 30,67,907 rural households 25,84,810 i.e. 84% have IHHLs. Out of which 23,60,318 IHHLs have been build under Rural Sanitation Programmes since 1999, of which 8,82,012 have been given incentive money at various rates prevailing at different times. [55] In England this habit existed till 15th Century at least, “poor sanitation made London a death-trap. Without any kind of sewage system, the streets stank to high heaven, whereas human excrement was systematically collected in Chinese cities and used as fertilizer in outlying paddy fields. In the days when Dick Whittington was lord mayor – four

times between 1397 and his death in 1423 – the streets of London were paved with something altogether less appealing than gold.", [Niall Ferguson, Civilization : The West and the Rest , (First Edition, Penguin Press, 2011)] page 23
