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GOVERNMENT OF ASSAM

**WHITE PAPER
ON
PROVINCIALISATION OF SERVICES OF
EMPLOYEES OF EDUCATIONAL INSTITUTIONS
UNDER
ASSAM VENTURE EDUCATIONAL INSTITUTIONS
(PROVINCIALISATION OF SERVICE) ACT, 2011**

**PLACED ON THE TABLE OF THE HOUSE OF
ASSAM LEGISLATIVE ASSEMBLY ON 27TH FEBRUARY, 2017**

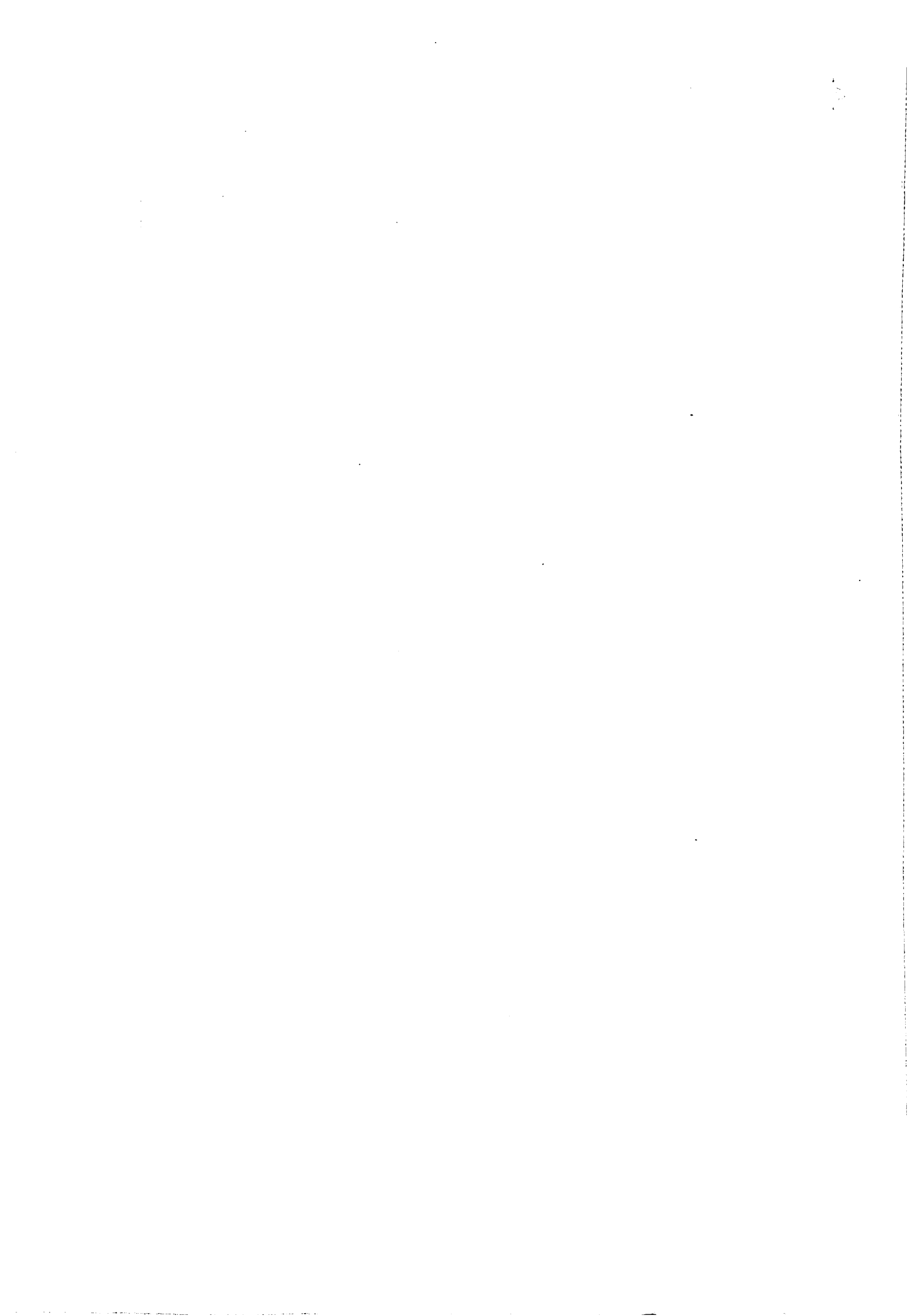


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Background:

- (a) In ancient Assam, the number of educational institutions were very limited and confined to only the Municipal Town areas. The people of Assam were forced to travel to other states for Educational purposes, in particular to Calcutta and often abroad for Higher Learning. Later, the British established some High Schools and Higher Secondary Schools in all the District Head Quarters which are today known as the 'Government Secondary Schools'. With the increased demand for learning, the local community started establishing Educational Institutions on their own which came to be known as 'Venture Educational Institutions'. Simultaneously, the Government contributed towards the spread of Education through the Government Secondary Schools and Government Degree Colleges. Post-Independence, Government of Assam started giving grants to the Venture Educational institutions and these Institutions came to be known as Deficit Schools/Colleges. There was demand from the society on the Government to take over the management of these schools & accordingly, the Government of Assam enacted legislations from time to time to take over the management of these schools including the services of the teachers & other staff.
- (b) The following legislations were enacted over the course of the last few decades for provincializing the venture educational institutions :
- (c) **Assam Elementary Education (Provincialisation) Act, 1974:** To provincialise the services of employees of different categories of State & Regional Boards for Elementary

Education and to bring them under the direct management and control of the State Government, the Assam Elementary Education (Provincialisation) Act, 1974 was enacted and came into force with effect from 05.09.1975. Following provincialisation, these employees were deemed to be Government employees and were allowed pensionary benefits under Assam Services (Pension) Rules, 1969.

- (d) **Assam Secondary Education (Provincialisation) Act, 1977:** To provide for provincialisation of Secondary Education covered by the Deficit Scheme of the Government of Assam for its improvement and better control and management of such Educational Institutions, the Assam Secondary Education (Provincialisation) Act, 1977 was enacted and came into force with effect from 01.10.1977. The teaching and non-teaching staff of the Educational Institutions which received deficit grants-in-aid under the Secondary Education was provincialised under this Act. Post-provincialisation, these employees were deemed to be Government employees and were allowed pensionary benefits under the Assam Services (Pension) Rules, 1969.
- (e) **Assam College Employees (Provincialisation) Act, 2005:-** To provide for provincialisation of the services of employees of the Non-Government Colleges in receipt of Deficit Grants-in Aid, the Assam College Employees (Provincialisation) Act, 2005 was enacted and came into force with effect from 01.12.2005. After provincialisation, these employees were deemed to be Government employees and they were allowed pensionary benefits under Assam Services (Pension) Rules, 1969.
- (f) The last Provincialisation Acts were enacted in the year 2011/2012 under the name and style-
- (i) The Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, (ii) Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Act, 2011, (iii) Assam Junior Colleges (Provincialisation) Act, 2012 and (iv) Assam Venture Sanskrit and Pali Educational Institutions (Provincialisation of Services) Act, 2012

The Expenditure per year against the posts provincialized as per the Provincialisation Act, 2011 is Rs 1343.45 crores. This is expected to rise by

approximately 20% from next year on account of the effect of the Assam Pay Commission.

In addition to the above mentioned provincialised Educational Institutions, there was a proposal for provincialisation of 3138 Nos. of Primary Schools, 2889 Nos. of Upper Primary Schools, 581 Nos. of High Schools/HS School/Junior Colleges with a total post of 33668 under the existing Act. The estimated expenditure for the posts to be provincialised as per the existing Act would have been Rs. 925.42 crores per annum if these institutions were provincialised (Details at table 4).

Further, the Education Department has received representations from various organizations for provincialisation of 1370 number of Schools/Colleges that received recognition and concurrence after 2006 with a total 12141 employees. The tentative annual expenditure against the demand of various institutions for provincialisation of Schools/Colleges which are not covered by the Provincialisation Act, 2011 will be Rs.924.07 crores, if they are considered for provincialisation. [Details at Table 5]

- (g) The provincialisation of the various categories of Educational Institutions by successive governments has resulted in the mushrooming of Venture Educational Institutions across the State in an unplanned manner. It is to be mentioned here that due to various handicaps of the Venture Educational Institutions combined with the fast changing Educational system, these institutions find it difficult to impart quality education.
- (h) There were certain shortcomings of the Provincialisation Act, 2011 which are mentioned below:

1. Qualification Criteria: Provincialisation Act 2011 not in line with RTE Act, 2009/ NCTE Regulation

Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009) states that the minimum educational qualifications for the teachers should be as per the norms set by the National Council for Teacher Education. The minimum Educational and Professional Qualification in respect of various categories of Schools as per National Council for Teacher Education Regulations are given in the table below:

Level	Minimum educational and professional qualification
<p>Lower Primary (for classes I–V)</p>	<p>(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education.</p> <p style="text-align: center;">Or</p> <p>Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.</p> <p style="text-align: center;">Or</p> <p>Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)</p> <p style="text-align: center;">Or</p> <p>Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)</p> <p style="text-align: center;">And</p> <p>(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for this purpose.</p>
<p>Upper Primary (for classes VI to VIII)</p>	<p>(a) B.A./ B.Sc. and 2-year Diploma in Elementary Education.</p> <p style="text-align: center;">Or</p> <p>B.A./ B.Sc. with at least 50% marks and 1-year Bachelor in Education (B. Ed.)</p> <p style="text-align: center;">Or</p> <p>B.A./ B.Sc. with at least 45% and 1-year Bachelor in Education (B. Ed.) in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time in this regard</p> <p style="text-align: center;">Or</p> <p>Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B. El. Ed.)</p>

	<p style="text-align: center;">Or</p> <p>Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A./ B.Sc. Ed. Or B.A.Ed/B.Sc. Ed.</p> <p style="text-align: center;">Or</p> <p>B.A./ B.Sc. with at least 50% marks and 1-year B.Ed. (Special Education)</p> <p style="text-align: center;">And</p> <p>(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.</p>
<p>Secondary/ High School (For classes IX-X) as per NCTE Regulation (During period when Provincialisation Act 2011 came into force)</p>	<p>Graduate with Bachelor of Education (B.Ed.) or its equivalent.</p> <p style="text-align: center;">Or</p> <p>Four years integrated B.Sc., B.Ed. or an equivalent course.</p>
<p>Senior Secondary/ Intermediate for Classes XI-XII (During period when Provincialisation Act 2011 came into force)</p>	<p>Masters Degree in the relevant subject with Bachelor of Education (B.Ed.) or its equivalent.</p> <p style="text-align: center;">Or</p> <p>Two years integrated M.Sc.Ed. Course or an equivalent course.</p>

Sub-section (3) of Section 4 of the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011, states that teachers need to have requisite academic and professional qualifications as prescribed by the relevant Rules at the time of their initial appointment. The employees of the Venture Educational Institutions which are considered for provincialisation under the Provincialisation Act were appointed under the Assam Secondary Education (Provincialised) Service Rules, 1982

and Assam Secondary Education (Provincialised) Service Rules, 2003 as amended, in respect of Secondary Education and the Assam Elementary (Provincialisation Service Rules), 1977 as amended, in respect of Elementary Education. In all these Service Rules, the professional qualification of Diploma in Elementary Education for teachers of elementary education and BT/B.Ed degree for teachers under Secondary Education was not insisted upon. The requirement of TET was not also insisted at the time of initial appointment of these teachers whose services have been considered for provincialisation under this Provincialisation Act, however as per RTE Act / NCTE Regulations, TET is compulsory for teachers of Elementary Education and B.Ed/B.T degree is compulsory for the teachers of secondary education.

2. **Ignored the “Neighborhood Norms”** The Provincialisation Act also ignored the ‘neighborhood norms’ for the Provincialisation of the schools under Elementary Education. Due to this, in a particular area even there is an existing school, provincialisation has been done for another school, where as uncovered areas are still without any schools. The following are the area of schools as stipulated under RTE Rules, 2011:

- (i) In respect of children in Classes I-V, a school shall be established within a walking distance of one km of the neighborhood;
- (ii) In respect of children in classes VI-VIII a school shall be established within a walking distance of 3 km of the neighborhood.

As per RMSA norms there should be one High School within a radius of 5 Km and one Higher Secondary school within a radius of 7 Km.

3. **Educational and Professional Qualification for Teachers of Higher Education**

As per sub-section (3) of Section 4 of the Provincialisation Act, 2011 the Higher Education teachers must have acquired such Educational as well as Professional qualification as may be determined by the University Grants Commission from time to time. The following were the Educational and Professional qualification for teachers under degree colleges:

(a) Master Degree, concerned subject with 55% marks (% Marks relaxed for SC,ST candidates)

(b) NET/SLET/PhD

However, there was a provision that the employee without having the prescribed Academic or Professional Qualifications may be given a period of 5 years to acquire such Qualifications at the existing term of his employment and on acquisition of such requisite qualification his case may be considered for provincialisation.

4. Demerits of the Venture Schools and the Provincialisation Act

As can be discerned from the above points there are some demerits of the Venture Schools and the Provincialisation Act, 2011 which are listed below

- (a) The qualifications prescribed in the Act are not in conformity with the RTE Act/ NCTE Regulations/ SEBA etc.
- (b) The Reservation policy of the State is not incorporated in the Act. In the venture schools community recruits the teachers and they do not follow reservation norms. Thereby most of the teachers are recruited from general category and as a result when vacancy arises due to retirement all the vacancies are to be filled up from the reserved category to fill up the backlog and this continues for 25-30 years. Thereby applicants of general category are deprived.
- (c) Discrimination with some of the teachers due to fixation of maximum number of teachers in the School/Colleges in the Act. Secondly, due to provincialisation of services of teachers on seniority basis, in some schools services of teachers for core subjects was not provincialized.
- (d) The teachers are recruited in the venture School/Colleges is not competition based, it is opaque in nature and therefore quality of Education is suffering.
- (e) The Act ignored neighborhood norms for provincialisation of the schools.
- (f) Due to mushroom and unplanned growth of venture schools and provincialisation of these schools the financial burden on State exchequer has increased substantially.
- (g) While the venture schools were established by the local people except landholding, the other infrastructure facilities like building of the school was not adequate. After

provincialisation of these schools the responsibilities for looking after these school building have been shifted to the State Government leading extra burden on the State Exchequer. For such situation it has been difficult to escape from the public criticism showing poor infrastructure of the schools.

5. The Government of Assam in the Finance Department raised all the above issues in its endorsement dated 05.12.2015 to Education Department. The endorsement reads as follows:

“Secretary, Secondary Education Department/O

Ref: Your endorsement dated 13.11.2015 at page 75/RNS in the File No.ASE.345/2011

Finance Department while submitting the proposal to the Hon'ble Chief Minister (as FM) observed that the proposed amendment appears to have a far reaching implication to the State's Finances and it is essential to examine the matter comprehensively to offer the views of Finance Department on the proposed amendment Bill. The observations of Finance Department submitted to Hon'ble CM (as FM) were as under:

1. First, it is noted that the whole exercise requires the answers to two basic questions-
(a) How to serve the education interest of the children? and (b) At what cost? The answer to these questions can be safely found within the constitutional and legal framework as conferred in the Right to Education Act, 2009. Accordingly, the following critical examination would put the matter in a proper perspective:
2. It is glaring to note that certain provisions of the AVEI (PS) Act and as amended in 2012 and 2013 are found to be not in consistency with the provisions of RTE Act, 2009 of Central Government particularly those related to the serving the interest of Children's Education vis-a-vis cost to the State Exchequer. These aspects would cover the number of teaching and non-teaching staff proposed to be provincialised and cost of infrastructure development cost which in turn basically depends on the number of schools to be run by the State Government.
3. As regard to the number of teachers, PTR is the basis and the Schedule (see Sections 19 & 25) norms and standard for a school of RTE Act, 2009 provides that there should be two teachers up to 60 students in class I to V, it means PTR is 1:30. whereas the section 3(ii) of AVEI (PS) Act 2011 and as amended in 2012 and 2013 provides for 1:25 PTR. This provision has led to provincialisation of services of a large number of teachers which has already put a huge financial stress on the resources.
4. Also, the provision of section 4(1) of RTE Act. 2009 has stipulated condition for establishment of school within one km for primary school of classes I to V and 3 kms for classes VI to VIII has not been referred to in the AVEI (PS), Act 2011 and as amended in 2012 and 2013 which has resulted provincialisation of school in close proximity of areas which could have been scrupulously avoided.

5. The same schedule of RTE Act, 2009 has also set the conditions of the school building and other required amenities for a primary school such as all weather building consisting of (i) at least one classroom for every teacher and an office-cum-store-cum-Head teacher's room; (ii) barrier-free access; (iii) separate toilets for boys and girls; (iv) safe and adequate drinking water facility to all children; (v) a kitchen where mid day meal is cooked in the school; (vi) Playground;
6. Through section 3(3) & (4) of the AVEI (PS) Act, 2011 provide that the institution shall acquire the required infrastructure as specified in the schedule of the RTE Act, 2009 within two years from the date of commencement of this Act, the department appears to have not put in place any system to confirm the compliance of these provisions not only for the proposed cases but also for the provincialisation so far accorded.
7. In the event of provincialisation without the stipulated infrastructure, it would shift enormous financial burden and onus on the State Govt. as per RTE Act, 2009 and in such cases Central Government will not support the State Govt. with funds, since PTR is far lower than the stipulation fixed by the RTE Act, 2009.
8. As regards other than Elementary Education, such principles have either not diligently stipulated or ignored while provincializing the services of the teaching and non teaching staff of secondary and college level institutions. There are no reports of maintaining the proper norms for enrolment, for building and amenities in the institutions and for the distance to be maintained between two institutions, etc. Thus, the scarce resources are not gainfully put to use.
9. With regard to financial implications involved so far in the provincialisation of services of teaching and non teaching staff of the venture institutions from Primary to Higher Education levels, no comprehensive information could be made available to the Finance Department by the Education Department. Though the Department indicated in the current proposal that the financial implication is Rs.120.44 crore per annum against 3699 posts, it is doubtful whether the information is accurately available on the record and whether such detailed exercise has been conducted. No details are available on the file also. This information is doubtful because at the time of initial provincialisation in the year 2011, the department stated that the financial implication was only Rs 1144 crore while the current position even with many proposals pending, the total financial implication is hovering around Rs.8000 crore.
10. Records of Finance (SIU) Department show that since inception of the AVEI (PS) Act, 2011 to till date, the services of 57,131 number of teaching and non teaching staff of Elementary, secondary inclusive Madrassa and Higher Education Departments have been provincialized under this Act. This is almost nearing the number that was initially assessed in the year 2011. But, as per the education department's report there are many more proposals pending and as such the original assessment was grossly under-assessed putting the state finances under severe stress with about 40% of total salary expenditure of the State Government going only to this department.
11. The total financial implication of ongoing provincialisation itself is not clear. As per the recent assessment of the Education Department, the expected financial outflow is about Rs.8490.28 crores baring Higher Education and Technical Education Department. (A brief statement is attached at Flag 'A'). The Department has not been able to provide these details for all levels upto Degree

- and Technical Colleges and therefore, the total financial implication would be far higher than Rs 8490.28 crore and further relaxation of the AVEI (PS) Act, 2011 would create huge stress on the State Exchequer.
12. It is also pertinent to mention here what number of more proposals for provincialisation are in the pipeline are yet to be ascertained by the Education Department and what quantum of financial implications are to be incurred from state exchequer are the questions still looming large.
13. On examination of each amendment it is observed that :-
- (a) The financial implications provided in the Cabinet Memorandum at the time of enactment of the Act in 2011 was only Rs. 1144 crore. While at the current level of provincialisation itself the total financial outgo to the salaries alone appear to be Rs. 8000 crore. Again, in the current proposal, the financial impact was shown as Rs.120.44 crore for all the amended provisions whereas from the S1. 198/C it seems to be relevant to only Secondary Education. These anomalies are either due to non-application of mind to such serious issues or deliberately suppressing the facts by the concerned officers in the Department which throw the State public finances out of gear. This matter needs serious consideration.
- (b) As regards Section 2(P), it is not clear that by availing the provisions to give effectiveness to the Act, services of how many new schools, no. of employees, etc. will be provincialised and what will be its financial implications. It is also not known whether such future proposals are yet to be borne.
- (c) Vide Amendment of section 3 - 3(1) For clause (ii), it may be stated that the Section 6(i) of the sixth schedule of the Constitution of India provides that primary education is an inherent subject of the District council and hence, any intervention of the State Government on this matter is *ultra vires* to the statutory provision of the constitution. In case of High School, Junior college and Degree College, on the proposed substitution of the clause, it cannot be ascertained from the proposal, how many institutions and employees would be covered, as and what would be the financial implication for such provisions to be implemented.
- (d) As regards Amendment proposed to Section 3(2), when proposals for provincialisation of the posts of teaching and non-teaching staff of venture institutions of High Schools under the instant provisions of 30% pass percentage in H.S.L.C examination have not been completed and brought to a reasonable conclusion, it would not be prudent to go ahead with this proposed amendment of relaxation reducing the pass percentage to 20%. Secondly, similar proposal made by the Department in the year 2011 itself (28/RNS) and the Finance Department did not agree to the same and the Department had amended the proposal. Now, without any additional material on record, Finance Department cannot agree to the proposal.
- (e) The department proposed Vide Amendment of Section 4 - 4(i) to substitute a clause for bringing more venture institutions under the purview of provincialisation. Finance department offers the view that it would not be judicious to accede to this at this stage on the ground that as the proposed amendment will entail additional liabilities on the resources when the provincialisation process under extant provisions is yet to be completed and to be brought to a logical conclusion.
- (f) Vide Amendment of Schedule 5, the department proposed to increase or decrease the Nos. of posts in a particular cadre considering need of the

posts in the cadre without affecting the total nos. of posts of the institution. Finance Department cannot agree to the proposed amendment at this juncture even the initially agreed provincialisation has not been brought to conclusion. Secondly, there are huge no of court cases in all departments in the education department which they have not been able to provide and there are 611 no. of court cases alone in Secondary Education in the newly provincialised schools itself and any such flexibility would create enormous irregularities as has been generally noticed in the Department.

14. With the existing provincialisation itself, about 40% of salary budget is appropriated by the Education Department alone and the Government has not been able to fill up all vacancies to fill up all vacancies/create new posts in other critical departments like Health, Home, Land Revenue and Revenue generating departments like Taxation. Transport. Excise, etc.
15. It would not be exaggerated that with the current proposal and with the ensuing result of the 7th State Pay Commission's recommendation, State Govt. would not only be able to undertake any development works but also would fail to honour the salary commitments to all 4.28 lakh employees all 12 months in near future.
16. Further, the provincialisation process itself appears to be against the constitutional provisions of reservation to SC and ST. Secondly, the provincialisation of services would be required to be examined in the spirit of Uma Devi case of Supreme Court.
17. Huge number of litigations are pending in the Department and the exact numbers in Elementary Education Department are even not readily available. As stated at para 4(f) at pre-page, even a large number of cases are pending in provincialisation schools.
18. Government has engaged National Institute of Public Finance and Policy (NIPFP) to study public finances and inter-alia, the matter of education sector and cost associated thereon would also be examined. It is, therefore, prudent to await the recommendations of NIPFP.
19. The whole issues as stated above need to be seriously considered so that the regular payment of salaries of all State Government employees and regular implementation of welfare schemes do not suffer in future creating disproportionate stress on State finances in a lopsided manner.

After consideration of above observations of Finance Department, Hon'ble Chief Minister (as FM) has ordered as follows:

"All deserving institutions, teachers and staff should be covered by the process of provincialisation and due justice should be meted out for the overall improvement of the educational scenario in the State. For this purpose, it is essential that all facts related to the provincialisation process are available so that no deserving institution is left out again.

Hence, Education Department in consultation with Finance Department will immediately devise a mechanism to make a ground level assessment of the provincialisation scenario such that the information required in respect of number of personnel, financial implication etc. as mentioned in the Finance Department's note is accurately furnished.

Education Department will accordingly furnish the required details to Finance Department at the earliest, who will in turn expeditiously process the matter."

Accordingly, the Education Department is advised to take necessary action please.

Sd/-
Date. 05.12.2015
Deputy Secretary,
Finance Department”

6. The then Hon'ble Chief Minister also asked Education department to address all these issues immediately giving approval on the following endorsement:

Hon'ble Chief Minister

“Kindly refer your order in File No. ASE.345/2011 relating to the amendment of the Assam Venture Educational Institution {Provincialisation of Services} Act 2011. Your order reads as follows:

“All deserving institutions, teachers and staff should be covered by the process of Provincialisation and due justice should be meted out for the overall improvement of the educational scenario in the State. For this purpose, it is essential that all facts related to the Provincialisation process are available so that no deserving institution is left out again.

Hence, Education Department in consultation with Finance Department will immediately devise a mechanism to make a ground level assessment of the Provincialisation scenario such that the information required in respect of number personnel, financial implication etc. as mentioned in the Finance Department's note is accurately furnished.

Education Department will accordingly furnish the required details to Finance Department at the earliest, who will in turn expeditiously process the matter”.

Today I have discussed the matter with Advocate General, Assam regarding further action to be taken in this respect. The Advocate General of Assam has suggested that as per your order to devise a mechanism to make a ground level assessment of the Provincialisation and to find out all deserving institutions, teachers and staff to be covered by the process of provincialisation. A Committee comprising of the officers of the Education Department and the Finance Department may be constituted. The Committee so constituted will collect all the information required in this respect.”

Sd/- S. Borkotoky
Date. 08.12.2015
Minister, Education, Assam

“ Approved”
Sd/- T.Gogoi
Date.08.12.2015
Chief Minister, Assam”

7. Court case and Court order:

- (a) As per record available in the Directorate of Secondary Education, there are 683 nos. of cases filed by different persons in various dates, received from various sources, claiming provincialisation under secondary education. Likewise, there are 100 cases filed against the provisions of the said Act under elementary education department.
- (b) The petitioners were seeking the relief in different categories like as seniority for provincialisation of their services, date of appointment by the managing committee in disputes, subject combination (i.e- Bio Chemistry and Bio Mathematics), non-provincialisation of their services, excess teaching and non-teaching staff etc.
- (c) Hon'ble High Court vide order dated 23/09/2016 in WP(C) No. 3190/2012 declared the "Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011" as invalid. The operative part of the order of Hon'ble High Court reads as follows:

"DISCUSSION & CONCLUSION

- (a) When the arguments of the petitioners are analysed, it is clear that the Provincialisation Act has many legal failings as it is not only discriminatory but is also repugnant to many aspects of the RTE and other Central Acts. Noticing the merit of the points raised by the petitioners, the Government in fact has conceded about the defects in the State Act. The Education Commissioner in his affidavit averred that the State has decided to bring in a fresh legislation to streamline the process of provincialisation by addressing the deficiencies in the present Act. In such circumstances, the Court can either strike down the offending legislation or target certain portions of the Provincialisation Act to make the State legislation conform to the constitutional and legal requirements.
- (b) But this litigation reveals the total non-application of mind and it is all pervading in the state enactment. The discriminatory impact of the Provincialisation Act is found to be glaring here. In order to avoid impermissible discrimination, the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group, and also the differentia must have a rational relation to the object sought to be achieved by the statute in question. The petitioners here project that the teachers whose services are provincialized and those who have been left out are at par in all aspects. In most cases, both categories have been rendering service in the school since inception and are similarly qualified as well as rendering similar duties. There is nothing on the face of the statute or the surrounding circumstances to show any distinguishing factor. Also no rational relation of such differentia with the object of the Act is discernible from reading of the provision. In fact the object of the Act is to provincialise the services of teachers in venture educational institutions and prevent further growth of such institutions.

However, the object of provincializing the services of the required teachers in the institutions established bonafide stands negated by the enactment in its present shape.

- (c) The venture schools which were set up bonafide on need basis, in our perception, do serve the students in remote places and it may not be wrong to say that due to the inability of the State to discharge its constitutional obligations, the venture educational institutions were allowed to function. We may also say that the State has been discharging its constitutional obligation through these venture educational institutions. In this backdrop, when the venture schools are taken over, the government in a sense is taking steps towards discharging its constitutional obligations. However the action of the State in taking over such schools with only a given number of teachers, when the number is not commensurate with the prescribed requirements of the RTE Act (the law framed for implementation of Article 21A), the relevant prescription is absolutely arbitrary. The spirit of Article 21A stands defeated in our perception if the mechanism prescribed under the RTE Act is not conformed to encourage those bonafide elements who have aided the State in discharging its constitutional obligation.
- (d) It is also questionable whether the mode of entry into government service facilitated by the Provincialisation Act can ignore the applicable reservation laws relating to SC/ST category, women and disabled groups. The role of the authorities in the field of education in the Sixth Schedule areas of Assam is also undermined by the 2011 Act.
- (e) The appointment of teachers in the venture institutions is not competition based and is opaque and therefore quality of education is bound to suffer if this is allowed to continue. This naturally will negatively impact the next generation of our State. Moreover, the norms and qualification prescribed by the competent authorities like the UGC, NCTE, SEBA, etc. is the major casualty in application of the Provincialisation Act.
- (f) When such substantial defects are perceived, in a given context, the court can strike down only the offending provisions. However when unconstitutionality is noticed in the major provisions starting from the Preamble to the Schedule of the Provincialisation Act, striking down the offending portion will practically de-capacitate the 2011 Act. In other words, the statute itself will become inoperable although the ultra vires declaration is limited to some segments of the Act.
- (g) Therefore, we feel that a piecemeal exercise will not serve the purpose. But at the same time, to suggest how the Provincialisation Act should be re-shaped would be intruding into the domain of the legislature. Moreover amendment exercise might have to be preceded by a consultative process with all the stakeholders and this is surely the responsibility of the State. That apart it is certainly difficult to separate the bad from the good portion of the Provincialisation Act. Under these compulsions, being convinced with the arguments of the petitioners, we declare that the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 is constitutionally invalid. As the State has decided to bring in a fresh legislation, considering the likely time needed for the process, we direct the State to do their exercise as committed in the additional affidavit, expeditiously and preferably in the next 6(six) months. It is ordered accordingly.
- (h) With the above order, the cases stand allowed without any order on cost in the manner indicated.”

8. Merits of the Provincialisation as per Order of the Hon'ble High Court

The venture schools which were set up bonafide on a need basis, in our perception, do serve the students in remote places and it may not be wrong to say that due to the inability of the State to discharge its constitutional obligations, the venture educational institutions were allowed to function. We may also say that the State has been discharging its constitutional obligation through these venture educational institutions. In this backdrop, when the venture schools are taken over, the government in a sense is taking steps towards discharging its constitutional obligations. However the action of the State in taking over such schools with only a given number of teachers, when the number is not commensurate with the prescribed requirements of the RTE Act (the law framed for implementation of Article 21A), the relevant prescription is absolutely arbitrary. The spirit of Article 21A stands defeated in our perception if the mechanism prescribed under the RTE Act is not conformed to encourage those bonafide elements who have aided the State in discharging its constitutional obligation.

9. Present Status of the Provincialisation Act

- (a) The services of 21957 Nos. of employees under Elementary Education, 16721 Nos. of employees under Secondary Education and 2980 Nos. of employees under Higher Education have been provincialised under the Provincialisation Act, 2011.
- (b) However, there is a report that the enrolment of these newly Provincialised Institutions are decreasing after provincialisation.
- (c) There are many newly provincialised schools where the enrolment is less than the prescribed rate and these schools require merger/amalgamation with other schools.

10. Institutions eligible for the Provincialisation under the Provincialisation Act, 2011 but not yet provincialized including institutions involved in court cases

There are 6608 Nos. of institutions which are eligible as per the Provincialisation Act, 2011 but have not yet been provincialised. There are 33668 Nos. of employees under these 6608 Nos. of Institutions awaiting provincialisation under this Act.

11. Financial Implication for Provincialisation of services of employees of Venture Educational Institutions:

The following tables are the financial implications for the Provincialisation of services of employees of Venture Educational Institutions since inception:

(A) Details of Institutions Provincialised under different legislations prior to the enactment of Provincialisation Act, 2011 and Financial implications thereof: [Table-1]

Name of Directorate	No of Institutions	No of Employees	No of Students in these Institutions	Annual Salary Expenditure (Rs. in Crores)
Higher Education	189	10,415	3,78,577	1223.95
Secondary Education	2,278	51,266	4,55,600	1651.94
Elementary Education	41,012	84,674	34,21,465	3349.87
TOTAL	43,479	1,46,355	42,55,642	6225.76

(B) Details of Institutions provincialised under Provincialisation Act, 2011 and financial implications thereof: [Table-2]

Name of Directorate	No of Institutions	No of Employees	No of Students in these Institutions	Annual Salary Expenditure (Rs. in Crores)
Higher Education	134	2,980	1,26,323	142.25
Secondary Education	1554	16,721	3,10,800	605.99
Elementary Education	6802	21,957	4,00,485	595.21
TOTAL	8,490	41,658	8,37,608	1343.45

(C) Details of Institutions provincialised under different Provincialisation Acts till 2016 and Financial implications thereof: [Table-3]

Name of Directorate	No of Institutions	No of Employees	No of Students in these Institutions	Annual Salary Expenditure (Rs. in Crores)
Higher Education	295	13,395	5,04,900	1366.20
Secondary Education	3,832	67,987	7,66,400	2257.99
Elementary Education	47,814	1,06,631	38,21,950	3945.08
TOTAL	51,941	1,88,013	50,93,250	7569.27

(D) Details of Institutions considered under the Provincialisation Act, 2011 but not yet finalized (Pending cases as per Amendment Act, 2013) and Financial implications thereof [Table-4]

Name of Directorate	No of Institutions	No of Employees	Approximate number of students	Annual salary expenditure (Rs. in crores)
Higher Education	---	620	---	36.60
Secondary Education	581	6704	104580	226.53
Elementary Education	6027	26344	288197	662.29
TOTAL	6608	33668	392777	925.42

(E) Details of Institutions demanding Provincialisation (Cases not eligible as per Provincialisation Act, 2011) and Financial implications thereof (Approximate) [Table-5]

Name of Directorate	No of Institutions	No of Employees	Approximate Number of Students	Annual Salary Expenditure (Rs. in Crores)
Higher Education	40	1334	14070	60.37
Secondary Education	790	9451	142200	829.85
Elementary Education	540	1356	21570	33.85
TOTAL	1370	12141	177840	924.07

12. Way Forward (Possible Solutions):

Given the complexities of Provincialisation, the following solutions are suggested and needs deeper deliberation:

A New legislation should be enacted which considers the following aspects:

- (i) Total ban on Provincialisation of Educational Institutions which were not recognised, or received permission or concurrence up to last class before 01.012006
- (ii) Covers all eligible teachers on the basis of Total enrolment of Schools/Colleges including Subject-wise enrolment without discriminating on the basis of maximum ceiling on the number of teachers ;
- (iii) Maintains the representation of Reserved Candidates in the State as per policy on Reservation of SC, ST Act. The teachers will be absorbed against the posts which shall be personal to them. These posts can be abolished as soon as it is vacated by them and shall be kept outside other cadre posts.
- (iv) It is imperative to maintain educational and professional qualification as per RTE/NCTE/UGC norms to reach the goal of imparting quality education. The teacher who fulfils the norms may be entitled to full pay scale and other benefits as per State Government norms. Those who do not meet these norms can be termed as Tutors and their service conditions can be different and may be provided a fixed pay till they

acquire required norms. As soon as they acquire required norms they can be entitled for regular pay scale.

(v) Ensuring the availability of teachers for all compulsory subjects in all categories of schools.

(vi) One Base school can be identified for each habitat. There can be one lower primary School within a radius of one KM , one Upper Primary School in a radius of three Km, one High School in a radius of 5 Km and one Higher secondary School in a radius of 7 Km. The services of teachers can be attached to base schools so identified.

13. In addition to the above mentioned educational institutions under Elementary, Secondary and Higher education, there are also provincialised Madrassa and Sanskrit Tols which were provincialised under different legislations. The present status of Madrassas and Sanskrit Tols which were provincialised under the Assam Venture Madrassa Educational Institutions(Provincialisation of Services) Act, 2011 and the Assam Venture Sanskrit and Pali Educational Institutions(Provincialisation of Services) Act, 2012 respectively, are as follows:

Category of institutions	No of Institutions	No of Employees	Annual Salary Expenditure (Rs. in Crores)
Madrassa Institutions	327	3832	173.58
Sanskrit and Pali Institutions	15	75	03.03
Total	342	3907	176.61

Besides, there are another 162 nos of Madrassa institutions with 1696 nos of employees which satisfied the norms as per Madrassa Provincialisation Act, 2011 and if their services are provincialised, then an amount of **Rs. 39.64** crores shall be required per year.

Further, there are demands for provincialisation of services of 164 Madrassa institutions and 96 Sanskrit and Pali institutions which received recognition/permission as the case may be, after 01.01.2006 and if these institutions are also considered for provincialisation, then there shall be additional requirement of fund of **Rs. 138** crores per year.

14. Additional Fund: Requirement as per proposed ways forward-

- (a) The total additional financial implication to meet the expenditure for provincialisation of services of the employees of the Venture Educational Institutions as per the proposed ways suggested in the White paper would be **Rs.756** crores annually for the institutions falling under Elementary, Secondary and Higher education.
- (b) For provincialisation of services of employees of Madrassa Institutions and Sanskrit Tols, there shall be additional requirement of fund of around **Rs.40** Crores annually.

15. Generation of Fund for Provincialisation:

To cope with the requirement of funds for provincialisation, Education Cess may have to be levied on certain Goods & Services as the State Government cannot take the burden of excess cost of provincialisation. For the purpose of Provincialisation of the Services of the Employees of Venture Educational Institutions, the Government can by separate Acts or Rules as the case may be, create a pool of fund from various sources through Taxation, Levies, Toll, Cess. After such imposition and collection, the shortage can be supplemented from the Consolidated Fund of the State to meet the requirement of salary and other dues.

