

(2008) 07 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No's. 14363, 14377 and 15491 of 1994

Associated Managements of Primary and Secondary Schools
in Karnataka

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (a), 21, 226, 29 (2)

Citation : (2008) ILR (Kar) 2895 : (2008) 4 KarLJ 593

Hon'ble Judges : Cyriac Joseph, C.J;N. Kumar, J;Manjula Chellur, J

Bench : Full Bench

Advocate : Basavaraj, for VijayashankarAssociates, U.L. Bhat, P.S. Dinesh Kumar, Shantesh Gureddi, M.C. Narasimhan, H. Neelakanta Rao, A.G. Holla, Shetty and HegdeAssociates, F.V. Patil, T. Vittal Rao, Puttige R. Ramesh, Mohammed Farooz, V.C. Jagannatha, T. Radhakrishna, K. Sachindra Karanth, H. Neelakanta Rao and S.G. Bhat and Shantesh Gureddi, for the Appellant; B.V. Acharya and B. Manohar, AGA for R1 and R2, C.H. Hanumantharaya, for R3 to 18, Hemalatha Mahishi, for R19 and Ravivarma Kumar, for R20, for the Respondent

Judgement

N. Kumar, J.—The destiny of India is now being shaped in her classrooms. In a world based on science and technology it is education that determines the level of prosperity, welfare and security of the people. On the quality and number of persons coming out of our schools and colleges will depend our success in the great enterprise of national reconstruction whose principal objective is to raise the standard of living of our people. The task is neither unique nor is it quite new. But its magnitude, gravity and urgency have increased immensely and it has acquired a new meaning and importance in the context of liberalisation, globalisation and privatisation. If the pace of national development is to be accelerated there is need for a well defined, bold and imaginative educational policy and for determined and vigorous action to vitalize, improve and expand education.

2. Education is to be used as a powerful instrument of social, economic and political change and therefore has to be related to long term national aspirations, the programmes of national development on which the country is engaged and difficult short term problems, it is called upon to face. If this change on a grand scale is to be achieved without violent revolution, there is one instrument and one instrument only, that can be used, Education.

3. In a democracy the primary purpose of education is to provide an individual with the widest opportunity to develop his potentialities to the full. This direct link between education, national development and prosperity exist only when the national system of education is properly organized from both qualitative and quantitative points of view. India is in transition from a society in which education is a privilege of a small minority to one in which it could be made available to the masses of the people.

4. A development of proper language policy can also assist materially in social and national integration. Of the many problems which the country has faced since independence, the language question has been one of the main complex and intractable and it still continues to be so. Its early and satisfactory solution is imperative for a variety of reasons, educational, cultural and political. It is hardly necessary to emphasize that the development of the Indian languages is both urgent and essential for the development of the people of India and as a way of bringing together the elite and the masses.

5. The development of the modern Indian languages is inextricably linked with the place given to them in the educational system. The medium selected should enable the students to acquire knowledge with facility to express themselves with clarity and to think with precision and vigour. From this point of view, the claims of the mother tongue are pre-eminent. As a matter of sound educational policy, the medium of education in school and higher education should normally be the same.

6. An emotional, extremely delicate and a sensitive issue of general importance and consequences which touches the population in some way or the other residing in the geographical boundaries of the State of Karnataka, is the subject matter of this writ petition. It raises an interesting question of constitutional law. The petitioners contend that the question raised in the writ petition arises for consideration for the first time before this Court, where as the respondents contend that the said question is already concluded by the decisions of this Court as affirmed by the Apex Court. Therefore, in this background it has become necessary to extract the relevant portions of the judgments earlier rendered by this Court and the Apex Court in order to set at rest the controversies. In this process brevity has become a casualty. Therefore, after giving our anxious consideration to various aspects urged, we have tried to find a solution to this vexed problem, in the background of a constitutional set up, which affects not only the present generation but also the generations yet to be born.

7. These are all batch of Writ Petitions filed by linguistic and religious minorities, religious denominations, parents, parents associations, children through their parents and educational institutions run by the majority, challenging the Government Orders dated 22.4.1994 and 29.4.1994.

8. Writ Petition Nos. 14363/1994, 14377/1994, 15491/1994 19453/1994, 22563/1994, 30645/1999, 25647/1994, 18571/1994 and 19331/1994 are all by the managements belonging to majority community.

9. Writ Petition Nos. 17337/1994, 18787/1994, 19469/1994, 20165/1994, 17338/1994 and Writ Appeal No. 2415/1995 are all filed by the parents and associations formed by the parents.

10. Writ Petition Nos. 11785/1995, 29540/1995, 22752/1994, 19434/1994 and 900/2000 are Writ Petitions filed by several linguistic minority institutions.

11. Writ Petition Nos. 17677/1994 and 19346/1994 are filed by religious minorities and certain religious denominations.

12. In pursuance of the impugned Government orders, consequential orders were issued to several schools calling upon them to change the medium of instruction and to effect other consequential changes. Those consequential orders and communications are challenged in Writ Petition Nos. 34396/1996, 34684/1996 and 34185/1996.

13. In Writ Petition Nos. 21052/1994 and 5618/1993 the petitioners are seeking a direction to start English medium primary schools. As they have not challenged the impugned Government orders, these two Writ Petitions have to be decided by the single Bench in the light of the decision rendered by us in this case and, therefore, they are delinked and sent back for consideration of the single Bench.

(IV) Order of Reference

14. When writ petitions came up before the learned Single Judge of this Court, an order dated 09.06.1994 was made as under:

In view of the constitutional issues raised in the writ petition, it would be better if the writ petition is listed for hearing before the Division Bench u/s 9 of the Karnataka High Court Act 1964, as expeditiously as possible.

Thereafter, when this matter was listed before the Division Bench on 29.08.1994 the Division Bench passed the following Order:

These petitions are before us on a reference u/s 9 of the Karnataka High Court Act.

2. The petitioners belong to different linguistic and minority groups; while some of the petitions are filed in public interest. In these petitions, the constitutional validity of the Government Orders dated 22-4-1994 and 29-4-1994 is challenged as being violative, inter alia, of Articles 14, 19(1)(a), 21, 29(2) and 30(1) of the Constitution of India. The said Government Orders are purported to have been

issued in pursuance of its policy of introducing mother tongue as the medium of instruction in I to IV Standards of the Primary schools. The challenge is mainly against the element of compulsion found in Clause 6 of the order, under which mother tongue or Kannada shall be the compulsory medium of instruction.

3. It is urged that the order indirectly compels study of kannada as a medium of instruction from the early stage, thereby it infringes generally upon the fundamental rights of the child citizens and the parental right to choose the mode of education of his child under Article 29(2) of the Constitution. It is further stated that the order is arbitrary since it indirectly imposes Kannada on the minority groups which is impermissible in view of the various rulings of the Supreme Court and especially of this Court reported in the case of; General Secretary, Linguistic Minorities Protection Committee and Another etc. Vs. State of Karnataka and Another, . Among other contentions, it is urged that even a child whose mother tongue is Kannada is denied admission to an English medium school which is aided or maintained by the State only on the ground of language. In so far as the minorities are concerned, the order directly infringes upon their constitutional right to establish and manage institutions of their choice.

4. In "General Secretary, Linguistic Minorities Protection Committee v. State of Karnataka "(supra), the constitutional validity of an earlier order making the study of Kannada in addition to mother tongue by children belonging to linguistic minority groups from the first year of the Primary School compulsory and prescribing Kannada as the sole first language in the Secondary Schools was challenged. The opinion of the majority of the Full Bench is found at page Nos. 562 and 563.

5. In English Medium Students Parents Association Vs. State of Karnataka and others, , while upholding the majority view and declining to interfere in a matter relating to Government policy, the Supreme Court has stated thus:

The sting of the earlier GOs. and orders was the element of compulsion especially the children belonging to linguistic minorities from the first year of the primary school making Kannada as the sole first language in the secondary schools. Such a provision is violative of Article 29 and 30 of the Constitution.

6. Subsequently, the matter having been referred back for disposal, the Division Bench, while disagreeing with certain observations made by Bopanna, J in Sahyadri Education Trust Vs. State of Karnataka, , has stated thus:

a regulation which requires imparting pre-primary and primary education upto IV standard in mother tongue is a reasonable regulation, in the interest of excellence in education and in the interest of minorities. It is also consistent that the claim of the linguistic minorities who are the petitioners, some of whom are also religious minorities, that they have right to impart instructions in primary schools in their respective mother tongue and that it is also necessary to protect their right to conserve and develop their language under Article 29 of the Constitution.

It is vehemently urged on behalf of the petitioners that what is assumed to be a regulation by the Bench is in fact a restriction on the rights of the minorities and linguistic groups, and as such, the said observation is inconsistent with the view taken by the Full Bench in *General Secretary, Linguistic Minorities Protection Committee and Another etc. Vs. State of Karnataka and Another*, as affirmed by the Supreme Court in *English Medium Students Parents Association Vs. State of Karnataka and others*, where the policy of the law is clearly spelt out to the effect that whenever there is an element of compulsion, it would be violative of Articles 29 and 30 of the Constitution.

7. In *State of Karnataka v. Noble Saint Education Society* ILR 1993 (1) KAR 835, another Division Bench of this Court also does not agree with the view taken by the earlier Division Bench and seeks to clarify the same. Shivashankar Bhat, J speaking for the bench has observed thus at para 19:

While considering the right of the minorities under Article 30(1), whereunder, the right is absolute in character, Supreme Court pointed out that the State is competent to regulate the exercise of such a right by the minorities. What governs Article 30(1) also would govern the Fundamental Rights under Articles 19(1)(g) and 21, also. Supreme Court made a distinction between a "restriction" and a "regulation". Regulation secures the proper functioning of the institutions, in matters educational. In other words, while restrictions impede the exercise of the right, "regulations" polishes the right so that, there would be a proper and smooth exercise of the right in the interest of the very persons exercising the Fundamental Right.

8. Apart from the apparent inconsistency between the views taken by this Court in the aforesaid two cases, it is brought to our notice that the state has appealed against the judgment in *Sahyadri Education Trust Vs. State of Karnataka*, (as affirmed by the Division Bench), while granting special leave, the Supreme Court has made the following order--

Since education is in the concurrent list, we feel that it is proper to hear the Central Government on the question involved in these cases. The Central Government shall be impleaded as the respondent in all these cases.

These cases are referred to the Constitution bench since they involve interpretation of the provisions of the Constitution.

9. It is, however, submitted by the learned Advocate General that since the specific issues involved in the instant matter are not before the Constitution Bench, there is no impediment to proceed with these matters. Alternatively, it is suggested that in view of the constitutional question of public importance being involved as also the inconsistent. Views taken by two benches of this Court on the interpretation of Articles 29 and 30 of the Constitution pertaining to the language policy of the State, it may be appropriate to refer the matter for consideration by a larger Bench.

10. Having given our most anxious consideration, we are of the opinion that it is a fit case for consideration by the Full Bench. Hence, u/s 7 of the Karnataka High Court Act, we refer these matters for the opinion of the Full Bench. In the mean while status quo as directed earlier shall continue till further orders by the Full Bench in that behalf. 11. The papers be placed before the Hon"ble Chief Justice for appropriate orders.

The additional sets of papers to be filed within one week.

On 30.08.1994 the scope of reference was explained by the Division Bench as under:

In our Order dated 29-8-94, in the penultimate para it is stated that the matters are referred for the opinion of the Full Bench u/s 7. The intention of the Bench is to refer the entire matter for consideration by the Full Bench. The order stands clarified accordingly.

It is thereafter, that the Hon"ble Chief Justice ordered for placing this matter before the Full Bench.

Factual matrix

15. Though these writ petitions are filed by various sections of the public, the principal grievance of all these petitioners is the validity of the Government Order dated 22.04.1994, as amended by the Government Order dated 29.04.1994, by which the Government has formulated a policy, making it compulsory for all students from standards 1 to 4 to have primary education in their mother tongue.

16. The facts of the case are clearly set out in W.P. No. 14363/1994. The Government has filed a detailed counter. The literary figures of Kannada as well as Kannada Development Authority have also impleaded themselves in this writ petition to support the Government Order. Therefore, for purposes of convenience, the facts of the said writ petition and die statement of objections filed in the same are taken as the factual basis for deciding the dispute between the parties.

17. The Associated Management of Primary and Secondary Schools in Karnataka, a Government recognized unaided English medium schools Association, is the petitioner. It is a society-registered under the Karnataka Societies Registration Act, 1960 on 15.11.1989. It consists of recognized, unaided English medium primary and secondary schools managements in Karnataka. More than one lakh students are studying in the petitioners" Member - Institutions and more than 30,000 teachers are working with them. Over 120 schools are the constituents of the petitioners" society. All these schools were established before 19.06.1989.

18. The Government of Karnataka by its order dated 19.06.1989, issued ah order spelling out its language policy. The aforesaid order was challenged before this Court and the Supreme Court. The Supreme Court by its order dated 8.12.1993 in W.P.No.536/1991 and Civil Appeal Nos. 2856 & 2857 of 1989 declined to

interfere in the matter, holding that Article 32 of the Constitution cannot be a means to indicate policy preference. In the wake of the aforesaid order dated 8.12.1993, passed by the Hon'ble Supreme Court, respondent No. 1 issued an order dated 22.4.1994 bearing No. ED/28/PGC/94 purporting to re-affirm its policy set out in its earlier order dated 18.06.1989. The Government of Karnataka having regard to the difficulties and hardships involved in converting English medium schools to Kannada medium schools resorted to make the policy applicable only to the English medium schools started from 1989. A copy of the order is produced as Annexure-A. The petitioner contend that the said policy did not find favour with the activists and protagonists of Kannada language, who virtually raised a cold war against the Government of Karnataka demanding the retrospective and deadly uniform application of the language policy. The Government succumbed to the pressure of the Kannada agitationists and withdrew the exemption granted to the old schools, which were started prior to 1989 and issued a new order on 29.04.1994 bearing No.ED/28/PGC/94. A true copy of this order is produced as Annexure-B.

19. The petitioner further contends that as per the subsequent order (Annexure-B) all English medium schools in Karnataka are required to convert themselves into Kannada medium schools overnight This last minute decision has taken the petitioners by surprise. The petitioners' society do not give admission to 1st standard directly. Students passing out of upper kindergarten have been given admission to 1st standard in the same schools. The formalities of receiving and accepting of application forms for admission to 1a standard are already over before the closure of last term on 10.04.1994. The schools are all set to re-open on 25.5.1994. Each one of the English medium private schools in Karnataka has made huge investments by erecting buildings, purchasing buses and providing other educational facilities to the students. Each school has about 20 teachers who are teaching in English medium only. If the obligatory conversion process is brought into force, the entire present teaching staff has to be retrenched since it is not possible for them to teach in Kannada as they themselves have taken the education in English medium. The socio-economic implication of the impugned order is that, it swells the ranks of the unemployed English medium teachers. The State view cannot substitute the parental preference for the medium of instructions of wards. The new language policy results in injustice, inequality and disparity. It leaves free the affluent Kanadiga parents to send their wards abroad and get them educated in English and thereby ensure that such wards have an edge over their less fortunate brethren, who are ordained by the State to study in Kannada medium. In today's context, the students coming out of English medium schools have upward mobility. Those who belong to the centrally governed institutes like the ICSE, CBSE schools are even better equipped to succeed in national or international entrance tests and examinations. If the regional language is to be taught in principle to all students, then, let it be taught as the language and not as a medium. In fact, the anxiety of the State to teach a child in its mother tongue coercively with a sledge-hammer would only prove to

be counter productive. On the practical level, the introduction of such reforms, if they can be called reforms, should be based on careful planning. These are academic matters which concern the future generation. They need to be decided through public debate.

20. After a counter was filed, the petitioner filed a rejoinder pleading additional facts and pointing out that the Supreme Court's pronouncement is with reference to the Government Order dated 19.6.1989 whereas the subject matter of the present writ petition is the Government Order dated 29.4.1994. The Supreme Court has held, that the order dated 19.6.1989 is not open to challenge because there was no element of compulsion to study Kannada at the primary stage and that from standard 1 to 4 where mother tongue will be the medium of instruction, only one language from schedule I thereof will be compulsory and further, that from standard 3 onwards Kannada will be an optional subject for non-Kannada speaking students. The Government Order impugned in this writ petition departs and deviates from the Government Order dated 19.6.1989, the validity of which was upheld by the Supreme Court. Kannada is covertly made compulsory by the present impugned order. Hence, the judgment of the Supreme Court does not and cannot come in the way of this Court considering the present writ petition on merits. The judgment of the Supreme Court does not cover the issues arising for decision in the present petition. It was contended, that the fundamental rights of citizens cannot be infringed by the State taking shelter under the policy. The contention of the State, that parents do not have the right to decide in which language their children shall be instructed is diametrically opposed to the law declared by the Supreme Court, that the parents shall have the right to choose the medium of instruction of their children. It is because, the Government order dated 19.6.1989 did not infringe on the fundamental rights of the citizens, that the Supreme Court declined to interfere with the said order on the ground that it is a policy decision. In the present writ petition, the validity of the Government Order dated 29.4.1994 is challenged on the ground, that it violates the fundamental rights assured to the petitioners under Articles 14, 29 and 30 of the Constitution of India.

21. Subsequently, they have filed one more application for raising additional grounds contending, that the executive power of the State under Article 162 of the Constitution is Co-extensive with the State's legislative competence to enact a law and wherever the subject is not covered by an enacted law, the same can be operated upon by the State in exercise of its executive power. However, the executive power cannot be extended to impose restrictions on the exercise of fundamental rights and every act done by the State must, if it is to operate to the prejudice of any person, be supported by legislative authority. The impugned Government Order which imposes restrictions on the exercise of fundamental rights, in the absence of legislation authorizing the same is liable to be struck down.

22. In the Writ Petitions filed by the parents, parents associations and students

have contended that they have a fundamental right to choose the medium of instruction for their children as guaranteed under Article 19(1)(a)(g) of the Constitution of India and that has been denied to them by the impugned order. In the Writ Petitions filed by the religious denominations, they complain that they have a right to establish and maintain an educational institution, under Article 26 of the Constitution which right has been now infringed by the impugned order. In the Writ Petitions filed by linguistic and religious minorities they contend Article 30(1) of the Constitution of India confers a fundamental right to establish and administer educational institution of their choice, the word "their choice" includes the right to choose the medium of instruction in which they want to impart education and, therefore, the impugned orders violate their fundamental rights. The petitioners in some of the Writ Petitions have challenged the orders, communications, circulars and notices which have been issued giving effect to the impugned order directing the educational institutions to convert English Medium into Kannada Medium.

23. The 1st respondent - state filed a detailed statement of objections. They contend that the State Government passed an order dated 20.07.1982 prescribing (1) Kannada as the sole first language from 1st standard itself and (2) Kannada as the sole first language in secondary schools. This order prescribing Kannada as a compulsory subject from the 1st standard and as sole first language in secondary schools was challenged in certain writ petitions before this Court and the matter was referred to a Full bench. The Full Bench in the case of General Secretary, Linguistic Minorities Protection Committee v. State of Karnataka 1989 (Kar) 226 by majority ruled that prescribing Kannada compulsory subject from 1st standard and also prescribing it as sole first language in secondary schools is violative of the right of the minorities guaranteed under Articles 29 and 30 of the Constitution of India. It further ruled that the same was also violative of Article 14 of the Constitution of India. The Full bench very strongly favoured prescribing mother tongue as the medium of instruction from standard 1 to 4 and introducing Kannada as the second language from 5th standard onwards in the case of students who have not studied Kannada from standards 1 to 4. It was also suggested that third language could be introduced at the high school level. Liberty was reserved to the Government to formulate its language policy. The State Government being aggrieved by the majority decision appealed to the Supreme Court. Though leave to appeal was granted, as the Supreme Court did not grant any interim order of stay, following the Full Bench judgment and pending decision of the Supreme Court in this behalf, the Government Order dated 19.6.1989 was issued in strict conformity with the majority judgment of the Full Bench of this Court. Even this Government Order of the year 1989, prescribing mother tongue as the medium of instruction for standards 1 to 4 and prescribing Kannada as a compulsory subject from 5th standard onwards in the case of those who have not studied Kannada from standards 1 to 4 was challenged by filing a writ petition before the Supreme Court under Article 32 of the Constitution of India in W.P. No.

336/1991. The said writ petition as well as the appeals filed by the State challenging the Full Bench judgment of this Court were heard by the Supreme Court and a common judgment was rendered in the case of English Medium Students Parents Association Vs. State of Karnataka and others, It is respectfully submitted that all the contentions now urged in the present writ petitions are liable to be negated in view of the aforesaid Supreme Court judgment which is binding on all, as the Law of the land.

24. It is contended, that the Supreme Court in the aforesaid decision fully upheld the majority view of the Full Bench of this Court and dismissed the appeals preferred by the State. In effect, the Supreme Court held, that mother tongue should be the medium of instruction from standards 1 to 4. It pointed out that all the experts are unanimous in their opinion that children should begin their schooling through the medium of mother tongue and that there is great reason and logic behind this. When the tender minds of the children are subjected to alien medium, the learning process becomes unnatural. It inflicts cruel strain on the children, besides rendering educational process artificial and torturous. The Supreme Court has also upheld the order making Kannada as a compulsory subject in respect of all the students even if the same is not their mother tongue from 5th standard onwards. It was held that the Kannada being the official language of the State, it is open to the State to make it compulsory language from 5th standard onwards.

25. It is also contended, that the present Government Order impugned in the writ petition, is based on the judgment of the Full Bench of this Court as affirmed by the Supreme Court. There is no infirmity in the order now passed. Though initially the Government Order excluded from its purview, schools which have been started prior to 1989, it was soon realized that such a classification was neither warranted nor beneficial from the point of view of having a common language policy in respect of all the schools situated in the State and that the classification itself has no rational nexus to the object sought to be achieved. It was also felt that such a classification would be discriminatory and the same would defeat the very object of the policy embodied in the Government Order which has been upheld by the highest Court of the land. Further, such differential treatment classifying them as two categories of schools only on the basis of the date of starting of the schools would have resulted in unnecessary confusion and administrative and academic problems. It was not expedient to have two sets of syllabus and two types of examinations. In the circumstances, the Government issued the Government Order dated 29.4.1994 superseding the Government Order dated 22.4.1994. By this, a uniform policy has been formulated for all the schools without any discrimination. Enunciation of such uniform policy is in the interest of academic discipline.

26. It is further contended that, the said Government Order does not infringe any of the constitutional or other rights of the parents or the management. The Government Order embodies measures which are regulatory in nature and which

are absolutely necessary for maintaining academic discipline. The State is entitled to enforce regulatory measures in the matter of education and the present measure is one such regulatory measure which the Government is competent to impose. Neither the management nor the parents have an absolute right to decide about the medium of instruction. As pointed out by the Supreme Court in the aforesaid case, the question relating to medium of instruction is a matter of policy and the State Government is entitled to formulate such policy as it considers beneficial to the students. The Supreme Court has pointed out, that the Courts have no power or jurisdiction to entertain with such formulation of policies and the same should be left to the discretion of the concerned State Governments. Therefore, it was contended, the present writ petition filed challenging the Government Policy was not maintainable. The present Government Order is in substance the same as the Government Order dated 19.6.1989. Government Order having been upheld by the Supreme Court, challenge to the present Government Order is unsustainable. It was specifically contended, that in formulating the policy, the Government is guided not only by the opinion of the academicians, experts, literary figures and educationists but also the ruling of the High Court and the Supreme Court. It is not the legal requirement to consult each and every school or the management. It is also not practicable to do so. The contention, that the principles of natural justice have been violated is untenable. The doctrine of promissory estoppel can never be applied to the facts of the present case.

27. Respondents 3 to 19 who are literary figures of Kannada literature, filed an application to implead themselves as respondents, as persons who are interested in the subject matter of the writ petition in view of the great public interest involved in the case. They desire to support the validity of the Government Order as the Government Order came to be passed after incessant struggle carried on by the people of the State for nearly two decades. They have re-iterated the stand of the Government and have referred to the judgment of the Full Bench of this Court as well as the Division Bench and the judgment of the Supreme Court to support the Government Order. They were impleaded and heard.

28. IA VII was filed by Kannada Development Authority to get itself impleaded in the writ petition. The petitioner agreed that they are necessary and proper party to the petition. Therefore by an order dated 30-8-2002 the impleading application was allowed, Kannada Development Authority was impleaded as respondent No. 20 and was heard.

Rival Contentions:

29. Sri. U.L. Bhat, learned Senior Counsel who led the arguments on behalf of the petitioners in all these cases urged, the following grounds for quashing the impugned order:

(1) "Right to education" is implicit in "right to life" a fundamental right guaranteed under Article 21 of the Constitution. It is for proper exercise of this

right, the child or the parents of the child, have right to choose the medium of instruction.

(2) The right to freedom of speech and expression as contained in Article 19(1)(a) of the Constitution includes right to propagate education and right to receive information within which, the right to choose a medium of instruction, acquire information, knowledge, is implicit and a fundamental right.

(3) Right to carry on any occupation under Article 19(1)(g) includes the right to establish an educational institution to impart education in a language of the choice of the citizen. Similarly, the right to establish and maintain an institution for charitable purposes which includes educational institution is conferred on every religious denominations, majority or minorities under Article 26 of the Constitution. Under Article 29(1) of the Constitution, every section of the citizens in this country having a distinct script or culture of its own have been given the right to conserve the same and for the said purpose establish and administer educational institutions of their choice. Similarly, the linguistic and religious minorities have been conferred the fundamental right to establish and administer educational institutions of their choice and, therefore, establishment and administration of an educational institution includes choosing the medium of instruction in which education is to be imparted and is a fundamental right guaranteed to every citizen, every religious denomination and linguistic and religious minorities under Articles 19(1)(g), 26, 29(1) and 30(1) of the Constitution of India. The Government Order is also violative of Article 29(2) of the Constitution which frowns upon denial of admission to a citizen to any educational institution maintained by the State or receiving aid out of state funds on the ground of language.

(4) The impugned order is not a regulation issued for maintaining academic discipline. It has the effect of curtailing the fundamental right in establishing an educational institution of their choice and, therefore, it is a restriction.

(5) The parent has a fundamental right to choose the medium of instruction of their child which is now impinged by the impugned order.

(6) Though the impugned order contains the policy of the Government with reference to medium of instruction which the Court should not interfere, but as the impugned policy decision violates the fundamental rights of the citizens and is passed in violation of principles of natural justice it is vitiated and calls for interference.

(7) Article 350-A of the Constitution has no application to the facts of this case, as it only deals with an obligation of the State to provide primary education in mother tongue to the linguistic minorities.

(8) The impugned orders are passed on the basis of Dr. H. Narasimhaiah Committee report as well as on the basis of observations and directions issued by this Court and the Supreme Court and therefore in the first place it is not in

conformity with the orders passed in the earlier proceedings by this Court and also there is no application of mind while passing the impugned order.

(9) Before passing the impugned order, the aggrieved persons are not heard and therefore, the impugned order also violates the principles of natural justice.

(10) The restriction curtailing the enjoyment of a fundamental right cannot be imposed by an executive order under Article 162 of the Constitution and it has to be by law.

For the aforesaid reasons, the petitioners want the impugned order to be quashed.

30. Per contra, Sri. B.V. Acharya, learned Sr. Counsel appearing for the State of Karnataka contended, that the question raised in this writ petition is covered by the judgment of the Supreme Court in English Medium Students Parents Association (Supra) and is also covered by the judgment of the Full Bench of this Court in ILR 1989 Kar. 437. Secondly, he contended that the impugned order was passed in obedience to the direction of the Division Bench of this Court and is in consonance with the Division Bench judgment in ILR 1989 Kar.1595 which has been affirmed by the Supreme Court.

Even on merits, it was contended, that the impugned order is a regulatory measure enforced to achieve excellence in education. The experts are almost unanimous in their opinion that mother tongue should be the medium in primary stage. The observations of the Supreme Court and the Full Bench and the Division Bench of this Court fully supports the same. Even if an observation therein are held to be not a precedent, the impugned Government Order can be justified on the basis of Article 350-A alone. The Government Order making it obligatory to follow constitutional mandate cannot be held to be illegal or invalid. The choice of the parent is to agree to the regulatory measure within the competence of the State. The said policy knows what is good for a citizen, even though the citizen also knows what is good for him. If the State has the duty to provide the facility, it also has a right to insist that the said facility shall be availed of. It is the accepted position that all the rights which minorities possess, the majority also possess. No constitutional provision is violated. Since it is a matter of policy, the Courts cannot interfere. Government may evolve a new policy taking into consideration the new circumstances and the development.

31. Professor Ravivarma Kumar, learned Senior Counsel appearing for the Kannada Development Authority, Respondent No. 20, in addition to reiterating the submissions of the learned Counsel for the State, also contended that a proper interpretation of Article 350-A coupled with the fundamental right guaranteed to every citizen of this country to have free and compulsory primary education up to the age of 14 makes it clear, not only the student has to be provided education in the mother tongue, it has a right to insist that every student in the primary school ought to study in their mother tongue only. It is acknowledged all over the world, that it is the mother tongue alone which is

more suitable to the child to have education at the initial stage. Therefore, when the Government in the interest of the student, in discharge of its constitutional obligations, formulates the policy prescribing that the children from standards 1 to 5 should study in their mother tongue, it does not violate any constitutional provision nor is against the interest of the child or the public at large.

32. Smt. Hemalatha Mahishi, learned Counsel appearing for the respondents 3 to 19, the literary figures of Karnataka, re-iterated the aforesaid contentions and contended, that the State has a right to insist that a child shall have its primary education in its mother tongue, even though the parent of the child may not agree, as ultimately it is the State which knows what is good for the child and the nation and the parent has no such unbridled right to insist that he will not educate his child in the mother tongue and he has the choice to choose the medium of instruction. The children learn better in their own mother tongue especially in primary level. It is in their own interest and for the welfare of them to learn in their own mother tongue. All over the world it is recognised as a right of the child to learn in the mother tongue. Parents are duty bound to protect the interest of the child. It is their primary responsibility. However, the ultimate protector of the interest of the child is the State and the ultimate responsibility rests with the State. No one has any right in respect of a child. Only duties and responsibilities. Constitutional mandate is to preserve linguistic and cultural diversity. In its role as the protector of child's interest, State has got every right to formulate the language policy and declare mother tongue as the medium of instruction in the primary stage. Parents have no choice, where child's interest and welfare is involved. The parents are guided only by their personal whims and fancies and imaginary aspirations and in pursuit of the same, in fact, they will be acting against the interest of the child. In support of her contention, she has relied on relevant literature as could be gathered from the articles published in various international magazines.

Points for consideration:

33. In the light of the aforesaid submissions, the questions that arise for consideration are as under:

1) Is the right to choose the medium of instruction at the primary level, either to study or impart education, a fundamental right guaranteed under any of the Articles 19(1)(a)(g), 26, 29 and 30(1) of the Constitution of India?

2) Can the State by way of regulation restrict the said right of choice to mother tongue or regional language only?.

34. The answer to these intricate questions covers various components such as the opinion of experts in the educational field, opinion of statesmen, legal and constitutional issues, concept of rights, in particular fundamental rights under the Indian Constitution, concerns of citizens and in particular the parents of the child, social and cultural issues, interests of the language, State and Nation, rights and obligations of a State in a democratic set up and a host of other factors. It is in

this backdrop we have attempted to answer the issues raised in this case.

Mother Tongue as Medium of Instruction

35. Mother-tongue is the language that child learns first. Often the child learns the basics of his first language from his or her family. Almost every child has an imagination, an instinct for words, a protective health, wealth of idea and fancy. The basic knowledge can easily be gained through the mother-tongue. The energies of the child should be protected through the mother tongue. The term mother-tongue should not be interpreted to mean that it is the language of one's mother only. It would be a narrow definition. Broadly speaking it is the language, which a child is most familiar with. Generally, the parents are the proper persons who can assess and say which language the child is most familiar with. This question of primary education in mother-tongue of the child has agitated the minds of educationists, statesmen and experts in the field for over a century. In this context, it will be useful to refer to such opinions within the country, outside the country and all over the world to understand the philosophy behind this question of mother-tongue being the medium of instruction at primary level to a student.

Mahatma Gandhi

36. Mahatma Gandhi, the Father of the Nation, on more than one occasion emphasised on the mother-tongue being the medium of instruction. He forcefully said:

The babe takes its first lesson from its mother. I, therefore, regard it as a sin against the mother land to inflict upon her children a tongue other than their mother's for their mental development.

xx xx xx I hold it be as necessary for the urban child as for the rural to have the foundation of his development laid on the solid rock of the mother tongue.

XX XX XX Who can calculate the immeasurable loss sustained by the nation owing to thousands of its youngmen having been obliged to waste years in mastering a foreign language and its medium, of which in their daily life they have the least use and in learning which they had to neglect their own mother-tongue and their own literature.

Again to quote Mahatma Gandhi: "The medium of instruction should be altered at once and at any cost, the provincial languages being given their rightful place. I would prefer temporary chaos in higher education to the criminal waste that is daily accumulating."

Mahatma Gandhi in his Speech Published in Young India, 1-9-21

The foreign medium has caused brain fag, put an undue strain upon the nerves of our children, made them crammers and imitators, unfitted them for original work and thought, and disabled them for filtrating their learning to the family or the masses. The foreign medium has made our children practically foreigners in

their own land. It is the greatest tragedy of the existing system. The foreign medium has prevented the growth of our vernaculars. If I had the powers of a despot, I would today stop the tuition of our boys and girls through a foreign medium, and require all the teachers and professors on pain of dismissal to introduce the change forthwith. I would not wait for the preparation of textbooks. They will follow the change. It is an evil that needs a summary remedy.

The Noble Laureate Sri Rabindra Nath Tagore had expressed his views in this matter in no uncertain terms:

In no country in the world, except India, is to be seen this divorce of the language of education from the language of the pupil. Full hundred years have not elapsed since Japan took its initiation into Western culture. At the outset she had to take recourse to textbooks written in foreign languages, but from the very first, her objective had been to arrive at the stage of ranging of the country. It was because Japan had recognized the need of such studies, not as an ornament for a select section of her citizens, but for giving power and culture to all of them, that she deemed it to be of prime importance to make them universally available to her people. And in this effort of Japan to gain proficiency in the Western arts and sciences, which were to give her the means of self-defense against the predatory cupidity of foreign powers, to qualify her to take an honoured place in the comity of nations, no trouble or expense was spared. Least of all was there the miserly folly of keeping such learning out of easy reach, within the confines of a foreign language.

Sri Aurobindo. in the year 1920-21 wrote a chapter in *Arva*. the relevant portion reads as under:

The mother tongue is the medium of education and therefore the first energies of the child should be directed to the thorough mastering of the medium. Almost every child is an imagination, an instinct for words, a dramatic faculty, a wealth of idea and fancy. These should be interested in the literature and history of the nation. Instead of stupid and dry spelling and reading books, looked on as a dreary and ungrateful task, he should be introduced by rapidly progressive stages to the most interesting parts of his own literature and the life around him and behind him, and they should be put before him in such a way as to attract and appeal to the qualities of which I have spoken.

The first attention of the teacher must be given to the medium and the instruments and until these are perfected, to multiply subjects of regular instruction is to waste time and energy. When the mental instruments are sufficiently developed to acquire a language easily and swiftly, that is the time to introduce him to many languages, not when he can only partially understand what he is taught and masters it laboriously and imperfectly. Moreover, one who has mastered his own language, has one very necessary facility for mastering another. With the linguistic faculty unsatisfactorily developed in one's own tongue, to master others is impossible. To study science with faculties of

observation, judgment, reasoning and comparison only slightly developed is to undertake a useless and thankless labour. So, it is with all other subjects.

37. Though Dr. Gokak Committee was constituted for the purpose of finding out the feasibility of imposing Kannada as a compulsory subject for non-Kannadigas, in the course of the report, it has made few comments on the feasibility of Kannada being the medium of instruction which reads as under:

Kannada has become the official language. The day is not far off when Kannada should be the sole official language in Karnataka. The authorities of the Public Service Commission are yet to realise this and translate it into action. The students and their parents should be convinced of the necessity and benefits of Kannada as the medium of instruction at the University level. Proficiency in English should be attained by studying it as a language. They should realise the tragic fact that if English is retained as the medium of instruction only the process of instruction will be impaired without helping to achieve any proficiency in English. Kannada is prescribed as the medium of instruction only at higher secondary levels.

Almost all the modern languages possess the resplendent literature of the ancient and modern civilization. It is an accepted principle that education of a child should be through the mother-tongue. A child right from its birth grows amidst the atmosphere of that language. A child's knowledge can develop only through its mother tongue. In our country generally every state has provided schools at the primary level for the linguistic minority, imparting education in their respective mother tongues, subject to certain rules. It is necessary on the part of the Government to formulate a specific policy as regard to the mother tongue of the linguistic minority and the medium of instruction at middle school level. The policy of Karnataka State is most liberal in this matter. Being liberal is certainly good. But many a times this attitude is coupled with ignorance. In Karnataka the Government are running schools at their cost for the linguistic minorities with their respective languages as the medium of instruction, even at middle school level.

38. In 1956 after reorganization of the States, the Parliament amended the Constitution of India by introducing Article 350-A which casts a duty on every State and local authority to endeavor to provide adequate facilities for instruction in the mother tongue at primary stage of education to children belonging to linguistic minority groups. Dealing with this aspect the Supreme Court in the case of English Medium Students Parents Association Vs. State of Karnataka and others, observed as under:

All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is great reason and justice behind this. Where the tender minds of the children are subject to an alien medium the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the

educational process becomes artificial and torturous. The basic knowledge can easily be gathered through the mother-tongue. The introduction of a foreign language tends to threaten to atrophy the development of mother-tongue. When the pupil comes of age and reaches the Vth standard level, the second language is introduced. The child who has not taken Kannada as a first language is required to take it as a second language. At the secondary stage the three language formula is introduced. However, in cases of non- Kannada speaking students grade marks up to 15 are awarded. Certainly, it cannot be contended that a student studying in a school from Karnataka need not know the regional language. It should be the endeavour of every State to promote the regional language of that State. In fact, the Government of Karnataka has done commendably well in passing this GO. Therefore, to contend that the imposition of study of Kannada throws an undue burden on the students is untenable.

39. The opinion of the educational experts and international organizations as reflected in news letters, magazines, resolutions world over are as under:

In the Education Today Newsletter July-September, 2003 - the mother tongue dilemma, it is stated as under:

(a) The mother-tongue dilemma: Studies show that we learn better in our mother tongue. But then it has to be taught in school, which is not the case of all minority languages. Teachers have known for years the value of teaching children in their mother tongue.

(b) Better Results:

Many studies have shown children to better if they get a basic education in their own language. This is important because about 476 million of the world's illiterate people speak minority languages and live in countries where children are mostly not taught in their mother tongue.

In New Zealand, a recent study showed that Maori children who received basic education in their own language performed better than those educated in English only, note Don Long, who produces books and teaching materials in the country's minority languages.

In United States, a research unit at George Mason University in Virginia has monitored results at twenty-three primary schools in fifteen States since 1985. Four out of six different curricula involved were partly conducted in the mother tongue. The survey shows that, after eleven years of schooling, there is a direct link between academic results and the time spent learning in the mother tongue. Those who do best in secondary school have had a bilingual education.

Learning in the mother tongue has cognitive and emotional value. Minority pupils feel more respected when it is used," says Dutcher. Clinton Robinson, an education and development consultant and former head of international programmes at the Summer Institute of Linguistics in the United Kingdom, says "children who learn in another language get two messages - that if they want to

succeed intellectually it won't be by using their mother tongue and also that their mother tongue is useless.

(c) Revising language policies:

Some rich countries have become more aware of the issue and have started revising their language policies. The idea that integration means giving up your mother tongue is no longer sacred. "The Jacob in tradition of punishing children for using dialect languages at school has changed," says Michel Rabaud, head of the French government's inter-ministerial task force on mastering the French language, "speaking a language other than French, regional or otherwise, is no longer a handicap for a child."

The countries of the North are taking in more and more immigrants and have to adapt to their presence. In 2000, more than a third of the population of western Europe under 35 was of immigrant origin, according to a recent UNESCO report on linguistic diversity in Europe.

Some countries have already responded. They include the Australian State of Victoria, where bilingualism has been steadily introduced in all primary schools over the past twenty years. In 2002, compulsory courses in "a language other than English" involved forty-one languages in primary and secondary schools. Indonesian, Italian, Japanese, German and French are the most popular.

(d) Huge Obstacles:

Mother tongue education and multilingualism are increasingly accepted around the world and speaking one's own language is more and more aright. Encouraging education in the mother tongue, alongside bilingual or multilingual education, is one of the principle set out by UNESCO in a new position paper.

On top of this, languages are now regarded as an integral part of a people's identity, as shown in the UNESCO Universal Declaration on Cultural Diversity (2001), which recognizes the importance of languages in promoting cultural diversity. "But the technical issues of how to teach them are involved too. The main thing is to respect local languages and legitimize them within the school system as well as giving pupils access to a national and foreign language.

(e) Apolitical decision:

Minorities are usually the victims and the first thing they get hit by is typically a ban on using their own language. Just one example is the systematic repression of Indonesia's Chinese community during President Suharto's regime, when use of Chinese was officially forbidden.

But encouraging the mother tongue is usually a calculated political decision. After independence in Africa, one of the first steps by the new governments was to rehabilitate local languages.

Swahili became Kenya's official language in 1963 and Guinea launched a

linguistic desalinization by proclaiming the country's eight most widely used languages to be official ones and launching literary campaigns.

UNESCO - Education - Message from the Director-General of UNESCO for International Mother Language Day: 21st February 2005:

International Mother Language Day, which the international community has been celebrating with UNESCO every 21st February for the past six years, provides an especially meaningful opportunity for debate and action to promote all the languages spoken on our planet. As a medium for conveying knowledge, for learning, dialogue and expressing an individual culture's view of reality, each of the six thousand languages currently spoken on earth - by reason of its own irreplaceable originality - helps nurture and enrich the cultural heritage of humankind.

If culture is, as UNESCO has been saying since the Convergence on Cultural Policies for Development in Stockholm in 1998, at the earth of sustainable development, then language becomes a key factor not just in endeavors to promote cultural diversity and quality education suited to the needs of learners, but also in the fight against poverty. So teaching a mother language and multilingualism are the cardinal points of a sustainable development that safeguards each individual's attachment to his or her native culture while ensuring that every one can open up to others and reap the benefits of an increasingly interactive world.

UNESCO - EFA Global Monitoring Report - 2005

Improving Teaching and Learning - Language for Instruction Matters --

Initial literacy is acquired more easily in the mother tongue:

The situation in South-East Asia and China illustrates the diversity of languages and of patterns of language used in school. In this part of the world there is a general trend towards more widespread use of local languages in the first few years of primary education.

There is now a strong body of evidence that bilingual schooling offers significant benefits in learning outcomes. In the most successful models, the mother tongue is used in the early years of schooling so that children can acquire and develop the literacy skills that enable fuller participation in learning activities. In a growing number of countries, after four or five years (earlier in some cases) there is a transition to learning and using the second or foreign language as the medium of instruction. In this way initial literacy is acquired more easily, facilitating the acquisition of the language that will become the medium of instruction for the rest of the school years.

Papua New Guinea (PNG) has over 830 languages, and at least 434 local languages are used for initial instruction in schools. Popular demand for the use of local languages is spearheaded a remarkable reform story that has had

broader implications for the primary school system. In the late 1970s and early 1980s village vernacular schools were introduced in Bougainvillea province, where parents felt strongly that their language and culture should figure more prominently in education to counter evidence of alienation and social problems among young people.

Implementation of Mother-Tongue Teaching in Hong Kong Secondary Schools: some recent reports:

While most primary school education in Hong Kong is the mother tongue and most university level education involves a considerable amount of English, until 1997 a great deal of secondary education was in English.

Starting with the 1998 school year, 307 government and government-aided secondary schools in Hong Kong were required to adopt mother-tongue teaching, while 114 schools were allowed to continue with English medium instruction because of their previous high achievement.

The Hong Kong Department of Education defended its decision claiming that, "educational research worldwide and in Hong Kong show that students learn better through their mother-tongue", and that students in Chinese medium classes have outperformed those in English-medium classes in both Chinese and English on the Hong Kong Certificate of Examination.

In spite of the initial opposition from parents, students, teachers and administrators a year ago, findings from the above studies appear to show that mother-tongue teaching has provided a positive, non-threatening learning environment for students, and the feeling that they are making progress in English. Students in Chinese-medium programs appear to be more active, appear to learn more subject matter, enjoy school more, and are improving in English.

The UNESCO position paper, *Education in a Multilingual World* (2003) says clearly:

1. Instruction in the mother tongue is essential for initial instruction and literacy and should be extended to as late a stage in education as possible.
2. Communication, expression and the capacity to listen and dialogue should be encouraged: first of all in the mother tongue, then, if the mother tongue is official or the national language in the country, in one or more foreign languages.

Historically, may it be Europe, Asia or South America, only those countries have attained higher literacy rates where mother tongues were/are used as the medium of instruction at the elementary and secondary level of schooling.

England had scant literacy rate when Latin was the medium of instruction. The literacy rates improved when French was adopted, but it still remained limited to middle income groups. Mass literacy was only achieved when English, the mother tongue of the inhabitants, was made the medium of education.

Kothari Report:

Medium of Education at School & College:

The medium selected should enable students to acquire knowledge with facility, to express themselves with clarity and to think with precision and vigour. From this point of view the claims of the mother tongue are pre-eminent.

The use of first and second languages in Education: a review of educational experience Washington D.C. World Bank. Country Department III:

The most important conclusion from the research and experienced reviewed in this paper is that when learning is the goal, including that of a second language, the child's first language (i.e., his or her mother tongue) should be used as the medium of instruction in the early years of schooling.... The first language is essential for the initial teaching of reading, and for comprehension of subject mater. It is necessary foundation for cognitive development upon which acquisition of the second language is based:

Mehrota. S. (1998) Education for All: Police lessons from High-Achieving Countries: UNICEF staff working papers. Newyork. UNICEF: "In a situation where the parents are illiterate.... If the medium of instruction in school is a language that is not spoken at home the problems of learning in an environment characterized by poverty are compounded, and the chances of dropout increase correspondingly. In this context the experience of high achievers has been unequivocal: the mother tongue is used as the medium of instruction at the primary level in all cases.... There is much research which shows that the students learn to read more quickly when taught in their mother tongue. Second, students who have learnt to read in their mother tongue learn to read in a second language more quickly than do those who are first taught to read in second language. Third, in terms of academic learning skills as well, student taught to read in their mother tongue acquires such skills more quickly.

International Conference on Education 46th Sessions 2001: Final report:

It is increasingly obvious that the language of instruction at the beginning of one's education, at such a crucial moment for future learning, should be the mother tongue.

International Conference on Education 46th Session 2001: Final Report, P.17:

Educational contents needs to reflect the growing importance of communication, expression and the capacity to listen and dialogue, first of all in the mother tongue, then in the official language in the country as well as in one of more foreign languages.

Amman Affirmation (1996): the essential role of the mother tongue for initial instruction must be acknowledged.

The Delhi Declaration and Framework for Action, Education for all Summit (1993):

Where the language of instruction is the language other than mother tongue of

the learner, it is likely that initial learning will be slower and achievement lower. For this reason, educators have long advocated the benefits of offering, wherever possible, initial instruction in the mother tongue.

40. Therefore, studies worldwide show that the Children learn better in their mother-tongue. Studies have shown children do better if they get a basic education in their own language. Encouraging education in the mother-tongue, alongside bilingual or multilingual education, is one of the principles set out by UNESCO in a new position paper. Hence 21st February of each year is proclaimed in 1999 by UNESCO as International Mother Language Day. UNESCO's universal declaration on cultural diversity (2001) recognizes the importance of languages in promoting cultural diversity and languages are regarded as an integral part of people's identity. In the most successful models, the mother-tongue is used in the early years of schooling so that children can acquire and develop the literary skills that enable fuller participation in learning activities. All the countries of the world are leaning towards earlier education in the mother-tongue medium. India is no exception to this worldwide movement. Constitution of India in Article 350-A stresses the importance of giving instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups. Many states in India have already adopted this policy and are trying to introduce mother-tongue as the medium of instruction in the primary classes. The Indian languages are struggling to survive against the onslaught of English language and now they are trying to establish their legitimate place in the education system of the country. For the Indian languages to survive as living languages, it is very essential and urgent that they are taught and used as medium of instruction in the primary school level. Just speaking a language is not sufficient. Literacy means acquiring the skill of writing and reading.

41. Therefore, all over the World it is universally accepted that the child should begin its education in the mother tongue. It is the mother tongue which is best suited, at the tender age, to acquire and develop literary skills, that enable fuller participation in learning activities. Studies have shown that the students learn better through their mother tongue. It creates a positive, non-threatening learning environment. It helps them to express themselves with clarity and to think with precision and vigor. Therefore, the first energies of the child should be directed to the thorough mastering of mother tongue. A child's right from its birth grows amidst the atmosphere of its mother tongue. Learning in the mother tongue has cognitive and emotional value.

Therefore, there is no two opinion worldwide regarding the utility and importance of the mother tongue being the medium of instruction at the primary level of education.

Article 350-A of the Constitution

42. Sri. Ravivarma Kumar, the learned Senior Counsel appearing for the Kannada Development Authority submitted, a constitutional right to have primary

education in mother tongue is recognised under Article 350-A of the Constitution. By a Constitutional mandate an obligation is cast on every State and on every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to the children belonging to the linguistic minority groups. The responsibility of ensuring such duty is conferred on the President of India and not on the Courts. A duty to provide adequate facilities for instruction in the mother tongue is coupled with a right to insist on mother tongue being the medium of instruction at the primary stage of education. When the said power coupled with the duty has been performed by the State, no writ can lie to annul such solemn duty performed by the State.

43. In order to appreciate this contention let us look at the Article which is enacted by the Constitution VII Amendment Act 1956, which reads as under:

350-A. Facilities for instruction in mother-tongue at primary stage

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provisions of such facilities.

44. For proper appreciation of this Article, it is necessary to have the historical background. Prior to independence, the medium of instruction in many schools was English. The native languages were relegated to the background. The fight for freedom not only was directed against the English men, the Rulers, but also against their language i.e., English. After independence, there was no single Indian language which could replace English, as language of the country. The provinces as they existed on the date of independence, had a large mix of people speaking different languages, though one single language was dominant in that province. There was a demand for switching over to the regional language in education. In that context it was not possible to force the linguistic minorities to switch over to the regional language of the provinces. Their interest had to be protected. This problem was agitating the mind of the rulers of the day. It is clearly reflected in the following resolution which was adopted by the Provincial Education Ministers' Conference of 1949 and approved by the Central Advisory Board of Education and Government of India.

The medium of instruction and examination at the Junior Basic Stage must be the mother-tongue of the child and where the mother-tongue is different from the. Regional or State Language, arrangements must be made for instruction in the mother-tongue by appointing at least one teacher, provided there are not less than 40 pupils speaking the language in the whole school or ten such pupils in the class. The mother-tongue will be the language declared by the parent or guardian to be the mother-tongue. The regional or State language where it is different from the mother-tongue should be introduced not earlier than class 3 and not later than the end of the Junior Basic Stage. In order to facilitate the

switching over to the regional language as medium in the secondary stage, children should be given the option of answering questions in their mother-tongue, for the first two years after the Junior Basic Structure.

At the secondary stage, if the number of pupils, whose mother-tongue is a language other than the regional or State language, is sufficient to justify a separate school in an area the medium of instruction in such a school may be the mother-tongue of the pupils. Such schools if organised and established by private societies or agencies, will be entitled to recognition and grants-in-aid from Government according to the prescribed rules. The Government will also provide similar facilities in all Government Municipal and District Board Schools where one third of the total number of pupils of the school request for instruction in their mother-tongue. The Government will also required aided schools to arrange for such instruction if desired by the one third of the public pupils provided that there are no adequate facilities for instructions in that, particular language in the area. The regional language will, however, be a compulsory subject through out the secondary stage.

The arrangements prescribed above will in particular be necessary in Metropolitan cities or places where a large number of people speaking different language live or areas with a floating population speaking different languages.

45. This vexed question agitated the minds of our constitution makers also as is clear from the discussions while framing the Constitution. There was a demand to include in the fundamental rights, the right to primary education to all children and also that the said primary education should be in the mother tongue of the child. There was a reference to a resolution accepted by the Government of India and published in its gazette on 14th August 1948, which contains the following passage.

The principle that a child should be instructed in the early stage of its education through the medium of the mother tongue has been accepted by the Government. All educationists agree that any departure from the principle is bound to be harmful to the child and therefore to the interest of the society.

The Government of India is of the opinion that in the larger interest of the country, it is desirable that the policy enunciated above should be followed by all Provinces and State Governments.

46. Therefore, according to this very resolution it is accepted that it is essential in the interest of the society as well as the minority that the children should be imparted primary education through the medium of the mother tongue.

47. During the debates in the Constituent Assembly Sri. Pandit Govind Vallabh Pant said as under:

In our country, vast numbers are illiterate and they have to be given the benefit of at least primary education. Primary education, in order that it may be made even universal, will cost millions and millions. Now, how are our schools to be

established and how are our schools to be run? If every school should have two or three sets of teachers, one knowing Nagari and the other knowing Urdu, indiscriminately regardless of the number of students interested in either are we capable of providing for that financially? If such a policy were followed, then we would not be able to introduce universal primary education, not to talk of compulsory primary education, till Doomsday. Obviously, you have to examine the situation in every place and then provide such machinery as would yield maximum results.

48. Sri. Dr. B.R. Ambedkar said as under:

Coming to the other question, namely, whether this Constitution should not embody expressly in so many terms, that the right to receive education in the mother tongue is a Fundamental Right. Let me say one thing and that is that I do not think that there can be any dispute between reasonably minded people that if primary education is to be of any service and is to be a reality it will have to be given in the mother tongue of the child. Otherwise primary education would be valueless and meaningless. There is no dispute, I am sure, about it and in saying that I do not think it necessary for me to obtain the authority of the Government to which I belong. It is such a universally accepted proposition and it is so reasonable that there cannot be any dispute on the principle of it at all. The question is whether we should incorporate it in the Law or in the Constitution. I must frankly say that I find some difficulty in putting matter into a specific article of the Constitution.

(underlining by us)

49. After a heated debate in the Constituent Assembly when the final draft of the Constitution was presented to this country, the Constitution did not contain any Article providing primary education as the fundamental right, much less, mother tongue as the medium of instruction in primary education.

50. The structure of the Indian Union has been largely determined by the accidents and circumstances attuning the expansion of British Rule in India. The formation of British Indian provinces in 18th and 19th centuries was governed by considerations of administrative convenience and economy and reasons of military strategy and security. With the emergence of nationalism, towards the end of 19th century, the policy of balance and counter balance began to override purely administrative considerations in making territorial changes. The Indian National Congress accepted in 1920 linguistic redistribution of provinces as apolitical objective. After independence there has been a growing recognition of the need to balance die linguistic number with others, such as, national unity, administrative, economic and other considerations. Therefore, the Union of India constituted a committee for reorganisation of the States in India, which was headed by Justice Fazal Ali, and is popularly known as Fazal Ali Commission. The said Commission made several recommendations. The relevant recommendations of the said Commission are as under:

II. Recommendations of States Reorganisation Commission.

758. The scheme of redistribution of State territories which we have recommended will result in many cases in bringing together people seeking a common language. To that extent it will reduce the number of linguistic minorities. It is, however, quite evident that even if the linguistic principles were applied very rigidly, the problem of linguistic minorities will, by no means, be solved. This is because there are obvious limitations to the realisation of unilingualism at the State level, the limiting factors being the following:

- i) Not all the language groups are so placed that they can be grouped in to separate States;
- ii) there are large number of bilingual belts between different linguistic zones; and
- (iii) there exists areas with the mixed population even within unilingual areas.

Besides, the Constitution guarantees freedom of movement to all citizen of India. The present picture of the linguistic composition of various administrative units of India, therefore, can, by no means, be regarded as static.

Xxx xxxx xxx 768. We realise that over emphasis on the rights of minorities and too many special safeguards for them would tend to keep the minority - consciousness alive and might thereby hamper the growth of a common nationhood. We, are therefore, not in favour of setting up too elaborate a system of guarantees to the minorities which would, in our opinion, complicate rather than solve the problem. At the same time, we are impressed by the need of according to the linguistic minorities sufficient opportunity for development so that they may not suffer from a sense of neglect or discrimination.

xxxx xxxx xxxx 773. The more important aspects of the problem, however, are the right of linguistic minorities to instruction in their mother tongues, the use of minority languages in the administration, and the representation of the minorities in the State Services. The language of instruction in educational institutions and the language of the administration are matters that touch, in practice, many vital aspects of the life of every individual. They, therefore, constitute what we regard as the core of the problem of linguistic minorities.

774. We first deal with the question of the right of minorities to instruction in the mother tongue. The Indian Constitution guarantees to the minorities the right to private schools but does not specifically recognise the right to instruction in the mother tongues in public schools. It seems to us that linguistic minorities do not have the resources required to establish and maintain their own educational institutions particularly in rural areas. In such cases, therefore, a positive duty should be cast on the State to provide for facilities to minorities for education in the mother tongue at the primary school stage.

775. It may be recalled that the right of each language group to have education

in the mother-tongue in public schools at the primary school stage has been recognised by the Congress Working Committee in its resolutions adopted in August, 1949, and May 1953. The right has also been recognised in principle by the State Governments as well as the Government of India. This is clear from the resolution adopted at the Provincial Education Ministers' Conference held in August, 1949, which has been approved by the Government of India, and now serves as a guide to the State Governments in making arrangements for the education of their school-going children whose mother-tongue is different from the regional language.

776. From the data supplied to this Commission by the State Governments it appears that most of the States are endeavoring to implement this resolution, though it is difficult to say to what extent it is being carried out both in the letter and in the spirit. The resolution is only recommendatory. The States are, therefore not following a uniform policy. After carefully examining the background of the question, the reasons why the suggestion for making suitable provision in the Constitution on the subject did not find favour with the Constituent Assembly, and the views expressed before us, we have come to the conclusion that the right of the minorities to have education in the mother-tongue at the primary stage, subject to a sufficient number of students being available, should be placed on a more stable footing than is a position at present. We, therefore, recommend that constitutional recognition should be given to this right and that the Central Government should acquire power to issue appropriate directives for the enforcement of this right on the lines of the Provisions contained in Article 347 of the Constitution.

So far as secondary education is concerned, the policy of the Government of India, as embodied in the Resolution of the Central Advisory Board of Education adopted in 1949, has been that regional languages should be introduced at the secondary stage with provision for instruction in the mother-tongue even at this stage if the number of pupils in the area is sufficient to justify establishment of separate schools, or for instructions in the same school if one third of the pupils in the school ask for it. We are doubtful if this deals with the problem adequately. It is, of course, clear that, so far as secondary education is concerned, it will have to be treated differently from the education at the primary stage. We, therefore, do not recommend the extension of the principles of the constitutional recognition of the right to have instruction in mother-tongue to secondary education. At the same time, we feel that the Government of India should, in consultation with State Governments lay down a clear policy and also take more effective steps to implement it.

801. Before we conclude, we wish to emphasise that no guarantees can secure a minority against every kind of discriminatory policy of a State Government. Governmental activity at State level affects virtually every sphere of a person's life and a democratic Government must reflect the moral and political standards of the people. Therefore, if the dominant group is hostile to the minorities, the

lot of minorities is bound to become unenviable. There can be no substitute for a sense of fair play on the part of the majority and a corresponding obligation on the part of the minorities to fit themselves in as elements vital to the integrated and ordered progress of the State.

51. Accepting the recommendation, the States were reorganised substantially on the basis of language. In many cases it resulted in bringing together people speaking a common language. In terms of the said recommendation 16 constituent units, which are called to be as States and 3 administrated territories were formed. After reorganization of States, on the basis of language, linguistic majority became the rulers of the States, as in a democracy, numerical majority is the only criterion. The horrors of partition of the country were fresh in the minds. By reorganization of states, the Indian polity was once again divided on the basis of the language. People who were living in their respective places for sufficiently long time and who were speaking the language other than the regional language became the linguistic minorities in their own states. People who have moved to other states after independence, for various reasons, became linguistic minorities at their destinations. But all these people belonged to one nation i.e. India. Article 29(1) conferred on the citizens of this country having a distinct language, script or culture of its own a fundamental right to conserve the same. They also have been conferred a fundamental right under Article 30(1) of the Constitution the right to establish and administer educational institution of their choice. However, even if those linguistic minorities because of their numerical strength or financial constraints were unable to establish the educational institution to conserve their language, script or culture, it became necessary to protect their interests. There was an apprehension that the linguistic majority may not show any interest in protecting the interests of the linguistic minority, notwithstanding the constitutional mandate, especially with reference to the language of the linguistic minorities. As is clear from the report, though over emphasis on the rights of linguistic minorities and too many special safeguards were found to be not advisable, as it would hamper the growth of a common nationhood, the need for according to the linguistic minority sufficient opportunity for development, so that they may not suffer from a sense of neglect or discrimination was felt. One aspect on which they laid emphasis was the right of linguistic minorities to have educational instruction in their mother-tongue. They noticed that the Indian Constitution guarantees to the minorities the right to establish and administer private schools but does not specifically recognise the right to instruction in the mother-tongue in public schools. As the linguistic minorities do not have the resources required to establish and maintain their own educational , institutions, particularly in rural areas, they wanted that a positive duty should be cast on the State to provide for facilities to minorities for education in the mother-tongue at the primary school stage. After examining the reasons why the suggestion for making suitable provision in the Constitution on the subject did not find favour with the Constituent Assembly and why the right of the minorities to have education at the primary stage, should be placed on a

more stable footing than what was the position at that time, they recommended that Constitutional recognition should be given to this right, and the Central Government should acquire power to issue appropriate directives for the enforcement of this right, on the lines of provisions contained in Article 347 of the Constitution. It is in this background and to allay the fear of linguistic minorities and to protect their interests that Article 350-A was introduced to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. An obligation was cast on every State and every local authority within the State to provide such facilities. It was not made a fundamental right, as otherwise it would have become justiciable. It was relegated to a constitutional right only. The President of India was vested with the power to securing the provision of such facilities.

52. The way Article 350-A is worded makes it very clear that it is not justiciable in a Court of law. It only deals with facility for primary education in mother tongue to children belonging to linguistic majority groups. It does not deal with or refer to the major group in the State. By this Article an obligation was cast upon every State and every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. The responsibility of securing such education was entrusted to the President of India. In other words, the said constitutional right was not made a justiciable right in a Court of law and the power to compel the State to perform its obligation was left to the discretion of the President of India.

53. Therefore, the argument that when the State is under an obligation to provide primary education in mother tongue under Article 350-A, it has the power to prescribe mother tongue as the only medium of instruction is without any substance. Such a power is not conferred either under Article 350-A or under any provision of the Constitution on the State. It is nothing to do with the Government Policy to have medium of instruction in the mother tongue. No freedom or choice is given to the State under the Article. It is an obligation cast on the State by the Constitution to protect the interest of the linguistic minorities. Therefore the impugned order is not issued in pursuance of this Article as contended. No freedom or power is given to State to formulate a government policy in respect of linguistic minorities, as the said provision already spells out the policy in so far as linguistic minorities are concerned. The state can only make an endeavor to give effect to the said policy. Therefore, Article 350-A of the Constitution confers a right only on the linguistic minorities only to insist on providing facilities for primary education in their mother tongue, but no right or power is conferred on the State to impose its policy on the linguistic minorities. The State cannot by virtue of this provision compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary school. No such right is conferred on the State by this provision and such a right do not flow from this Article.

54. Ever-since pre independence days, there was a provision to study Sanskrit as first language in the syllabus prescribed in High Schools. The same continued even after acceptance of the 3 language formula. After independence, by Government Order dated 20th October 1979, provision was made to delete Sanskrit language from the list of first languages and to study as one of the combined languages. This policy was opposed by the lovers of Sanskrit language. Many scholars and experts in the field of education appealed to the Government to retain Sanskrit as first language. A writ petition was also filed challenging the aforesaid Government Order. During the pendency of the Writ petition before the High Court, the Government decided to refer the matter to an expert committee regarding the steps to be taken in this regard. The Government assured the Court, that the impugned Government Order would not be implemented till the Committee submits its report. On the aforesaid submission, the writ petition was dismissed as withdrawn. Accordingly, a committee consisting of 7 members was constituted with Dr. V.K. Gokak as the Chairman. The Committee was requested to give its opinion on the following questions:

- (1) Should Sanskrit remain as the subject of study in the school syllabus?.
- (2) If so, how to retain it without its being an alternative for Kannada?
- (3) Would it be proper to have Kannada as the compulsory subject as per the three language formula and should the option of selecting the remaining two languages be left to the students themselves?

55. The Committee after lengthy deliberations submitted its report on 27 January 1981 which is popularly known as "Dr. Gokak Committee report" and answered the questions raised and made the following recommendations:

- (1) Kannada should be introduced as a compulsory subject for all children from 3rd standard.
- (2) Kannada should be the sole first language in the higher secondary schools (i.e., 8th, 9th and 10th standards) carrying 150 marks and this should be implemented for Kannada speaking people from 1981-82 itself and in respect of others 1986-1987, after taking necessary steps to teach Kannada from the 3rd standard from the academic year 1981-82 itself.

56. It is thus clear that the question whether Kannada or mother tongue of a child should be the medium of instruction in Primary School was not the subject matter of dispute, reference or recommendation. It is to resolve the dispute between the Kannada and Sanskrit and which language should have primacy, the said Committee was constituted. It was not in contemplation of any one, at that time, whether Kannada should be die medium of instruction at primary level.

57. On consideration of the aforesaid report, the State Government passed an order dated 30th April 1982 which is to the following effect:

Order No. Ed 113 Soh 79, Bangalore Dated 30TH April 1982

Government have carefully. examined the recommendations of the Committee and having regard to all aspects of the matter are pleased to order as follows:

1. At the secondary school level, the language pattern to be adopted will be as follows:

A. First Language:

Kannada or mother tongue (Urdu, Tamil, Telugu, Marathi, English, Hindi) to carry 150 marks.

B. Two other languages from the following

Kannada, Hindi, English, Sanskrit, Arabic, Persian, Urdu, Tamil, Telugu, marathi to carry 100 marks each.

Note:- (1) Students offering a language other than Kannada as first language will study Kannada as a compulsory language and any one of the remaining languages (from Group B) both of which will be examined subjects for the SSLC.

(2) Students offering Kannada as first language will take any two of the above languages (from B Group) except Kannada.

2. Students coming from outside the State and joining VIIIth, IXth or Xth standard and who have not studied any of the languages listed as first language may be allowed to take additional English or Hindi as first language.

3. The teaching of Kannada from IIIrd standard in non-Kannada schools will commence from the academic year 1982-83 itself and the language pattern for the High Schools prescribed in para (1) above will come into effect from the academic year 1987-88.

4. Students joining VIIIth standard from the academic year 1982-83 cannot take Sanskrit as first language or as composite first language. They can take Sanskrit as third language. This system will continue till the language pattern prescribed in para (1) above comes into force from the academic year 1987-88.

5. The Commissioner for Public Instruction was requested to take necessary action in the matter immediately to implement the above orders.

58. Since it was felt that the order dated April 30, 1982 did not sufficiently reflect the aspirations of the Kannada speaking people, the Government thought it expedient to place the entire matter before the State Legislature. The State Legislature resolved that in the High Schools, Kannada must be the sole first regional language carrying 125 marks. In addition, a student might study any two languages carrying 100 marks each. 15 grace marks might be given for a period of 10 years to students belonging to linguistic minority community, who study Kannada as first regional language and also those who study Hindi and whose mother tongue is not Hindi to enable the students whose mother tongue is

not Kannada to learn Kannada as the sole first language in High Schools. Government have taken steps to start teaching Kannada from III standard from this academic year i.e., 1982-83. In addition to the above, it was also recommended that the Government should take steps to start teaching Kannada from the first standard itself from 1982-83.

59. In accordance with the above resolution, the State Government made an order dated July 20, 1982. That order reads as follows:

Order No.Ed 113 Soh 79, Bangalore Dated 20th July 1982

Keeping in view the above, Government are pleased to direct as follows:

At the secondary school level, the language pattern to be adopted shall be as follows (from the academic year 1987-88):

A. First language:

Kannada shall be the sole first language (to carry 125 marks)

B. Two other languages from the following:

Urdu, Tamil, Telugu, Marathi, English, Hindi, Sanskrit, Arabic, Persian, Malayalam and Kannada (to carry 100 marks each)

Note: 15 grace marks shall be given for a period of 10 years,

(a) in the first language examination, to students whose mother tongue is not Kannada; and (b) in Hindi examination to students who study Hindi and whose mother tongue is not Hindi.

1. Students coming from outside the State and joining VIIIth or IXth or Xth standards in the State of Karnataka and who did not study Kannada earlier may be permitted to take English or Hindi as first language.

2. The teaching of Kannada from 1st standard in non-Kannada schools will commence from the academic year 1982-83 itself and the language pattern for High Schools prescribed in para (1) above will come into force from the academic year 1987-88.

3. Students joining VIIIth standard from the academic year 1982-83 should not be permitted to take Sanskrit as first language or as composite first language. They can, however, take Sanskrit as third language. This will continue till the language pattern prescribed in para (1) takes effect from the academic year 1987-88.

Note: Para (4) above which corresponds to para (4) of Government Order No. ED 113 SOH 79 dated April 30, 1982 shall not be given effect to pending disposal of Writ Petition Nos. 18882 to 18885 of 1982 in the High court of Karnataka wherein operation of the corresponding para (4) of Government Order dated April, 30, 1982 has been stayed.

4. The Commissioner for Public Instructions is requested to take necessary action in the matter immediately to give effect to the above orders.

5. Separate orders will issue regarding constitution of the High Power Committee for effective implementation of the language policy.

6. The orders issued in Government Order No. ED 115 Soh dated April, 30, 1982 are hereby withdrawn.

7. Pursuant to the abovesaid order, the Director of Public Instructions issued a circular dated August 11, 1982 in the following terms:

All the non-teaching Kannada schools in the state should begin to teach Kannada language from the 1st standard in the year 1982-83 as per instructions contained in para (3) of the Government Order. For that purpose the following periods of subjects and text books and lessons for study are prescribed as under:

1. Periods: Five periods a week i.e., two periods for work experience, 2 periods for physical training and one for singing education.

2. Text Books: Kannada Bharathi

3. Lessons for study: 1 to 16, 18 and 36 lessons.

4. Marks: This being a subject for examination, 100 marks are fixed.

5. Marks giving: Marks giving and examination rules as prescribed for the 1st standard are made applicable to this.

60. The constitutional validity of the aforesaid Government order was challenged before this Court. The learned single Judge before whom it came up for consideration referred the said writ petition to a Division Bench. The Division Bench after hearing for some time, having regard to the constitutional importance, as also the impact the decision of the Government would have on the primary and high schools, by an order dated 27th June, 1984 referred 3 questions for the opinion of the full Bench. The questions so referred to the decision of the Full Bench are as under:

(1) Whether the Government Order dated July 20, 1982 or any part of it is void being violative of the fundamental rights guaranteed to the petitioners under arts. 29(1) and 30(1) of the Constitution?

(2) Whether the Government order dated July 20, 1982 or any part of it is violative of the pledge of equality guaranteed under Article 14 of the Constitution?

(3) Whether, on the facts and in the circumstances of the case, the Circular dated Aug. 11, 1982 issued by the Director of Public Instruction of the State Government is violative of arts. 14, 29(1) and 30(1) of the Constitution

61. On such reference, the Full Bench framed the following question as the question arising for consideration before them:

The question for our consideration is whether such prescription is violative of Articles 14, 29 and 30 of the Constitution and a breach of obligation cast upon the State under Article 350-A of the constitution, in so far it relates to primary education.

62. After hearing the parties at length, and after considering the relevant judgments on the point, their conclusions were as under:

We shall now set out the summary of our conclusions:

I. Primacy should be accorded to Kannada in this State is indisputable. But as the supremacy of the Constitution of India is inviolable, primacy to Kannada could be secured without violating any of the provisions of the Constitution. The object of the impugned Government Order to secure primacy to Kannada in this State in fulfilment of the desire of the Kannada speaking people that Kannada which is not only the regional language but has also been declared by an Act of Legislature as the official language of the State, is really laudable and its appropriateness is unquestionable, but the manner in which it is sought to be given effect to by the impugned order has resulted in the violation of the provisions of the Constitution.

II. (1) The fact that Kannada is the regional as also the official language of this State does constitute a rational basis.

(i) for, making the study of Kannada language compulsory as one of the two languages for study from that class of primary school from which study of another language in addition to mother-tongue is made obligatory to all the children as part of the general pattern of primary education and

(ii) for making the study of Kannada compulsory as one of the three languages to be studied by the students at the secondary school level, that is, either as the first language or as one of the two other languages according to the choice of the students.

To (1) all children/students whose mother-tongue is Kannada and also to linguistic minorities who are permanent residents of this State and therefore such provision if made, would not be violative of the fundamental right to equality and equal protection guaranteed to them under Article 14 of the Constitution.

(2) A provision as above would not also be violative of the fundamental right guaranteed to linguistic minorities to conserve and develop their own language guaranteed under Art 29 and the right to establish educational institutions of their choice guaranteed under Article 30 of the Constitution as that would not only be a reasonable regulation but also would be in the interests of such minorities themselves.

(3) Further, such a provision secures primacy to Kannada in this State without affecting the supremacy of the Constitution, in that, in this State Kannada would

be the only language which would be compulsory for study in the schools for a permanent resident in this State and it would not be violative of any of the constitutional provisions.

III. The impugned order which makes study of Kannada as compulsory additional subject for children whose mother-tongue is not Kannada and who were/are having their primary education in their mother-tongue from the first year of the primary school, is violative of the fundamental right to equality and equal protection of the laws guaranteed to the petitioners under Article 14 of the Constitution.

IV. The impugned order which compels the institutions established by linguistic minorities to teach Kannada as a compulsory subject from the first year of the primary school is also violative of the fundamental right guaranteed to linguistic minorities for conserving and developing their script and language under Article 29 and the right to establish and administer the educational institution of their choice guaranteed under Article 30 of the Constitution.

V. The prescription of Kannada as the sole first language at the secondary school level is violative of the fundamental right to equality and equal protection of the laws guaranteed under Article 14 of the Constitution.

VI. The compulsory prescription of Kannada as the first language in respect of high schools established by linguistic minorities is also violative of the fundamental right guaranteed to linguistic minorities to conserve and develop their language and script and to establish and administer the educational institutions of their choice, guaranteed under Articles 29 and 30 of the Constitution respectively.

Thereafter, they answered three questions referred for their opinion as under:

(1) The Government Order dated 20th July, 1982 in so far it relates to the making of study of Kannada as a compulsory subject to children belonging to linguistic minority groups from the first year of the primary school and compelling the primary schools established by the linguistic minorities to introduce it as a compulsory subject from the first year of the primary school and also in so far it compels the students joining high schools to take Kannada as the sole first language and compelling the high schools established by linguistic minorities to introduce Kannada as the sole first language in the secondary schools, is violative of Articles 29(1) and 30(1) of the Constitution.

(2) The Government Order dated 20-7-1982 in so far it relates to the making of study of Kannada as a compulsory subject to children belonging to linguistic minority group from the first year of the primary school and compelling the primary schools established by linguistic minorities to introduce it as a compulsory subject from the first year of the primary school and also in so far as it compels the students joining high schools to take Kannada as the sole first language and compelling the high schools established by linguistic minorities to

introduce Kannada as the sole first language in the secondary schools, is violative of the pledge of equality guaranteed under Article 14 of the Constitution.

(3) On the facts and in the circumstances of the case, the Circular dated 11-8-1982 issued by the Director of Public Instructions of the State Government is violative of Articles 14, 29(1) and 30(1) of the Constitution of India.

After answering the said questions as aforesaid, the Full Bench also observed as under:

III. The Government shall however be at liberty:

(a) to introduce Kannada as one of the two languages from that primary school class from which study of another language in addition to mother-tongue is made obligatory as part of the general pattern of primary education: and

(b) to make study of Kannada compulsory as one of the three languages for study in secondary schools.

by making appropriate order or rules and make it applicable to all those whose mother tongue is Kannada and also to linguistic minorities who are and who become permanent residents of this State, in all primary and secondary schools respectively, whether they are Government or Government recognised, including those established by any of the linguistic minorities.

Thereafter, the aforesaid writ petitions were posted before the Division Bench for final disposal of the petitions. When the writ petitions were taken up for consideration by the Division Bench, the Division Bench after referring to paragraphs 26, 27, 28 and 47 of the Full Bench judgment, held as under:

From the Full Bench Judgment, it is clear that the State is under a duty to provide lower primary education up to first four years in mother-tongue and therefore it should ensure that primary education upto fourth standard, whether it is in Government Schools or private schools recognised by the Government, whether aided or not aided, whether established by linguistic minorities or otherwise, should be in mother-tongue if the prescribed number of children having a particular language as their mother-tongue get admitted to any of these primary schools and therefore the State should make it obligatory for each of these institutions to impart primary education in the mother-tongue of the children concerned.

Ultimately, the Division Bench disposed of the aforesaid writ petitions with the following order:

14. In the result, we make the following order:

(i) In WP Nos. 28566 and 28576/1982, 32654/1982, 33790/1982, 36630/1982, 36630A/1982 and 13907/1983;

(i) The Writ Petitions are allowed;

(ii) The impugned Government Order dated 20-7-1982 as also the Circular dated 11-8-1982 issued by the Director of Public Instructions pursuant to the aforesaid Government Order, are declared void as offending Articles 14, 29(1) and 30(1) of the " Constitution of India;

(iii) Consequential direction shall issue to the State Government.

(a) to provide the ensure that primary education up to first four years including pre-primary education is imparted in mother-tongue of the children concerned, in Government schools as also schools established by any private agency including linguistic minorities which are recognised, whether receiving financial aid or not subject to the existence of the prescribed minimum number of children having a common mother-tongue who have got themselves admitted to the school concerned; and

(b) to leave the choice of selecting the first language for study in the High Schools to the students;

(iv) The Government shall, however, be at liberty;

(a) to introduce Kannada as one of the two languages from that primary school class from which study of another language in addition to mother-tongue is made obligatory as part of the general pattern of primary education; and

(b) to make study of Kannada compulsory as one of the three languages for study in secondary schools, by making appropriate order or Rules, and make it applicable to all those whose mother-tongue is Kannada and also to linguistic minorities who are and who become permanent residents of this State, in all primary and secondary schools respectively, whether they are Government or Government recognised, including those established by any of the linguistic minorities.

(ii) In W.P. No. 1006 of 1983:

The Writ Petition is dismissed, subject to what is stated in paragraph 13 of this order.

63. These judgments were challenged before the Supreme Court. During the pendency of the matter before the Supreme Court, the Government issued a fresh Government Order dated 19.06.1989. Clause I of the said Government Order, which is relevant, is extracted as hereunder:

(i) From 1st Standard to IVth Standard, mother tongue will be the medium of instruction, where it is expected that normally only one language from Appendix-I will be the compulsory subject of study.

From III Standard onwards Kannada will be an optional subject for non-Kannada speaking students. This will not be taught on a purely voluntary basis and it will not be at the cost of any other instruction imparted in the school or any other school activity in which all school children participate. There will be no

examination at the end of the year in Kannada language.

64. The validity of the said Government Order was challenged before the Supreme Court in a petition under Article 32 of the Constitution of India. The appeals filed against the aforesaid Full Bench judgment of the High Court and this writ petition under Article 32 of the Constitution were heard together by the Supreme Court. The Supreme Court took note of the fact that the corrigendum came to be issued on 22.06.1989 amending the earlier Government Order dated 19.06.1989 which read as hereunder:

In view of the liberty given to the State of Karnataka the present GO. bearing No. 87 Prousebha 88, Bangalore dated 19-6-1989 (quoted above) has come to be passed. A corrigendum also came to be issued on 22-6-1989 which reads as under:

For para (i) of Order portion of the above said Govt. Order dated 19-6-1989 i.e., from the words "From 1st Standard...subject to study" the following para shall be substituted:

From 1st Standard to Nth Standard "where it is expected" that normally" mother tongue will be the medium of instruction, only one language from Appendix-1 will be compulsory subject to study.

Noticing the aforesaid corrigendum, the Supreme Court observed as under:

A careful reading of the above G.O. would clearly indicate that the element of compulsion at the primary stage is no longer there because the G.O. is unequivocal when it says from I" to 4th Standards mother tongue will be the medium of instruction, only one language from Appendix-I will be compulsory subject of Study. From 3rd Standard onwards Kannada will be an optional subject for non-Kannada speaking students. It is to be taught on a voluntary basis there being no examination at the end of the year in Kannada language. This part of the G.O. is clearly in consonance with Article 350-A of the Constitution of India which reads as follows:

Facilities for instruction in mother-tongue at primary stage- It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the president may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Finally, the Supreme Court disposed of the appeal and the writ petition as under:

As regards civil appeals we find the majority opinion of the High Court has approached the matter in a proper perspective. We have already extracted the relevant portions of the judgment. The sting of the earlier GOs and orders was the element of compulsion especially the children belonging to linguistic minorities from the first year of the primary school making Kannada as the sole

First language in the secondary schools. Such a provision is violative of articles 29 and 30 of the Constitution. We have no difficulty in upholding the well-considered judgment of the High Court. In fact, the State has accepted the position and issued GO. dated 19-6-1989 which is impugned in W.P. No. 536 of 1991. Therefore, the civil appeals will also stand dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Order accordingly.

In so far as challenge to Government Order dated 19.06.1989 is concerned it observed as under:

As rightly contended by the learned Advocate General where the State by means of the impugned G.O desires to bring to about academic discipline as a regulatory measure it is a matter of policy. The State knows how best to implement the language policy. It is not for the Court to interfere.

Where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference.

In a matter relating to policy this Court should decline to interfere. In the result, we conclude the writ petition is devoid of merits and is accordingly dismissed.

The said judgment of the Supreme Court is reported in AIR 1994 SC 1702.

65. When the matter was pending before the Supreme Court, there were discussions regarding medium of instruction to be adopted at the primary stage. In fact, it was discussed in the Legislature also. The Government noticed that intellectuals, educational experts and public institutions were of the opinion that the medium of instruction at primary stage should be in the mother tongue and it should not be in any other language. The Kannada protagonists were demanding that no permission should be granted to start English Medium Primary Schools. However, minorities and a Section of public were demanding the Government to grant permission to start English Medium Schools. Since several years the Government was following strict policy while giving permission to English Medium Schools. Therefore, in 1991 there were about 500 unauthorised English Medium Primary Schools. Some of them had filed cases before this Court seeking permission for their respective schools. The Government noticed that in proportion to the demand for English Medium Schools, English Medium Schools have not been established. Taking advantage of the same, several recognised unaided English Medium School Managements were collecting huge donations and also fees and the said Schools have become business center. There was uncertainty in respect of English Medium Schools in the State. It was imperative for the Government to take policy decision in respect of these English Medium Schools without in any way affecting the language policy of the Government.

Therefore, the Government decided to constitute a committee consisting of educational experts and intellectuals. Accordingly, on 11.01.1991 it constituted a committee to go into the question of problem arising out of the establishment of unrecognised English Medium Schools and also to go into the question of medium of instructions at primary stage. Dr. H. Narasimhaiah, Former Vice Chancellor of the Bangalore University, was appointed as Chairman of the said Committee and other 15 Educationists as its members. The terms of reference of the committee was as under:

to suggest remedy for the problems arising from the unrecognised English Primary Schools and also to examine the question of Medium of Primary Schools, and to submit report.

66. The Committee was requested to give its report within a month. The first meeting of the Committee was held on 23.01.1991. Thereafter the Committee held its meetings on 31.01.1991, 11.02.1991, 28.02.1991 and 03.06.1991. The subject matter was discussed in detail and decision was taken. Proceedings of each of the meeting of the Committee was enclosed to the report. Several Associations, Management and some persons submitted their opinion in writing to the Committee. The consolidated report of the said opinion was also enclosed to the said report. Some of the members of the Committee also placed their opinion by note or by letters before the Committee. Copies of the letters were also enclosed. In the background of the proceedings of the meetings of the Committee and after holding discussions again in the meeting of the Committee held on 03.06.1991, the Committee unanimously recommended as follows:

(A) Permission should not be given indiscriminately to the existing unauthorised schools. After holding inspection of the schools, if minimum facilities are available and if the rules and regulations of grant-in-aid Code are fulfilled, permission can be given to such unrecognized schools. No permission be given to other schools. Admission to the 1st standard should be given to study only in Mother-tongue medium in such recognized schools from June 1991. In case this condition is not fulfilled, the recognition of such schools should be withdrawn.

(B) In schools recognized as indicated above, opportunity should be given to complete the study in 4th standard in the medium in which the student are studying at present in 2nd, 3rd and 4th standards.

(C) In case required number of students are not available to study in mother tongue medium or if facilities could not be provided to study in mother tongue medium, such schools should opt for the regional language as their medium.

In the primary stage, no permission should be given to CBSE, ICSE schools in the state. Such existing schools should satisfy only the needs of the students who have the right to study in English Medium as per the Constitution, court decisions and as per provisions of Grant-in-aid Code.

In the existing recognised English Medium schools also, it is proper that medium

of study should be the mother tongue of the student from the academic year 1991-92. In case required number of students are not available to study in the medium of mother tongue or for any other reason it is not possible to provide facilities to study in mother tongue, it is necessary to opt for the regional language as their medium of study. The Government shall take steps to provide facilities such required for this.

In order to improve the position of Kannada Medium Schools and to raise their standards, the Government should take necessary steps on priority basis.

Condition should be inserted in the Rules of appointment, that those who seek appointment in Government and Aided Institutions, should have studied Kannada language as their first language in SSLC.

Sd/-

67. The Government as per Orders dated 28.04.1992 and 24.06.1992 formulated its Policy regarding medium of instruction in English Medium Schools after considering the report and keeping in mind the temporary language Policy published as per Order dated 19.06.1989. It was directed by the said order that approval (permission) could be given to those unauthorized English Medium Schools who have strictly fulfilled the provisions of Columns (1) to (4) of sub-rule (2) of Rule 12 of Code of Primary Schools Education and that in respect of English Medium Schools which are not entitled for approval, if they have fulfilled other conditions of grant-in-aid code, permission can be given to conduct Kannada or other medium schools and that students can change over to any other language medium from 5th Standard and above.

68. The Supreme Court rendered its judgment on 08.12.1993 upholding the Full Bench judgment of the High Court and also the legality of the order passed by the Government on 19.06.1989, with an observation that Government is well aware how to implement its language policy effectively and the Court should not interfere with the same.

69. It is in this background and in the light of the judgment of the Supreme Court and Full Bench of this Court, that the Government formulated its language policy to be followed by Primary and High Schools regarding medium of instruction. The Government proceeded to pass the impugned order which reads as under:

70. The English translation of the said order reads as under:

Proceedings of Government of Karnataka

Sub: Regarding implementation of languages Policy in the primary and High Schools

Read:-1) Government Order No. ED 113 SOH 79 dated 30-04-82.

2) Government Order No. ED 87 Rasheba 88 dated 19-6-89.

- 3) Government Order No. ED 205 PGC 91 dated 28-4-92.
- 4) Government Order No. ED 205 PGC 91, dated 24-6-92.
- 5) Government Order No. ED 113 SOH 79, dated 20-7-92.
- 6) Judgment of Supreme Court in application No. 536/91 dated 8-12-93.
- 7) Government Order No. ED 28 PGC 94 dated 22-4-94.

Preamble:

The Government as per order dated 30-4-1982 decided to introduce Kannada or the mother tongue of the student as first Language at the stage of High School. Along with that, the student should pass in two languages out of 10 languages mentioned in the order. Government, reviewing this order, issued afresh order on 20-7-1982, directing that from the academic year 1987-88, Kannada should be only first language at the stage of High School and the student should select two languages for study out of 10 languages, including, Kannada, mentioned in that order. It was also directed that in non-Kannada schools, teaching of Kannada should be compulsory in the beginning of first year of Primary Education.

Order dated 20-7-82 was challenged before the Karnataka High Court. On the ground that Order dated 20-7-1982 violated provisions of Articles 14, 29(1) and 30(1) of the Constitution of India, the High Court set aside the same as per its order dated 27-1-1984. However, the Court gave liberty to the State Government to issue suitable orders or frame-rules requiring teaching of Kannada as one of the languages out of two languages from Primary class in which as per Ordinary Model Primary Education it was required to study another language along with mother-tongue and making Kannada as a compulsory language out of three languages at the stage of High School and making this requirement applicable to all students with Kannada Mother-tongue and to students belonging to minority communities who are permanent residents or intend to be permanent residents of Karnataka State.

As against the judgment of the High Court, the State Government had filed an appeal before the Supreme Court. However, the State Government on 19-6-1989 issued an order laying down its language policy pending the judgment of the Supreme Court. As per the said order, children from 1st to 4th Standards must compulsorily study only one language out of 8 languages (including Kannada and English) mentioned therein. Kannada has to be taught to the students who do not study Kannada as first language from 5th to 7th standards, but pass in Kannada language is not compulsory, and from 8 to 10th standard, out of three languages Kannada should be studied compulsorily as one of the subjects.

Meanwhile the Government formed a Committee under the Chairmanship of Dr. H. Narasimhaiah, to enquire and report about the problems of unrecognized English Medium Schools and the question of English Medium at the Primary Stage. The Government as per orders dated 28-4-92 and 24-6-92 formulated its

policy regarding medium of instruction in English medium schools after considering the report of the Committee and keeping in mind the temporary language policy published as per order dated 19-6-1989. It was directed by this order that approval (permission) could be given to those unauthorized English Medium Schools who have strictly fulfilled the provisions of Columns (1) to (4) of Sub-rule (2) of Rule 12 of the Code of Primary Schools Education and that in respect of English Medium Schools which are not entitled for approval, if they have fulfilled order conditions of grant-in-aid code, permission can be given to conduct Kannada or other medium schools and that students can change over to any other language medium from 5th standard and above.

The Supreme Court as per its judgment dated 8-12-1993 upheld the judgment passed by the High Court and also the legality of the order passed by the Government on 19-6-1989 on the direction of the High Court and proceed to observe that Government is well aware how to implement its language policy effectively and the Courts should not interfere with the same.

Since it is necessary to pass orders in the background of the judgment of the Supreme Court, regarding language policy to be followed by Primary and High Schools and regarding medium of instruction to be adopted at the Primary stage, this order is passed.

Government Order No. ED 28 PGC 94, Bangalore Dated 29.04.1994

1. Canceling all earlier orders, including GO dated 22.04.1994 pertaining to the subject, on the basis of the judgment dated 8.12.1993 of the Supreme Court, the Government has passed the following order regarding language policy to be followed in Primary & High Schools with effect from the academic year 1994-95.

a. In Standards 1 to 4, where it is ordinarily expected that child's mother-tongue will be the medium of instruction, out of the languages shown in Schedule I, one mother tongue or Kannada only shall be the compulsory language of study.

b. From 3rd standard onwards, Kannada should be optional subject to non-Kannadigas. This will be taught so as not to come in the way of teaching of other subjects or school activities in which all students of the school participate. There will be no examination in Kannada language at the end of the year in classes 3 and 4.

c. From standard 5 onwards, where as per general system there is facility for teaching II language students are to study a II language chosen from Appendix I which will be other than the I language. This is subject to the condition that the student who does not study Kannada as I language, shall study Kannada as II language.

Provision will be made to study III language from 5th standard. The III language should not be language studied by the student as I or II language. Language which could be chosen by student as third language is indicated in schedule II.

Attendance to the classes of III language and taking examination in III language is compulsory. Study of III language continues from 5th to 7th standard. But passing the examination in III language is not compulsory. Marks obtained in examinations in III language from 5th to 7th standards will not be taken into account for determining rank or class.

d. Three languages will be taught in the High school stage, that is, in standards 8 to 10. The maximum marks for I language will be 125, for II language will be 100 and for III language will be 100. Pass in any two of the three languages is compulsory and out of these two languages, one should be Kannada.

e. Standard of study of II and III languages at the end of 10th standard, should be equal to the stage of learning of these languages at the end of 6 years of study.

f. Non-Kannada students and non-Hindi students should be given grace marks in examination in Kannada and Hindi respectively. To enable to pass these examination they can be given maximum of 15 grace marks. This facility is available for 10 years from the date of this order.

2. The medium of instruction should be mother tongue ? or Kannada, with effect from the academic year 1994-95 in all Government recognized schools in classes 1 to 4.

3. The students admitted to 1st standard with effect from the academic year 94-95, should be taught in mother tongue or Kannada medium.

4. However, permission can be granted to the schools to continue to teach in the pre-existing medium to the students of standards 2 to 4 during the academic year 94-95.

5. The students are permitted to change over to English or any other language as medium at their choice, from 5th standard.

6. Permission can be granted to only students whose mother tongue is English, to study in English medium in classes 1 to 4 in existing recognized English medium schools.

7. The Government will consider regularization of the existing unrecognized schools as per policy indicated in paragraphs 1 to 6 mentioned above. Request of schools who have complied with the provisions of the code of education and present policy of the government will be considered on the basis of the report of the Zilla Panchayat routed through commissioner for public instructions.

8. It is directed that all unrecognized schools which do not comply with the above conditions, will be closed down.

9. No Objection Certificate (No Objection Certificate will be issued to set up Central Board of Secondary Education (C.B.S.E.) schools or Indian Council of Secondary Education (I.C.S.E.) schools only if they comply with the following

conditions:

a. If there are children whose parents belong to All India service or Central Government Service or Central Government Industries and who are transferable from State to state (In proof of the same a certificate from the concerned department/organization will have to be produced).

b. If there are children whose parents are working in Banks, Trade concerns, or Institutions have branches in more than one state, and are subject to transfer interstate. Necessary certificate has to be produced from the bank/Institution to prove the same.

c. The instructions issued and to be issued by the Government from time to time should be complied with.

By order and in the name of Governor of Karnataka

Sd/- K.M. Ponnappa Secretary to Government Education Department

71. Though the entire order was challenged by the petitioners initially, at the time of hearing, all the petitioners have filed a memo giving up their challenge against studying Kannada compulsorily as a language of study.

72. Even otherwise the legal position is now well settled. When Marathi, regional language of Maharashtra was made compulsory throughout the State, the said Governmental policy was challenged on the ground English Medium schools run by the Gujarathi linguistic minorities were compelled to teach four languages as against the accepted three language formula. Therefore, these linguistic minorities contended the said compulsion offends Articles 29(1) and 30(1) of the Constitution and the said Governmental policy is liable to be quashed. Repelling the said contention, the Supreme Court in the case of Usha Mehta and Others Vs. State of Maharashtra and Others, held as under:

The impugned policy decision was taken by keeping in view the larger interest of the State, because the official and common business are carried on in that State in Marathi language. A proper understanding of Marathi language is necessary for easily carrying out the day to day affairs of the people living in the State of Maharashtra and also for proper carrying out of daily administration. Hence the regulation imposed by the State of Maharashtra upon the linguistic minorities to teach its regional language is only a reasonable one.... A particular State can validly take a policy decision to compulsorily teach its regional language.

...It is difficult to read Articles 29 and 30 in such a way that they contain the negative right to exclude the learning of regional language. Ipso facto it is not possible to accept the proposition that the people living in a particular State cannot be asked to study the regional language. While living in a different State, it is only appropriate for the linguistic minority to learn the regional language. In our view the resistance to learn the regional language will lead to alienation from the mainstream of life resulting in linguistic fragmentation within the State,

which is an anathema to national integration. The learning of different languages will definitely bridge the cultural barriers and will positively contribute to the cultural integration of the country. In our view," the impugned policy decision is in the paramount interest of the students who are living in the State of Maharashtra and also in the larger interest of the country. Therefore, we cannot rule that the impugned policy will result in destroying the minority character of the Gujarati community in Maharashtra.

Therefore, time has come for the people living in other States to learn the language of the province. At least their children who are admitted to schools in those States should learn the language of the soil, i.e., the regional language of the concerned State of their residence, it is in the interest of the children of these linguistic minorities to learn the language of the State in addition to the mother tongue, English as well as Hindi. Resistance to learn the regional language will lead to alienation from the main stream of life resulting in linguistic fragmentation within the State which is an anathema to national integration. Learning the language of the State would bridge the cultural barriers and will positively contribute for the national integration of the country. It is in the paramount interest of the children living in that particular State and also in the larger interest of the country that they learn the language of the State. It helps those children in future and their economic future is also dependant on the learning of the language of the State. No child can say that he will not learn the language, in particular the regional language. The present day children when compared to the past generations are more capable, intelligent and are exposed too early to the World around them and, therefore, learning the regional language would not in any way be a strain at all. The learning of the regional language is necessary for peaceful co-existence of linguistic minorities with the majority of the population. A policy decision taken by the State to compulsorily teach a regional/official language of the State cannot be held to violate any constitutional provisions. Therefore, the petitioners rightly did not press the challenge against that portion of the impugned order.

Therefore, the challenge in the writ petition is now confined to making mother tongue or Kannada as the medium of instruction in primary school as contained in Clause (2), (3), (6) and (8) of the said order.

73. At this juncture two subsequent events require to be taken note of. Earlier the primary education meant education from I to IV standard. The Government by an order dated 31.5.2001 stipulated that from the academic year 2001-02 the primary education to be imparted in Government schools as well as aided schools meant classes from I to V standard. Accordingly, by an order dated 30.5.2002 the impugned order herein dated 29.4.1994 was amended to substitute classes from I to IV with I to V.

74. Secondly the Government of Karnataka issued an order dated 29.10.2006 taking note of the National Curriculum Frame Work 2005, the relevant portion of which reads as under:

The multilingual character of Indian society should be seen as a resource to promote multilingual proficiency in every child, which includes proficiency in English

xxxx xxxxxxxx xxx 3.13 Second-language Acquisition. English in India is a global language in a multilingual country. A variety and range of English-teaching situations prevail here owing to the twin factors of teacher proficiency in English and pupils' exposure to English outside school. The level of introduction of English is now a matter of political response to people's aspirations rather than an academic or feasibility issue and people's choices about the level of its introduction in the curriculum will have to be respected, with the proviso that we do not extend downwards the very system that has failed to deliver.

The goals for a second-language curriculum are twofold: attainment of a basic proficiency, such as is acquired in natural language learning, and the development of language into an instrument for abstract thought and knowledge acquisition through (for example) literacy. This argues for an across-the-curriculum approach that breaks down the barriers between English and other subjects and English and other Indian languages. At the initial stages, English may be one of the languages for learning activities that create the child's awareness of the world....

In pursuance of the above, the Government Order dated 29.10.2006 came to be passed prescribing English as a language for study from I standard itself in all Kannada medium as well as linguistic minority schools.

75. In this background, the question for consideration is whether in the earlier proceedings referred to above the validity of mother tongue being the medium of instructions, was raised, whether it was contested and whether a decision was rendered, rendering the writ petitions not maintainable either on the ground of res judicata or on the principle of binding precedent.

76. By the Government order dated 20-7-1982, at the secondary school level, Kannada was made the sole first language to all students. The teaching of Kannada from 1st standard in non-Kannada schools was also prescribed. In pursuance of the said Government order, Director of Public Instructions issued a circular dated 11th August 1982 directing that, all the non-Kannada teaching Schools in the State should begin to teach Kannada language from 1st standard in the year 1982-83. It is this compulsion on linguistic minorities to teach Kannada from 1st standard, was the subject matter of the aforesaid proceedings. When this prescription was quashed by the Full Bench as offending the fundamental right conferred on linguistic minorities under Article 30(1) and 29 of the Constitution, the State preferred an appeal to the Supreme Court. During the pendency of the said appeal it passed yet another order on 19-6-1989. The relevant portion of the order which was impugned before Supreme Court in the writ petition under article 32 of the constitution read as under:

From the 1st standard to IV standard, where it is expected that normally mother

tongue Will be the medium of instruction only one language from Appendix I will be compulsory subject to study

(underlining by us)

77. Therefore, it is clear, even in the said order either Kannada or the mother tongue was not made the only medium of instruction from I to IV standard. It was observed that normally mother tongue will be the medium of instruction. However, the stress was on only one language from Appendix I will be the compulsorily subject to study. The compulsion was to study one language of the choice of the student and not Kannada, as was the case in the earlier Government Order. Therefore, the Supreme Court observed that a careful reading of the Government Order would clearly indicate that, the element of compulsion at the primary stage is no longer there, when the Government Order is unequivocal, when it says from 1st to IV standard mother tongue will be the medium of instruction. This part of the Government Order is clearly in consonance with Article 350-A of the Constitution of India. This Article is designed to implement one of the State Organization Commission's important recommendations regarding safeguards for linguistic minorities in the State after reorganization. Thereafter, they referred to the statement of Mahatma Gandhi on the need of mother tongue being the medium of instruction and the educational experts opinion and held the said Government Order is not violative of Article 29 and 30 of the Constitution. Further, they held that the State by means of the impugned Government Order desires to bring about academic discipline as a regulatory measure, it is a matter of policy. The State knows how best to implement the language policy. It is not for the Court to interfere, and therefore they declined to interfere with the Government Order dated 19-6-1989. However, they affirmed the Full Bench Judgment quashing the earlier Government Order, as there was an element of compulsion in the said order which violated Articles 29 and 30 of the Constitution.

78. The present Government Order dated 29-4-1994 is neither a replica nor similar as the Government Order dated 19-6-1989, which was the subject matter before the Supreme Court. If the State was satisfied with the policy as contained in the Government Order dated 19-6-1989, when it is already upheld by the Apex Court, there was no necessity to have passed the impugned order dated 29-4-1994. It would have been superfluous. Though the relevant portion of the Government dated 19-6-1989, as extracted above, is retained with little elaboration, the petitioners are not aggrieved by the same. Though initially they challenged the said portion of the order as contained in Clause (1) they have filed a memo giving up the said challenge. They are primarily aggrieved by the other clauses such as Clause (2) (3) (6) and (8), which are extracted as hereunder:

2. The medium of instruction should be mother tongue or Kannada, with effect from the academic year 1994-95 in all Government recognized schools in classes 1 to 4.

3. The students admitted to 1st standard with effect from the academic year 94-95, should be taught in mother tongue or Kannada medium.

6. Permission can be granted to only students whose mother tongue is English, to study in English medium in classes 1 to 4 in existing recognized English medium schools.

8. It is directed that all unrecognized schools which do not comply with the above conditions, will be closed down.

79. It cannot be disputed these clauses were conspicuously missing in the Government order dated 19-6-1989. They are introduced for the first time in Government Order dated 29-4-1994. The validity of these clauses were not the subject matter of earlier proceedings either before this Court or the Apex Court. The constitutional validity of these clauses was not challenged earlier, no arguments were addressed for or against the said clauses, neither this Court nor the Apex Court considered the validity of these clauses nor any decision was rendered. It is for the first time, the aforesaid clauses are challenged before this Court. Therefore, the aforesaid decisions do not conclude the matter in issue in this writ petition.

80. However, how the aforesaid decisions have to be considered and appreciated, and what weight is to be given, and how to find out what is the ratio decidendi of those decision which could be construed as binding precedent are all well settled. In this regard it is useful to refer to the following judgment on the point

22. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

xxx xxx xxx Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

81. The Supreme Court in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, held as under:

Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an

investigation into the facts, as in the present case, it could not be assumed whether a similar decision must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das case could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das case was made not only with the consent of the parties but there was an interplay of various factors and the Court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. The Court no doubt made incidental observation to the Directive Principles of State Policy enshrined in Article 38(2) of the Constitution.

Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative.

One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.

82. The Supreme Court in the case of Executive Engg., Dhenkanal Minor Irrigation Division v. N.C. Budharaj (2001) 2 SCC 721 has held as under:

A decision is an authority on the question that is raised and decided by the court. It cannot be taken as an authority on a different question though in some cases the reason stated therein may have a persuasive value.

83. The Supreme Court in the case of Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, has observed as under:

7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has declared law it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding

effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision.

84. The Supreme Court in case of the Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, held as under:

19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes.

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

85. The Supreme Court in the case of Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, has held as under:

It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion.

86. The Constitution Bench of the Supreme Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, has held as under:

Per Khare, C.J (for himself and for Variava, Balakrishna and Pasayat, JJ.)

The answers to the questions, in the majority judgment in Pai case (in para 161 therein) are merely a brief summation of the ratio laid down in the judgment. The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment.

Per Sinha, J.

A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same

in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal.

It is incorrect to contend that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefore, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

The judgment of this Court in T.M.A. Pai Foundation will, therefore, have to be construed or to be interpreted on the aforementioned principles. The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the Court may also consider the constitutional or relevant statutory provisions vis-a-vis its earlier decisions on which reliance has been placed.

87. The Supreme Court in the case of The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, held as under:

The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.

88. Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. Quotability as "law" applies to the principle of a case, its "RATIO DECIDENDI". The ratio decidendi of the judgment has to be found out only on reading the entire judgment. The ratio of the judgment is what is set out in the judgment itself. The ratio decidendi of the judgment is its reasoning which can be

deciphered only upon reading the same in its entirety. By reading a line here and there from the judgment one cannot find out the entire ratio decidendi of the judgment. It is the principle found out, upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. A decision often takes its colour from the question involved in the case in which it is rendered. A decision is an authority on the question that is raised and decided by the Court, and it is an authority for what it decides and not what can logically be deduced thereupon. The decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The only thing binding as an authority upon a subsequent judge is the principle upon which the case was decided. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the Statute. Judgments of Courts are not to be construed as Statutes. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as a cathedra statement having the weight of authority. Pronouncements of law, which are not part of the ratio decidendi are distinguished as Obiter Dicta and are not authorisation. Viewed from this angle, the summary of conclusions or the suggestions made in the earlier decisions cannot be construed as a ratio decidendi. Similarly, the observations made by the Supreme Court in affirming the said judgment with reference to matters which did not arise for consideration in the said case also would not constitute a ratio decidendi. It is also to be borne in mind that so far as Constitutional matters are concerned, it is the practice of the Supreme Court not to make any pronouncements on points nor directly raised for decision.

89. The answers to the questions are merely conclusions. The answer to the question would necessarily have to be read in the context of what is set out in judgment and not in isolation. They have to be interpreted in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment. One has to see the constitutional or relevant statutory provisions vis-a-vis its earlier decisions on which reliance has been placed. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal.

90. As is clear from the facts set out above in the aforesaid Full Bench Judgment, the question for consideration was, whether the Government Order making study of Kannada compulsory from the First Year of Primary School in addition to mother tongue of the land was violative of Article 14, 29 and 30 of the Constitution and the Government Order prescribing Kannada as sole First Language at High School level was also violative of Article 14, 19 and 30 of the Constitution. In the Government Order dated 19.06.1989 which was also the subject matter of the Writ Petition under Article 32 of the Constitution of India

before the Supreme Court, the question was again only one language from Appendix-I could be the compulsory subject of study. The Full Bench struck down the earlier Government Order as there was compulsion to study Kannada and therefore violative of Article 19, 21 and 30(1) which finding was upheld by the Supreme Court. For the same reason the Supreme Court declined to interfere with the subsequent Government Order dated 19.06.1989 as there was no compulsion to study any particular language from I to IV Standard, as is clear from Clause-I of the Government Order. Therefore, the ratio decidendi, of the judgment of the Apex Court as well as the full bench is "If there is an element of compulsion in the Government policy, which infringes the fundamental rights guaranteed to the citizens of this country under the Indian Constitution, such policy is void and the fundamental rights have to prevail over such governmental policy. In the absence of such compulsion the courts should not interfere with the policy decision of the Government". The question whether a student, a parent or a citizen has a right to choose a medium of instruction at primary stage other than mother tongue or regional language was not the subject matter of the aforesaid proceedings and the said question was not considered either by this Court or by the Apex Court and no decision rendered in the aforesaid proceedings on the said point. The casual expressions, observations, conclusions and the suggestions made in the earlier Full Bench judgment cannot be construed as a ratio decidendi, especially in constitutional matters, as the said question did not arise for consideration in the said case. Therefore the contention that the question involved in this Writ Petition are squarely covered by the earlier decisions of this Court and Apex Court is without any substance and accordingly it is rejected.

Constitutional Issues:

Right to Choose A medium of Instruction- is It a Fundamental Right?

91. The deck is clear. The question whether the medium of instruction is a fundamental right is not decided in the earlier proceedings. The said question has arisen for consideration for the first time before this Court. The said question is posed before us in three dimensions. They are:

- (1) Is right to choose a medium of instruction a fundamental right?
- (2) Whether parents and children have the right to choose the medium of instruction?
- (3) Whether every citizen, a religious denomination and a linguistic or religious minority has a right to establish an educational institution of his/its choice?

92. In order to decide these questions first we have to see the constitutional, provisions on which the reliance was placed namely,

Article 19: Protection of certain rights regarding freedom of speech, etc.,--

- (1) All citizens shall have the right-

(a) To freedom of speech and expression

(g) To practise any profession, or to carry on any occupation, trade or business

Article 21. Protection of life and personal liberty.-

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21A Right to education

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

Article 26. Freedom to manage religious affairs.-

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) To establish and maintain institutions for religious and charitable purposes;

Article 29. Protection of interests of minorities.

(1) Any section of the citizens residing in the territory of India or any part thereof having distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30. Right of minorities to establish and administer educational institutions.-

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

93. These provisions have been the subject matter of several judgments of the Apex Court in last 50 years, where the scope and ambit of these provisions are clearly explained laying down the law. However, because of some shades of opinion being not consistent and there appeared to be some conflict, an eleven Judges' bench was constituted by the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, for authoritatively pronouncing upon the scope and ambit of Articles 19(1)(g), 26, 29 and 30 of the Constitution of India. The Supreme Court reviewed the entire case law on the point and took note of, in particular, the earlier judgment of the Supreme Court, in respect of Kerala Education Bill where on a presidential reference the Supreme Court was called upon to give its opinion. They also took note of the judgments rendered in the The State of Bombay Vs. Bombay Education Society and Others, in

Siddarajabhai Sabbaj v. State of Bombay AIR 1963 SC 540 D.A.V. College, Vs. State of Punjab and Others, ; The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., in St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and other host of cases and they laid down the law on the point In this context, as the judgment of this larger bench is the law of the land and covers the scope of the aforesaid articles at length it is wholly unnecessary for us to refer to the earlier judgments of the Supreme Court in detail.

94. Suffice it to state that in T.M.A. Pai Foundation case, the Supreme Court has authoritatively laid down the law which is binding on all the Courts. It held as under:

The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff and an activity is carried on that results in the imparting of knowledge to the students must necessarily be regarded as an occupation even if there is no element of profit generation. It is difficult to comprehend that education per se will not fall under any of the four expression in Article 19(1)(g). Occupation would be an activity of a person undertaken as a r means of livelihood or a mission in life. Therefore it was held that right to establish and administer educational institution is the fundamental right.

The right to establish and maintain educational institutions may also be sourced to Article 26(a) which grants in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognised head of charity. Therefore, religious denominations or sections thereof, which do not all within the special categories carved out in Articles 29(1) and 30(1) have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denomination including the majority religious community to set up an educational institution. Therefore it was held that Constitution provides the fundamental right to establish and administer educational institution to all irrespective of them belonging to majority or minority. In the case of linguistic religious minorities in addition to the rights conferred under Article 19(1)(g) and Article 26, they have the right to establish and administer educational institution.

The freedom to manage religious affairs is provided by Article 26. This Article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. Clause (a) of Article 26 gives a religious denomination the right to establish and maintain institutions for religious and charitable purpose. There is no dispute that the establishment of an educational institution comes within the meaning of the expression charitable purpose. Article 26 does not deal with the right of an

individual, but is confined to a religious denomination. Article 26 refers to a denomination of any religion, whether it is majority or a minority religion. Just as Article 25 refers to all persons, whether they belong to majority or a minority religion. Article 26 give the right to majority religious denomination, to exercise the rights contained therein.

Article 29 and 30 are the group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof and having a distinct language script or culture of its own the right to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the Article mentions the interest of the minorities. Article 29(1) essentially refers to sections of citizen who have a distinct language, script or culture, even though their religion may not be the same. The common thread that run through Article 29(1) is language, script or culture and not religion. Article 29(1) gives the right to all sections of citizens whether they are in minority or the majority religions, to conserve their language, script or culture. In the exercise of this right to conserve the language, script of culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute.

The right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap in so far as they relate to the establishment of educational institutions but whereas Article 26 gives the right both to the majority as well as minority communities to establish and maintain institutions for charitable purposes, which would inter alia include educational institutions. Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations. Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice.

The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject matter of controls.

The right to establish an educational institution can be regulated but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-admission by those in charge of management. The

Constitution recognises the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. The Government can provide regulations that will ensure excellence in education. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged.

The standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations. Reputation of educational institution is established by the quality of its faculty and students and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies". "Once the aid is granted to a private professional educational institution, the government or the State agency, as a condition of the grant of aid can put fetters on the freedom in the matter of administration and management of the institution. The State which gives aid to an educational institution can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time. It cannot also be treated as an educational institution departmentally run by government or as a wholly owned and controlled government institution and interfere with Constitution of the Governing bodies or thrusting the staff without reference to Management.

Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Unlike Article 25 and 26. Article 30(1) does not specifically state that the right under Article 30(1) is subject to public order, morality and health or to other provisions of Part III. This sub-article also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations.

The right under Article 30(1) is not so absolute as to prevent the Government from making any Regulation whosoever. Any regulation framed in the national interest must necessarily apply to all educational institutions whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf. It is of course true that Government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion, but the right under Article 30 is not so absolute as to be above that law.

The regulation must satisfy a dual test, the test of reasonableness and the test that it is regulative of the educational character of the institution and is

conducive of making the institution an effective vehicle of education for the minority community or other persons who resort to it. It was permissible for the authorities to prescribe regulations, which must be complied with before a minority institution could seek or retain affiliation and recognition. The regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This in our view is the correct approach to the problem.

We agree with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land even the Constitution, is to apply to them.

That admission of students to unaided minority educational institutions, viz., schools and undergraduate colleges where the scope for merit based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to administer is not absolute but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the majority institutions also for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

Even though the words of Article 30(1) are unqualified atleast certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1), has therefore not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

95. It is in the backdrop of the aforesaid constitutional provisions and the law laid down by the Supreme Court, we have to find out the answer to this vexed

question. While interpreting a constitutional provision, we have to bear in mind the principles evolved by the Apex Court over the years. The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles of an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crisis of human affairs. A constitutional provision must be construed not in a narrow and constricted sense, but in a wide and liberal manner, so as to anticipate and take account of changing conditions and purposes so that a constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges. The Constitution of India, is an organic document. It should be interpreted in the light of the experience. It has to be flexible and dynamic so that it adapts itself to the changing conditions. The fundamental rights are an essential feature of the Constitution. They are the bedrock upon which the constitution is built. By and large, they are the extensions, combinations or permutations of the natural rights of life, liberty and equality possessed by an individual. The fundamental rights enshrined in the Constitution such as, right to equality and freedom have no fixed contents. Most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights. From time to time, the Supreme Court has filled in the skeleton with soul and blood and made it vibrant. The Constitution is required to be kept young, energetic and alive. Since last more than 50 years, the Supreme Court has interpreted Articles, 14, 19, 21 and given meaning, colour, and odour to these basic rights which a citizen possess by birth.

96. The Supreme Court in the case of *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, has laid down what consideration should weigh in the mind of the Court while interpreting the fundamental right and has held as under:

20. This principle of interpretation is particularly opposite to the interpretation of fundamental rights. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. Every right has a content. Every foundational value is put in Part III as a fundamental right as it has intrinsic value. The converse does not apply. A right becomes a fundamental right because it has foundational value. Apart from the principles, one has also to see the structure of the article in which the fundamental value is incorporated. Fundamental right is a limitation on the power of the State. A Constitution, and in particular that of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled is to be given a generous and purposive construction.

97. It is in this background we have to see what rights flow from these Articles, though they are not expressly stated in those Article. It is to be remembered, if a particular right is clearly stated in the provision, the question of interpretation would not arise. It is only when the rights are not expressly stated, the question of construction and interpretation of those provisions would arise. It is then the above principles have to be kept in mind and applied to, while interpreting the said provisions.

98. The right to education is not stated expressly as a fundamental right in Part III of the Constitution. The Supreme Court has however not followed the rule that unless a right is expressly stated as a fundamental right, it cannot be treated as one. Article 21 has sprung up a whole lot of human rights jurisprudence. Several un-enumerated rights fall within the ambit of Article 21 since personal liberty is of widest amplitude. They are, right to go abroad, right to privacy, right against solitary confinement, right against bar fetters, right to legal aid, right to speedy trial, right against handcuffing, right against delayed execution, right against custodial violence, right against public hanging, Doctor's Assistance, Shelter, right to means of livelihood, right to health, right to pollution-free environment and so on.

99. In the case of *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, Bhagwati, J. while affirming the proposition that Article 21 must be construed in the light of the Directive Principles of the State Policy, the Supreme Court observed that this right to live with human dignity enshrined in Article 21 derives its life breath from Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 at the least, therefore, it must include protection of the health and strength of workers, men and women and of the tender age of children against abuse, opportunities and facilities of children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity.

100. Subsequently relying on the aforesaid observation, the Supreme Court in the case of *Miss. Mohini Jain Vs. State of Karnataka and others*, held, that the directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 21 of the Constitution a reality, the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate. The fundamental rights guaranteed under Part in of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his

individualistic dignity. The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution.

101. Referring to these two judgments, the Constitution Bench of the Supreme Court in the case of *Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh* AIR 1993 SC 2173 held that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. This right, however is not an absolute right. The right to education under this Article have to be determined in the light of Articles 41 and 45 of the Constitution. Right to education so understood in the said context means, (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. This declaration of the right by the Supreme Court resulted in Parliament passing Eighty Sixth amendment introducing Article 21 -A expressly conferring the fundamental right on all children of the age of six to fourteen years free and compulsory education. Thus, right to education is a fundamental right which is implicit in right to life under Article 21 of the Constitution Every citizen has the right to education under the Constitution. The State is under an obligation to establish educational institutions to enable the citizen to enjoy the said right. The State may discharge its obligation through State owned or State recognised educational institution. When the State Government grants recognition to the private educational institution, it creates an agency fulfilling its obligation under the Constitution. The students are given admission to the educational institutions whether State owned or State recognised, in recognition of their right to education under the Constitution. The right to primary education is a fundamental right under Article 21-A of the Constitution.

102. The opening words of Article 19 of the Constitution refers to rights regarding freedom of speech. Article 19(1)(a) declares that all citizens shall have the right to freedom of speech and expression. This provision has been the subject matter of interpretation by the Apex Court for more than half a century and the ambit and scope has been explained in detail and it is ever expanding and the last word has not yet been said. The apex Court has very broadly construed this provision. It is a right one gets by birth. It is a basic human right. A natural right. Freedom of speech and expression is basic to and indivisible from a democratic polity. It includes right to impart and receive information.

103. The Supreme Court giving meaning to the phrase freedom of speech and expression has read into the said provision freedom of press, propagation of ideas, freedom of circulation, right to publish and circulate one's ideas, opinions and views, right to speak, publish and express their views as well as right of people to read, right of citizens to exhibit film on doordarshan, right to express one's opinion by words of mouth, writing, printing picture or any other manner, right to propagate or publish public opinions, right to air his or her views through

the printing and/or electronic media or through any communication method.

104. This right to know and right to receive and impart information necessarily includes the right to receive education or to impart education. Education is a process through which one acquires knowledge, which is a bundle of information. The medium of acquiring knowledge or information should be the choice of the person acquiring the knowledge. In what language the instructions are to be taken or imparted should be the choice of the student or the person imparting education. There cannot be any compulsion regarding the medium of instruction. If there is compulsion, then it would amount to the violation of a human right apart from the fundamental right to freedom of speech and expression. Medium of instruction is a species of right to information. Therefore, the right to medium of instruction of their choice is implicit in this freedom of speech and expression. When right to education is a fundamental right and in particular by Article 21-A, a fundamental right is conferred on all children of the age of six to fourteen years to have free and compulsory education, which is popularly known as "primary education". The said right has to be given full effect, as the Constitution has not prescribed any fetters on the exercise of the said right. The State has been conferred power under the said Article to provide for free education in such a manner as the State may, by law, determine. If this Article 21-A is read with Article 19(1)(a) all children have the freedom to have primary education in a language of their choice as it is implicit in the right to freedom of speech and expression, the right to study or get instruction in a language of their choice. Therefore, the right to have primary education is a medium of instruction of their choice is enshrined in Article 19(1)(a) read with Article 21-A of the Constitution. As this right is conferred on all citizens under Article 19(1)(a), the said right is also that of the parents of the child, who are interested in educating their child and on whom a fundamental duty is cast under Article 51-A(k), which provides that it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child between the age of six and fourteen years. Both these Articles, i.e., 21-A and 51-A(k) were introduced by way of Eighty-sixth amendment to the Constitution in the year 2002, conferring a right on the child and an obligation on the parent of the child regarding primary education. These two Articles along with 19(1)(a) confers on the child as well as the parent a fundamental right to choose the medium of instruction of their choice.

105. Article 19(1)(g) confers on all the citizens of this country, a fundamental right to practise any profession or to carry on any occupation, trade or business. Occupation would be an activity of a person undertaken as a means of livelihood or a mission in life. The establishment and running of an educational institution and an activity carried there under, results in imparting of knowledge to the students must necessarily be regarded as an occupation even if there is no element of profit generation. Therefore, the right to carry on any occupation, includes the right to establish and administer educational institutions. It is a fundamental right guaranteed under Article 19(1)(g) to all the citizens of this

Country irrespective of the fact whether they belong to majority or minority. It is implicit in the said right to establish and administer an educational institution, the right of a citizen to choose the medium of instruction in which knowledge is to be imparted.

106. The right to establish and maintain educational institution is also conferred on every religious denomination or any section thereof, irrespective of the fact that they belong to majority or minority community in the Nation, under Article 26(a) of the Constitution. Education is per se regarded as an activity that is charitable in nature. Education is a recognised head of charity. Therefore a right to establish and maintain institution for charitable purposes includes a right to establishment and administration of educational institution. However, it is a right not conferred on individuals but on a religious denomination or a Section of such denomination. In other words, it is a collective right to citizens belonging to every religious denomination or Section thereof. In so far as the rights conferred on religious denominations under Article 26 is concerned, the said right is always subject to public order, morality and health.

107. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof and having a distinct language, script or culture of its own, to conserve the same and for the said purpose they also have right to establish and administer an educational institution. This right is also conferred on both, the majority and minority. It is purely an educational right. However, after conferring the aforesaid fundamental right on the minority community also, the Constitution makers thought of expressly providing on all minorities the right to establish and administer educational institution of their choice, under Article 30(1) of the Constitution which they have not expressly conferred on either linguistic or religious majority. Article 30(1) confers on all minorities, whether based on religion or language, a fundamental right to establish and administer educational institution of their choice. The minority referred to in Article 30(1) is not only a religious minority but it is a minority based on religion or language. Whereas, the right conferred under Article 26(a) is exclusively on religious denomination which includes a religious minority.

108. Article 29(1) applies to any section of the citizens. In other words, it applies to majority and minority, that is, to all citizens. All of them have a fundamental right to protect their language, script or culture and conserve the same. Article 29(1) do not control the rights conferred under Article 30(1) on minorities. Article 30(1) is an independent Article conferring on all religious and linguistic minorities, a right to establish and administer educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the Article says and means is, that the religious linguistic minorities should have the right to establish educational institutions of their choice. The minorities will ordinarily desire that their children should be brought

up properly and efficiently and be eligible for higher University education and go all over the world fully equipped with such intellectual attainments as it will make them fit for entering the public services. Therefore, the educational institutions of their choice will also necessarily include institutions imparting general secular education. It also includes the right to choose the medium of instructions of their choice other than the mother tongue of the child or the language of the said linguistic minority. The words "of their choice" which qualify "educational institutions" shows the vast discretion and option which minorities have in selecting the type of the institution which they want to establish. The said type of institution includes the type of medium of instructions in which they want to impart education. The dominant word is "choice" and the content of that Article is as wide as the choice of the particular community may make it.

109. The right conferred under Article 19(1)(a), 19(1)(g) and 26 are not absolute rights. The right under Article 19(1)(a) and 19(1)(g) could be curtailed by the State by enacting the law by imposing reasonable restriction as contained in Article 19 (2) and (6). In so far as rights conferred under Article 26 is concerned, it is always subject to public order, morality and health. Such restriction or curtailment of the right is not found in Article 29 and 30. The rights conferred in Article 29(1) and 30(1) of the Constitution are not controlled by any such restrictions. For exercise of the rights under these two provisions, the Constitution has not put any fetters on any section of the citizens or any linguistic and religious minorities. The said right is absolute.

110. The right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. Though the right flowing under Article 30(1) is held to be absolute, the Apex Court has read into this Article the concept of the said right being subject to a regulation protecting national interest. Any regulation framed in the national interest must necessarily apply to all educational institutions whether run by the majority or the minority. The right under Article 30(1) cannot over-ride national interest or prevent the Government from framing regulations in that behalf. However, the only limitation on the power of the Government while framing regulation is, that it cannot destroy the minority character of the institution or make the right to establish and administer, a mere illusion. The regulation so framed must satisfy the dual test. The test of reasonableness and the test that it is regulative of the educational character of the institution. The object of the said regulation should be to achieve excellence of standard of education and check mal-administration. If it is a restriction and negates the right conferred under Article 30(1) then the said restriction would be void ab initio and the restriction should yield to the said fundamental right. That is the essence of the right guaranteed under Article 30(1) of the Constitution on the linguistic and religious minority, thus protecting these minorities from the onslaught of the majority.

111. Article 29(2) declares that no citizen shall be denied admission into an educational institution maintained by the State or receiving aid out of the State

funds on the ground only of religion, race, caste, language or any of them. This is a fundamental right conferred on all citizens irrespective of whether they belong to the majority or minority, linguistic or religious. This article confers a right on the citizen not to be denied admission to an educational institution solely on the ground of religion, caste, race, language or any of them. Article 30(1) of the Constitution confers on the religious and linguistic minorities to administer and establish an institution of their choice which includes right to admit students. Treating Article 29(2) as a facet of equality, the apex Court gave a contextual interpretation to Articles 29(2) and 30(1) while rejecting the extreme contentions on both sides, i.e. on behalf of the institutions that Article 29(2) did not prevent a minority institution to preferably admit only members belonging to the minority community, and the contention on behalf of the State that Article 29(2) prohibited any preference in favour of a minority community for whose benefit the institution was established. Seen from this context any Government order or law which prohibits a citizen from securing admission in educational institution on the ground of language would be violative of Article 29(2) of the Constitution. No regulation could be passed by the State preventing the exercise of such right by the citizen. If so passed it would not be a regulation it would amount to restriction and, therefore, be violative of Article 29(2) of the Constitution.

112. The question whether the right to choose medium of instruction is a fundamental right and the citizen or a religious denomination or a religious and linguistic minority has a right to choose medium of instruction of their choice has been dealt with by the apex Court and this Court in more than one judgment while interpreting Article 19(1)(a)(g), 21, 26, 29(1) and 30(1) of the Constitution.

113. The Supreme Court in the case of *State of Bombay v. Bombay Education Society* (Supra) held as under:

Where, however, a minority like the Anglo-Indian community, which is based, "inter alia", on religion and language, has the fundamental right to conserve its language, script and culture under Article 29(1) and has the right to establish and administer educational institutions of their choice under Article 30(1), surely then there must be implicit in such fundamental right, the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29(1) and Article 30(1) of the greater parts of their contents. Such being the fundamental right, the police power of the State to determine the medium of instruction must yield to this fundamental right to the extent it is necessary to give effect to it and cannot be permitted to run counter to it.

(underlining by us)

114. Again the Supreme Court in *D.A.V. College v. State of Punjab* (Supra) in which the resolution of the Senate Sub-Committee of the Punjab making Punjabi as the sole or exclusive medium for the colleges affiliated to the University, was

quashed. The relevant observations are as under:

...When the country has been reorganised and formed into linguistic states it may "be the natural outcome of that policy to allow colleges established by linguistic and religious minorities giving instruction in the medium of language adopted by the Universities in other states to affiliate to them or if it wants colleges including the minority institutions to be affiliated to it, to make provision for allowing instruction to be given and examination to be conducted in the media and script of the minorities when it imposes a regional language as the medium of instruction for the University. No inconvenience or difficulties, administrative or financial can justify the infringement of the guaranteed rights.

115. The Supreme Court in the case of Usha Mehta and Others Vs. State of Maharashtra and Others, affirmed the earlier view of the Apex Court regarding medium of instructions in the following words:

This Court ruled that the right of minorities to establish and administer educational institutions of "their choice" under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction. (See generally the Constitution Bench decisions in D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others, and D.A.V. College, Vs. State of Punjab and Others, . But this exercise of "choice" of instructive language in schools by the linguistic minorities is subject to the reasonable regulation imposed by the State concerned. A particular State can validly take a policy decision to compulsorily teach its regional language. (See also English Medium Students Parents Association Case).

116. Though the question whether the medium of instruction at primary level should be only mother tongue or the regional language, was not the issue involved in the case before the earlier Full Bench, they have made certain observations on that aspect also. It is specifically pleaded in the statement of objections by the State that the impugned Government Order is passed in pursuance of the said observations. In other words, it is contended that by the impugned order all that they are doing is to give effect to the said judgment of the Full Bench. Though the said observations could not be construed as ratio decidendi or a precedent, at best, it could be obiter dicta. Even the obiter dicta requires attention and consideration. Therefore, let us see what the Full Bench has stated about the mother tongue being the medium of instructions.

117. The State relies on paragraph 26 of the judgment in the case of General Secretary, Linguistic Minorities Protection Committee And Anr. Etc. v. State of Karnataka and Anr. AIR 1989 KAR 226 which reads as follows:

26. Thus, we can see that there is complete unanimity on the topic of primary education. The opinion is that the children must be provided with facility to have their primary education in their mother tongue. As stated earlier, the State Reorganisation Commission attached great importance to this aspect of the matter in the context of establishment of linguistic states and it was firmly of the

opinion that a constitutional duty must be cast upon each of the linguistic states to take steps for providing primary education in mother tongue. It is in the light of this recommendation, Article 350-A was incorporated into the Constitution, which casts an obligation not only on each of the State Governments but also on each of the Local Authorities in each of the States to provide adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. In view of this article, it is urged that it is the constitutional obligation of each and every state and also local authorities to provide facility for primary education in mother tongue in the schools established by them or aided by them though this obligation has to be discharged by the Government and Local Authorities when it is practical and economically feasible having regard to the number of students belonging to any particular linguistic group get admitted to any school established by the State or local authority or financially aided by them. In this behalf as stated earlier, the minimum number of students necessary for making a provision for instruction in any language has also been specified. That being the position, if a linguistic minority group itself establishes a school, the State is under a duty to provide all facilities such as recognition and financial grant if sought for in accordance with the regulations governing the grant of recognition and aid. This is also abundantly clear from Clause (2) of Article 30 which provides that the State shall not in granting aid, discriminate against educational institutions established by a religious linguistic minority.

118. That is not all what they have said about primary education. What the State has not noticed in the aforesaid Full Bench judgment is contained in paragraphs 46, 48, 49, 50 and 82 which reads as follows:

Para-46: from the above judgments, it is dear that in respect of linguistic minority institutions the medium of instruction is to be entirely the choice of the management concerned.

Para-49: Learned Advocate General, however, tried to distinguish the ratio of these decisions on the ground that in these decisions only the right to choose the medium of instruction was upheld but in the present case, the Government was only prescribing Kannada as the first language and has not interfered with the medium of instruction.

Para-50: In our view, the distinction sought to be made is untenable. The choice of Principal language for study and medium of instruction are intimately connected. It is advantageous to study the very language adopted as medium of instruction as the first language though it is not always necessary to do so. As pointed out while considering the matter with reference to Article 14 the Choice must be of the student. In most of the cases, students prefer to take the language which is adopted as the medium of instruction as also the first language for, the study of a language as the principal language would be of great advantage for acquiring knowledge in other subjects. It would be incongruous to say that a linguistic minority's choice for medium of instruction is absolute but

the choice of first language is not. If as ruled by the Supreme Court in Bombay Education Society AIR 1954 SC 561, and in DAV College AIR 1971 SC 1731 the State cannot compel the educational institution established by a linguistic minority to adopt a language prescribed by the Government as medium of instruction and the choice of the management concerned should prevail, it follows that the minority educational institution or the students studying in those institutions must have the option to select the first language. For illustration, if a High School is established by the linguistic groups belonging to Marathi, Urdu, Tamil or Telugu languages in this State and they have the right to have the medium of instruction in their respective language it is difficult to appreciate as to how they do not have the choice to give a choice to the students joining these institutions to take Marathi, Telugu, Tamil or Urdu as first language. To tell a minority educational institution that you can have your language as the medium of instruction, but your institution will not be recognized by the State and you will not get financial aid from the State, if you do not make the regional or official language as the sole first language in your institution would be irrational and arbitrary. As we have held that a regulation making the regional language as the sole first language, would be an unreasonable regulation and therefore violative of Article 14, it follows that it is also violative of Articles 29 and 30 of the Constitution. In other respects the State has undoubtedly powers to prescribe any course of study which is in the interest of excellence in education. This power would certainly include the power to prescribe language or languages, as course of study in the educational institutions.

(underlining by us)

Para 82. In the instant cases, we are concerned not with the medium of instruction but only with the primacy extended to the official language of the State as the sole compulsory first language of the State. The State has permitted not only the freedom of choice in the matter of medium of instruction to the linguistic minorities but also have given the choice to learn the mother tongue as a second language instead of as the first language allowing grace marks of 15 to the linguistic minorities to overcome lack of familiarity of Kannada and the resultant deficiency in the matter of learning Kannada. I do not think that prescription of the first language is not a power which the State can exercise and that it amounts to interference in the administration of the minority educational institutions. The State has a right to prescribe a common syllabus. The stipulation of the first language for all educational institutions alike in an integral part of such a right. There is no violation of Article 14 of the Constitution.

(underlining by us)

119. In the case of Sahyadri Education Trust Vs. State of Karnataka, the learned single Judge dealing with medium of instructions has held as under:

Though the decision of this Court in Bapuji Education Society's case is pending consideration before the Division Bench in appeal, I am inclined to accept the

ruling of this Court on this point for holding that Societies which are engaged in promoting education are entitled to protection under Article 19(1)(g) of the Constitution and their rights could be curtailed by reasonable restrictions in public interest under the provisions of Article 19(2)(6) of the Constitution. The imposition of Kannada as the sole medium of instruction cannot be said to be in the interest of the general public and has no nexus to public interest. In the circumstances, the petitioners are entitled to the protection under Article 19(1)(g) of the Constitution. I will go further and hold that the impugned orders and the policy decision of the State Government are violative of Article 19(1)(a) of the Constitution as the medium of instruction is one aspect of freedom of speech and expression and I do not know of any law which can say that a student should express himself in a particular regional language not in English if he has the inclination to study the curriculum in English in addition to English as the II language or the mother language as the case may be."

(underlining by us)

120. After referring to the full Bench judgment of this Court in General Secretary, Linguistic Minorities Protection Committee's case and Rule 12(1) of the Grant-in-Code, a Division Bench of this Court after exhaustive discussion in the case of State of Karnataka Vs. Noble Saint Education Society, held as under:

We may also add that the right of the institutions under Article 30(1) is in absolute terms and they have a right to establish and administer educational institutions of their choice.

Provisions of Rule 12(ii) of the Code, therefore, are to be read, in the light of these settled principles - (a) Parental right to have primary education of their children in the school and language of their choice, and (b) in the case of minorities, said right is further reinforced by the language of Article 30(1) of the Constitution.

(Underlining by us)

121. The Full Bench of the Gujarat High Court in Shri Krishna Ranganath's (Supra) while dealing with the Gujarat University Act, 1949, observed as follows:

In our view the Act gives no power to the University to impose Gujarati or Hindi as the sole medium of instruction and examination or even as one of the media of instruction and examination on affiliated colleges or to prohibit the use of English as a medium of instruction and examination in affiliated colleges.

(i) "Statutes 207 and 209 in so far as they seek to lay down and impose Gujarati and/or Hindi in Devanagiri script as the medium of instruction and examination on institutions other than its own institutions are unauthorised and beyond the powers of the University and the Senate and are therefore, null and void as neither Section 4(27) nor any other provision of the Act empowers the University to lay down Gujarati or Hindi as a medium of instruction and examination for such institutions or to forbid the use of English as a medium of instruction and

examination for and in such institutions".

(ii) "Assuming that Section 4(27) and/or any other provisions of the Act do contain such power, that power at best is only to lay down Gujarati or Hindi as one of the media of instruction and examination and not as the only medium of instruction and examination to the exclusion of other languages and does not extend to forbid the use of English or any other language as a medium of instruction and examination and Statutes 207 to 209 are therefore, null and void.

It cannot be denied, though the American decisions may not be a guide to the interpretation of the provisions of Part III of the Constitution, that the petitioner is entitled as a parent to direct and education of his son in the manner he considers best suited and to guide thereby his future prospects. The State has no concern and we hope, no right to direct him to do so in a particular manner. That can only happen in countries which do not boast of democratic Constitutions. Though such a right may not arise from a Statute or a contract, he is entitled and has the liberty in law to educate his son in the manner he thinks best.

The decision of the Gujarat High Court was challenged in the Supreme Court and the Supreme Court dismissed the appeal preferred by the Gujarat University.

122. A careful reading of the counter filed by the State as well as the arguments canvassed at the time of arguments by all the learned Counsel on behalf of the respondents, clearly indicates that they do not dispute the fact that the choice of medium of instruction is a fundamental right. But their specific stand, as could be made out from the counter, is as follows:

The said Government Order does not infringe any of the constitutional or other rights of the parents or the management. The Government Order embodies measures which are regulatory in nature and which are absolutely necessary for maintaining academic discipline. The State is entitled to enforce regulatory measures in the matter of education and the present measure is one such regulatory measure which the Government is competent to impose. Neither the management nor the parents have an absolute right to decide about the medium of instruction. As pointed out by the Supreme Court in the aforesaid case, the question relating to medium of instruction is a matter of policy and the State Government is entitled to formulate such policy as it considers beneficial to the students. The Supreme Court has pointed out that the Courts have no power or jurisdiction to entertain with such formulation of policies and the same should be left to the discretion of the concerned State Governments. Therefore, it was contended, the present writ petition filed challenging the Government Policy was not maintainable.

123. This contention is primarily based on the decisions of the Supreme Court under Article 30(1) where it has been held that right under Article 30(1) is absolute but subject to regulations to be imposed by the State, to maintain excellence of education.

124. Therefore, in the light of the aforesaid constitutional provisions and the decision of the apex Court and this Court, it is clear that the right to education is a fundamental right, which also includes the right to choose the medium of instruction. The medium of instruction is one aspect of freedom of speech and expression. The freedom of speech and expression includes right to receive and acquire information and to disseminate it. It also includes right to educate, right to be educated, right to inform and right to be informed and entertained. The choice must be of the student and the parent. The State's duty is only to provide and create an atmosphere, where the child can have education in a medium of its choice. It cannot compel the student to choose a particular medium of instruction. The right to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction in imparting education. The medium of instruction is to be entirely the choice of the management concerned. Therefore we declare that the right to choose a medium of instruction of their choice is a fundamental right under Article 19(1)(a)(g), 21, 26, 29(1) and 30(1) of the Constitution of India.

Parentalright

125. The next question is, what is the right or role of the parent in choosing the medium of instruction for their child. (sic) (Mathru Devo Bhava; Pithru Devo Bhava;) is the underlining principle which represents the ethos and the culture of this country, of which all of us are proud of. As a corollary to that, the parents sacrifice their personal interest in life for the welfare of their children, especially in educating them. Probably it is only in this country the parents educate their children, through out, and spend from their pockets the cost of entire education, if need be by raising loans, or selling their properties. Today without any compulsion, by law slowly in urban areas, educated people are adopting a single or two child norms. The care and time spent on their children, in their upbringing, education and health is unbelievable. It is to be seen to be believed. May be the parents have their own dreams and aspirations in life for their children. They are prepared to make any sacrifice to achieve that object. In fact virtually they mortgage their whole life interest for the welfare of their children. It may be an Indian phenomenon. May be some times their children are not able to cope up with the expectations of their parents. But to state that parents are crazy and they do not know what is in the interest of their children is ridiculous. Equally ridiculous is the proposition, the Government of the day knows what is good for the children and not the parents of the child. However, laudable the programmes of the Government is, in practice, we have seen in the last 60 years of independence, how these policies are implemented. To say the future of the children is safe in their hands and not in the hands of their parents is an insult to the conscience of the country. It is when the parents of the children, due to ignorance, illiteracy, and poverty are unable to decide what is good for the child and are not aware of the fundamental right of the child and the fundamental duty of the parent, the Government should give its helping hand and aid them in

educating their children. The financial constraints of the government should not come in the way. They should provide requisite funds for their education. In doing so they would be complying with a constitutional obligation. However, when the parents are educated, financially sound, socially advanced, there is no necessity for the state to take upon itself the responsibility of educating their children. Such parents understand their fundamental duty to educate their children and they are eager to discharge their duties. They are prepared to sacrifice anything in life for their education. In fact people coming from poor and middle class families, their whole life depends on the education of their children. They know or at least they believe, that they know what is good for their child. Even in their dreams they will not think of doing any thing that is harmful to their children or their interest. Most of them need no assistance from the state in educating their children. They do not want unwarranted interference in the matter of their children's education. They would like to be left free. They would like to have freedom or choice of educating their children, in a manner which is most suited to their children. In those circumstances, it is unfair on the part of the government to impose its will on the parents and children in selecting the medium of instructions at the primary level. If the government has no power and competence to impose mother tongue as the medium of instructions on the students at higher level, equally it has no power to impose its will even in respect of primary education, merely because the experts opine that the mother tongue is best suited for child's education at primary level.

126. This parental right has been the subject matter of several decisions including the Apex Court.

The Supreme Court in the case of The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, has held as under:

141. The fundamental postulate of personal liberty excludes any power of the State to standardize and socialize its children by forcing them to attend public schools only. A child is not a mere creature of the State. Those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations.

142. The parental right in education is the very pivotal point of a democratic system. It is the touch-stone of difference between democratic education and monolithic system of cultural totalitarianism.

(Underlining by us)

Explaining the prerogative of the State regarding secular education, it was observed thus:

The State's interest in secular education may be defined broadly as an interest in ensuring that children within its boundaries acquire a minimum amount of information and knowledge in certain subject. Without such skill and knowledge, an individual will be at a severe disadvantage both in participating in democratic

self-government and in earning a living. No one can question the constitutional right of parents to satisfy their State imposed obligation to educate their children by sending them to schools or colleges established and administered by their own religious minority so long as these schools and colleges meet the standards established for secular education.

(underlining by us)

Finally, it was stated:

We find it impossible to subscribe to the proposition that State necessity is the criterion for deciding whether a regulation imposed on an educational institution takes away or abridges the right under Article 30(1). If a legislature can impose any regulation which it thinks necessary to protect what in its view is the interest of the State or society, the right under Article 30(1) will cease to be a fundamental right.

127. In the case of General Secretary, Linguistic Minorities Protection Committee and Anr. Etc. v. State of Karnataka and Anr. (Supra) full Bench of this Court dealing with parental right has held as under:

Para 23 (1) Primary education must be in Mother Tongue if that happens to be the choice of the parents.

Para 27 It is also universally recognised that it is the parental right to have primary education of their children in the school and language of their choice.

The State therefore should leave the option to have the primary education in mother tongue to the parents and their children. The State cannot curtail that right and liberty.

Para-46: We shall now proceed to test the validity of the rival contentions in the light of the ratio of the decisions of the Supreme Court. As far as primary education is concerned as shown earlier, it is the unanimous opinion of all the Commissions, Conference including Dr. Gokak Committee that it should be in mother tongue. In the case of Government or Government aided institution also the opinion is that if requisite number of students belonging to any linguistic group get admitted, provision has to be made for imparting primary education in mother tongue. Further, from the observation of the Supreme Court in the case of St. Xavier's College (AIR 1974 SC 1389) extracted earlier, it may be seen that the parents have the right to decide as to whether their children should secure primary education in the mother tongue or not. The State cannot step in and arrogate to itself the power to decide as to the language in which the children should have their primary education.

128. The Full Bench of the Madras High court in the case of Tamilnadu Tamil & English Schools Association v. State of Tamilnadu and Ors. 2002-2-LW.319 has held as under:

74. The parents on behalf of the children can call upon the State to provide the

education upto 14 years. Such education has to be given to shape the children to face the challenges and cater to the needs of a changing society. Under Article 21 of the Constitution of India, a citizen has a right to safeguard education. According to the Universal Declaration of Human Rights (Convention on the Rights of the Child) as accepted by Government of India even in 1992 parents have a prior right to choose the kind of education that shall be given to their children, Which the Apex Court described even in 1974 as a pivotal right of the parents in a democratic country. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Article 350A of the Constitution of India is not restricting such a right in any manner, as it imposes only an obligation on the State and nothing more.

75. Now, the parents are not demanding the State to provide education. They desire and only want to be left alone to decide. It is not as if, they want their children to learn something, which is prohibited under law. All that they want is to educate their children in all the subjects of their choice. Certainly, it cannot be said that the nation's image and dignity will be affected, as the language English has already been accepted by the nation as an "associate language". No one can claim to know better than the parents about the child, to decide, as to what the child requires in the sphere of education and such a decision they take keeping their duty in mind to shape the career and destiny of their child. With the nation touching a population of 100 crores and the State of Tamil Nadu with more than 6 crores, may not be able to do much in view of the limitations and constraints on them. First, the State has to endeavour to provide food and shelter to every one and education comes only thereafter. It can safely be said that the only logical conclusion that flows from the various decisions referred to supra and the discussions made above, is that the right to education is a fundamental right, which also includes the right to choose the medium of instruction and it can be exercised by the parents on behalf of their children.

129. The parental right and the right of the child in choosing the medium of instruction at the primary level has agitated the minds of the International Community and after sufficient deliberation, a common acceptable code of conduct has been evolved. The Universal Declaration of Human Rights Convention on the Rights of the Child provides as under:

Article 26(1) is to the effect that every one has the right to education.

Article 26(2) is to the effect that education shall be directed to the full development of human personality and for strengthening of respect for human rights and fundamental freedoms. Article 26(3) lays down that the parents have the right to choose the kind of education that shall be given to their children.

Article 10 of the European Convention on Human Rights which inter alia states as follows:

10.1. Everyone has the rights to freedom of expression. This right shall include freedom to hold opinion and to receive and impart information and ideas without

interference by public authority and regardless of frontiers.

Article 19(1) and (2) of the International Covenant of Civil and Political Rights, reads as under:

(1) Everyone shall have the right to hold opinions without interference;

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Convention on the rights of the child

Article 13: 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

Article 14: 1. States parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Article 27:2 The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

130. Thus, this parental right is recognised by the United Nations as is clear from Article 26(3) of the Universal Declaration of Human Rights Convention on the rights of the child, which was adopted by the General Assembly of the United Nations on 20th November 1989, which was accepted by the Government of India on 11th December 1992 which recognizes that every child has an inherent right to life, right to education and the parents have the right to choose the kind of education that shall be given to their children. The United Nations and other International Organizations only has adopted the national ethos of this country, which is cherished for over centuries in their land.

131. In 2002 when primary education was made a fundamental right by introducing Article 21-A correspondingly a fundamental duty was also cast on parents by introducing Article 51-A(k) which reads as under:

51-A. Fundamental duties.- It shall be the duty of every citizen of India -

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

132. Smt. Hemalatha Mahishi contended that, in the National Charter for Children, 2003, the Government of India has reiterated its commitment to the cause of the children in order to see that no child remains hungry, illiterate or sick. Dealing with free and compulsory primary education the following has been adopted:

17. Strengthening family:

(a) Every child has a right to a family. In case of separation of child from their families, the state shall ensure that priority is given to re-unifying the child with its parents. Incases where the state perceives adverse impact of such a re-unification, the state shall make alternate arrangements immediately, keeping in mind the best interests and the views of the child.

(b) All children have a right to maintain contact with their families, even when they are within the custody of the State for various reasons.

(c) The State shall undertake measures to ensure that children without families are either placed for adoption, preferably intra,-country adoption, or foster care or any other family substitute services.

(d) the State shall ensure that appropriate rules with respect to the implementation of such services are drafted in a manner that are in the best interest of the child and that regulatory bodies are set up to ensure the strict enforcement of these rules.

(e) All children shall have the right to meet their parents and other family members who may be in custody.

18. Responsibilities of both parents: the State recognizes the common responsibilities of both parents in raring their children.

133. A perusal of the aforesaid National Charter makes it very clear the role of the State arises in case of separation of a child from the family. On the contrary recognises the common responsibilities of both parents in rearing their children. No doubt the interest of the child is paramount. When the parents take care of the child it cannot be said they do not have child's interest upper most in their mind and that they would not recognize the paramount interest of the child and that only the State would have the paramount interest of their child. Similarly, under the provisions of the Hindu Minority and Guardianship Act, 1956 which deals with appointment of a guardian to a Hindu minor, Clause 13 of the Act makes it clear that the welfare of the minor shall be the paramount consideration. Even though the said law provides the custody of the child below the age of 5 years should be with the mother and thereafter the father has a right to the custody of the child but still when the husband and wife are not together a dispute arises between them and in particular regarding the custody

of the child, notwithstanding the aforesaid rights conferred under the Act on both father and mother, it is the welfare of the child which should be the paramount consideration which should weigh with the Courts in passing appropriate orders. Therefore, the State has no role to play, when child is taken care of by his or her parents. State or Court steps in when there is disharmony between the husband and the wife.

134. India is a Democratic Country. It is governed by a written Constitution. Its unity lies in diversity. Its hope and aspirations are meant not only to the present generation but also to the future generation to come. The people's wishes are to be respected. Their fundamental rights should not be trampled with. Every citizen has a fundamental right to freedom of speech and expression. Therefore, it is open to a group of people to insist on the mother tongue being made the medium of instruction. It is their constitutional right and they are free to express themselves in a manner befitting to them. The government is bound to hear them and take into consideration their views. That is how public opinion is built in a Democratic society. That is a democratic way of life. Similarly the views of the parents and other sections of the society also requires consideration and deserves respect. Though in a democracy, the majority counts, no count is taken to find out who constitutes the majority. Above all even if the government on consideration of the various facets of public opinion, formulates a policy decision and tries to implement the same, it has to be in accordance with the law of the land. That is the Rule of law, as no government is above law and they are also subjected to the rule of law. The said Government policy cannot impinge the fundamental rights of a citizen. A vocal section of the public cannot undermine and trample with the fundamental rights of a silent majority. That is the constitutional guarantee in a democratic set up. It has to be respected. That is the essence of good governance.

135. From the aforesaid discussion, the judgments of the Apex Court and this Court it is fairly well settled that it is universally recognised that it is the parental right to have primary education of their children in the school and language of their choice. The parental right in education is the very pivotal point of a democratic system. It is the touch-stone of difference between democratic education and monolithic system of cultural totalitarianism. The fundamental postulate of personal liberty excludes any power of the State to standardize and socialize its children. Those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations. A child is not a mere creature of the State. The parents have the right to decide as to whether their children should secure primary education in the mother tongue or not. No one can question the constitutional right of parents to discharge their fundamental duty to educate their children by sending them to schools or colleges so long as these schools and colleges meet the standards established for secular education. The medium of instructions is to be entirely the choice of the parents and the student. No one claim to know better than the parents about the child, to decide, as to what the child requires in the sphere of

education to shape its career and destiny. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. The parents have the right to decide as to whether their children should secure primary education in the mother tongue or not. The State cannot step in and arrogate to itself the power to decide as to the language in which the children should have their primary education. Therefore, it is a fundamental right of the parent and child to choose the medium of instruction even in primary school. The police power of the State to determine the medium of instruction must yield to the fundamental right of the parent and the child.

136. Lastly Article 30(1) expressly provides that the linguistic and religious minority have a fundamental right to establish and administer an educational institution of their choice. Similarly Article 26 expressly provides that every religious denomination or any section thereof shall have a fundamental right to establish and maintain institutions for charitable purposes which includes education. Article 19(1)(g) confers on every citizen of this country a fundamental right to carry on any occupation which includes imparting education by establishing an educational institution of their choice. Article 29(1) confers on any section of the citizen residing in this country having a distinct language, script or culture, of its own shall have the fundamental right to conserve the same by establishing and administering an educational institution. Thus a right to establish and administer an educational institution of their choice (including the choice of medium of instruction) is a fundamental right that has been enshrined in the Constitution on every citizen, a religious denomination and a linguistic or a religious minority and the authoritative pronouncement of the Supreme Court in *T.M.A. Pai's* case puts an end to the said controversy.

Judicial Review of Governmental Policy

137. It was contended that Article 350-A defines the policy of the Government. While giving effect to the said policy, the executive passes an order, the same cannot be the subject matter of judicial review and the Courts have to keep their hands off. It was also contended that in matters of policy decisions the Courts have no role to play and therefore, in the policy decisions of the State based on expert opinion, this Court should not interfere.

Judicial Review

138. Judicial review in our Country is the heart and soul of our constitutional scheme. The judiciary is constituted as an ultimate interpreter of the Constitution and is assigned the delicate task of determining the extent and scope of the powers conferred on each branch of the Government ensuring that action of any branch does not transgress its limits. Judicial review is the most potent weapon in the hands of the judiciary for the maintenance of the rule of law. The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law would become a teasing illusion and a promise of unreality. Judicial review is the basic feature upon which

hinges the checks and balances blend with the hind sight in the Constitution as people's sovereign power for their protection and establishment of egalitarian social order under the rule of law. The process of judicial scrutiny of the legislative Acts on the touchstone of the Constitution is technically called "judicial review". The Courts, however, adopt judicial self-restraint in discharging their functions of judicial review in order to maintain harmony between the judiciary, the legislature and the executive. Judicial review is an unavoidable necessity where there is a constant danger of legislative or executive lapses and excuses. The judiciary needs to be firm in its operation of duty and enforcement of Constitutional obligations and the result of its decisions must be towards the ultimate benefit of the nation. A distinction has to be made between the judicial review and justiciability of a particular action. The power of judicial review is implicit in a written constitution. Justiciability relates to a particular field falling within the purview of the power of judicial review. The power of judicial review over legislative and executive action vested in the High Court under Article 226 and the Supreme Court under Article 32 is an integral and essential feature of the Constitution, constituting the part of its basic structure. Therefore, ordinarily, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. By means of judicial review, the Court restrains unconstitutional exercise of power by the legislative and executive. Judicial restraint is, however, the only check on exercise of such judicial power. While exercising the power of judicial review of administrative action, the Court does not act as an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy so long such authority does not transgress its constitutional limits or statutory powers. Matters of policy are certainly for the legislature to consider. Where the function of the legislature ends, the function of judiciary begins. To pronounce upon the constitutional law is not legislating. In the course of judicial review of the actions of the constitutional authority, the Court cannot really substitute a decision reached by a fair procedure by a different decision only on the ground that the decision which appeals to the Court is a better one. Judicial review is not concerned with the decision, but with the decision making process. Generally, the Courts do not exercise their power of judicial review and interfere in policy matters of the State, unless the policy so formulated either violates the mandate of the Constitution or any statutory provisions or is otherwise actuated by malafides.

139. In this regard it is necessary to look into the following decisions where the scope of judicial review of the Government Policy has been clearly set out:

140. In the case of *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, the Supreme Court held as follows:

...but the Court will not sit in appeal over the policy of the Parliament in enacting law....

141. In *The State of Maharashtra v. Lok Shikshana Sanstha and Ors.* AIR 1973

SC 538 it was held by the Supreme Court, as under:

...So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the Courts to interfere with the policy leading up to such assessment.

142. In the case of R.K. Garg and Others Vs. Union of India (UOI) and Others, the Supreme Court held thus:

...No direction can be given or is expected from the Courts unless while implementing such policies there is violation or infringement of any of R.K. Garg and Others Vs. Union of India (UOI) and Others, the constitutional or statutory provision. The new Telecom policy was placed before the Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of Course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court.

143. In the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , the Supreme Court held as under:

We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly the in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter J. in *Morey v. Doud* (1957) 354 US 457:

In the utilities, tax and economic regulation cases there are good reasons for judicial self-restraint if not judicial deference to legislative judgment, The legislature after all has the affirmative responsibility, The Courts have only the power to destroy, nor to reconstruct, When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events-self-limitation can be seen, to be the path to judicial wisdom and institutional prestige and stability.

...The Court cannot strike down a policy decision taken by the State Government

merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide....

144. In the case of Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, , the Supreme Court observed thus:

31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the Courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.

145. In the case of Premium Granites and Another Vs. State of Tamil Nadu and Others, , the Supreme Court held thus:

54. It is not the domain of the Court to embark upon uncharted ocean of public policy in an exercise to consider as to whether the particular public policy is wise or a better, public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authority as the case may be....

146. In the case of M.P. Oil Extraction and Another Vs. State of M.P. and Others, the Supreme Court observed thus:

41. ...The executive authority of the State must be held to. be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution of such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not out-step its limit and tinker with the policy decision of the executive functionary at the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and Court should not embark on the uncharted ocean of the public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State that is, the legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional schemes so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days.

The democratic set up to which the policy is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

147. In the case of *Narmada Bachao Andolan Vs. Union of India and Others*, the Supreme Court observed as under:

229. It is now well settled that the Courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. The Courts, no-doubt, has a duty to see that the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution....

148. In *Balco Employees Union (Regd.) v. Union of India* AIR 2002 SC 351 the Supreme Court held thus:

45. It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon on an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

149. Therefore the parameters of judicial review is well defined. The power of judicial review is implied in written democratic constitution, which provides for separation of power. The power of judicial review over legislative and executive action vested in the High Court under Article 226 and the Supreme Court under Article 32, is an integral and essential feature of the constitution, constituting the part of its basic structure. Judicial review in our country is the heart and soul of our constitutional scheme. By means of judicial review, the courts restrains unconstitutional exercise of power by the Legislative and the Executive. To pronounce upon the constitutional law is not legislating. While exercising the power of judicial review of administrative action, the Court does not act as an appellate authority. Judicial review is an unavoidable necessity where there is constant danger of legislative or executive lapses and excesses. Judicial restraint is the only check on exercise of such judicial power. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in overstepping its limits.

150. The policy is essentially for the State to formulate keeping in mind the need and requirements of the people and society at large. The State should be allowed some play in the joints because it has to deal with complex problems, which do not admit of solution through any doctrinaire or strait-jacket formula. This is particularly in case of policy dealing with economic matters. The policy relating to

economic activities should be viewed with greater latitude than the policy touching civil rights such as freedom of speech, religion, etc., Therefore in exercise of its power of judicial review the Court should not transgress the field of policy decision. The Court, no doubt, has a duty to ensure that while taking a policy decision, there is no violation of the law by the Government and citizen's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

151. If the Government policy impinges upon or violates any fundamental rights guaranteed to the citizens of the Country or is contrary to any statutory provisions or which is opposed to principles of natural justice or actuated with malafides, then, in exercise of its power of judicial review the Court can review the said policy. When a policy framed runs against the constitutional provisions, the Court must as a part of its constitutional duty interfere with the said policy. In doing so, the Court will be discharging its constitutional obligations, maintaining equilibrium between the three wings of the State and maintaining the rule of law.

Regulation or Restriction

152. It is submitted that the impugned order is in the nature of Regulation setting out the policy of the Government in so far as medium of instruction in primary school. To maintain excellence in education it is necessary to prescribe at the primary level the medium of instruction to be either in mother tongue or in the regional language. It is not violative of fundamental right. It is also contended that the impugned order is issued because of the Constitutional mandate contained in Article 350-A and therefore the Court has no jurisdiction to interfere with Policy decision of the Government on education over which the Court has no jurisdiction.

153. From the aforesaid submissions it is clear that what they contend is even if right to choose the medium of instruction is held to be a fundamental right, the said right being not a absolute right, the State has the power to regulate the same. In fact, reliance is placed on the observations of the Division Bench of this Court in the case of General Secretary, Linguistic Minorities Protection Committee Vs. State of Karnataka, wherein it is stated that a Regulation which requires imparting a pre-primary and primary education up to 4th Standard in mother tongue is a reasonable Regulation, in the interest of excellence in education and in the interest of minorities. It is also consistent with the claim of linguistic minorities and therefore it is not violative of any Constitutional provision.

154. In order to appreciate this contention let us look at the pronouncement of the Supreme Court on this point. In the case of Rev. Sidhrajibhai Sabbai and Ors. v. State of Gujarat and Anr. AIR 1963 SC 540 the Supreme Court observed thus:

Regulation made in the true interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is

guaranteed, they secure the proper functioning of the institutions, in matter educational.

155. In the case of Ahmedabad St. Xaviers College Society and Anr. Etc., v. State of Gujarat and Anr. AIR 1974 SC 1384 the Supreme Court has observed as under:

In considering the question whether a regulation imposing a condition subserves the purpose for which recognition or affiliation is granted, it is necessary to have regard to what regulation the appropriate authority may make and impose in respect of an educational institution established and administered by a religious minority and receiving no recognition or aid. Such an institution will, of course, be subject to the general laws of the land like the law of taxation, law relating to sanitation, transfer of property, or registration of documents etc., because they are laws affecting not only educational institutions established by religious minorities but also all other persons and institutions. It cannot be said that by these general laws, the State in any way takes away or abridges the right guaranteed under Article 30(1). Because Article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws, which would not amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgment of the right.

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We find it impossible to subscribe to the proposition that State necessity is the criterion for deciding whether a regulation imposed on an educational institution takes away or abridges the right under Article 30(1). If a legislature can impose any regulation, which it thinks necessary to protect what in its view is in the interest of the State or society, the right under Article 30(1) will cease to be a fundamental right. It sounds paradoxical that a right, which the Constitution makers wanted to be absolute, can be subjected to regulations which need only satisfy the nebulous and elastic test of State necessity. The very purpose of incorporating this right in Part III of the Constitution in absolute terms in marked contrast with the other fundamental rights was to withdraw it from the reach of the majority. To subject the right today to regulations dictated by the protean concept of State necessity as conceived by the majority would be to subvert the very purpose for which the right was given.

What then are the additional regulations, which can legitimately be imposed upon an educational institution established and administered by a religious or linguistic minority, which imparts general secular education and seeks recognition or affiliation?

Recognition or affiliation is granted on the basis of the excellence of an educational institution, namely, that it has reached the educational standard set up by the university. Recognition or affiliation is sought for the purpose of enabling the students in an educational institution to sit for an examination to be

conducted by the university and to obtain a degree conferred by the university. For that purpose, the students should have to be coached in such a manner so as to attain the standard of education prescribed by the university. Recognition of affiliation creates an interest in the university to ensure that the educational institution is maintained for the purpose intended and any regulation, which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. That is the price of recognition or affiliation: but this does not mean that it should submit to a regulation stipulating for surrender of a right or freedom guaranteed by the Constitution, which is unrelated to the purpose of recognition or affiliation. In other words, recognition or affiliation is a facility which the university grants to an educational institution, for the purpose of enabling the students there to sit for an examination to be conducted by the university in the prescribed subjects and to obtain the degree conferred by the university, and therefore, it stands to reason to hold that no regulation which is unrelated to the purpose can be imposed. If, besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that the aid is utilized for the purpose for which it is granted will be permissible. The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from the regulations by the legislature or the university if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really subserves the purpose of recognition or affiliation. But that does not affect the question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the Court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, ex-hypothesi, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interest of the minority community and those persons who resort to it.

156. The Division Bench of this Court in the case of *State of Karnataka v. Noble Saint Education Society* (Supra) has held as under:

Regulation secures the proper functioning of the institutions, in matters educational in other words, while restrictions impede the exercise of the right, "regulations" polishes the right to that, there would be a proper and smooth exercise of the right in the interest of the very persons exercising the Fundamental Right.

157. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the Supreme Court has held as under:

The regulation must satisfy a dual test, the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive of making the institution an effective vehicle of education for the minority community or other persons who resort to it. It was permissible for the authorities to prescribe regulations, which must be complied with before a minority institution could seek or retain affiliation and recognition. The regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This in our view is the correct approach to the problem.

158. In this context reliance was placed on the provisions of the Karnataka Education Act, 1983. Clause 25 defines Primary Education which reads as under:

25. "primary education" means education in and upto such classes and standards as are prescribed under this Act.

159. Section 7 deals with the power of the Government prescribing curricula, etc., as well as the medium of instruction which reads as under

7 (1) (c) - Government to prescribe curricula, etc., (1) Subject to such rules as may be prescribed, the State Government may, in respect of educational institutions, by order specify--

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(c) the medium of instruction

160. Section 145 is the rule making provision conferring power on the State Government to make rules. Relevant portion of which reads as under:

145. Power to make rules.- (1) The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for --

(i) xxxx

(ii) the curricula, etc., specified under subsection (1) of Section 7.

161. Similarly, reliance was placed on Rule 12(i) and (ii) of the Grant-in-Aid Code which reads as under:

12. Medium of instruction : (i) In all primary schools, the medium of instruction shall ordinarily be the Regional language or mother-tongue of the child.

(ii) With a view to creating facilities for the linguistic minorities provision shall be made for teaching their mother-tongue subject to the prescribed conditions.

English medium schools or English medium sections in the existing Primary Schools may be opened with the permission of the Director for the benefit of the following categories of students:

(i) Students whose mother tongue is English;

(ii) Students whose parents belong to All India Services Central Services, etc., and are liable to be transferred from State to State (on production of certificates from the concerned department);

(iii) Students belonging to a migratory group Migratory group means those who have no permanent abodes and who migrate from State to State frequently for business or other reasons e.g. Labour employed in construction work;

(iv) Students whose parents are employees of Banks, Firms and other business concerns, which have branches in more than one State and the employees of which are liable to be transferred from State to State (on production of certificate from the concerned authorities);

(v) Students whose mother tongue is a minority language for which there is no provision in the schools of the locality.

(vi) Such schools should be started only after obtaining the permission of the Director; and

(vii) An English medium school or class may be permitted to be started subject to the condition that the minimum strength of each Standard is 10 or 30 for standards I to IV taken together. For standards V to VII the minimum strength shall be 10 per standard

162. The language of Rule 12(1) is not peremptory. Rule 12(1) and (2) contains the policy of the Government to impart primary education in mother tongue. In majority of cases it happens that the regional language, i.e. Kannada, the prescription is that primary education should be in regional or mother tongue. However, it is not peremptory. It is in the nature of a guidance and expects that ordinarily the medium of instruction shall be in the regional language or mother tongue. It is also in consonance with Article 350-A of the Constitution of India. The way the said rule is worded there is no compulsion. It is the regulation framed under Article 162 of the Constitution by the State to regulate the primary education in the State of Karnataka. Therefore, the provisions of the Code are to

be read as regulatory measures. In case of this provision goes beyond its limitation and purports to effect the exercise of fundamental right, an attempt should be made to read down the provisions if possible to make it regulatory. However, in case the said provision cannot be read as to convey only the regulatory purpose, then the Court may have to strike it down or ignore the same as unenforceable. Fortunately for us it is not necessary either to ignore the same or to strike it down. The words used in Rule 12(1), is "shall ordinarily". Therefore, it is expected as set out in the impugned Government order that everyone would like to have primary education for their children in their mother tongue to protect the language, the script and their culture. In the State of Karnataka, as Kannada happens to be the official language and the State is re-organized on the basis of language, it is expected that all Kannada speaking people would send their children to Kannada medium primary school. Therefore, there is no necessity to compel anyone to send a child to primary school where mother tongue is the medium of instruction. If this is the object of the regulation it is not violative of the fundamental right. It is within the competence of the executive to pass such an executive order. In fact the order dated 19.6.1989 passed by the State in pursuance of its executive power under Article 162 of the Constitution as its policy which is upheld by the Apex Court only repeats what is contained in Rule 12(1) and (2) of the Grant-in-Aid Code. The Supreme Court upheld the said Government order on the ground that there is no element of compulsion. Every child, if it chooses to have primary education in mother tongue, it is free to study in the said mother tongue.

163. Further it was contended that Karnataka Education Act, 1983 defines primary education as education in and up to such classes and standards as are prescribed under the Act. Section 7(c) confers powers on the State Government to specify the medium of instruction in respect of the educational institutions and Clause (2) of sub-rule (2) of Section 145 of the Act makes rules to carry out the purpose of the Act and in particular what is contained in sub-Section (1) of Section 7 of the Act.

164. All these provisions empower the Government to specify the medium of instruction in primary school. It does not empower the Government to compel the students to study in a particular medium of instruction. If such compulsion were to be read into these provisions, it would be violative of fundamental right. The legislature has not expressly conferred such power. We cannot by implication confer such power. It is well settled that all these provisions have to be interpreted keeping in mind the fundamental rights guaranteed to the citizens of this Country and if two interpretations are possible, it is that interpretation which would advance the cause of justice and avoid the legislative Act being declared as unconstitutional is to be preferred. A harmonious interpretation would indicate that the State has been conferred the power to specify medium of instruction in primary school so as not to offend the fundamental right guaranteed under the Constitution. That would meet the ends of justice.

165. From the foregoing, it is clear that the power of the State to make regulations regulating the fundamental rights cannot be disputed. Regulations secure the proper functioning of the institution in matters of education. The Regulation polishes the right so that there will be proper and smooth exercise of the right in the interest of very person exercising the fundamental rights. Such Regulations are not restrictions of the substance of right which is guaranteed. When the educational institution wants recognition, then, the State can impose such Regulation which will sub-serve or advance that purpose which are reasonable. That is the price of recognition. But this does not mean that the institution should submit to a Regulation stipulating for surrender of right or freedom guaranteed by the Constitution which is unrelated to the purpose of recognition. In other words, recognition is a facility which the institution wants from the State so that, the education imparted by them and the examinations conducted by them would be recognised. The said Regulation must satisfy the dual test, the test of reasonableness and that it is regulative of educational character of the institution and is conducive of making the institution an effective vehicle of education. Such Regulations are meant for maintaining excellence in the field of education.

166. Right to choose the medium of instruction is a fundamental right. It is for the persons who are establishing the institution to decide the medium of instruction and the course of study. This right is inherent in the persons who want to establish the educational institutions. The Government has no say in this matter. Once the educational institution is established, they choose the medium of instruction and the course of study, if they want recognition from the State, it is open to the State to prescribe by way of Regulation all that is necessary to achieve excellence in education by way of curriculum, syllabus, qualification of teachers, the nature of examination and host of other matters which are conducive to make the institution an effective vehicle of education. But if the recognition is dependent on the medium of instruction prescribed by the State and if that is not acceded to and if without surrendering that fundamental right the institution cannot be established, then it ceases to be a Regulation. It would be an unreasonable restriction and a total denial of the fundamental right. It impinges on the fundamental right. It is settled law that the State has no right to put such restriction, more particularly, in respect of religious and linguistic minorities in so far as their right to establish and administer educational institution of their choice is concerned.

167. Once it is held that Article 19 is applicable and fundamental right enumerated therein has been infringed, the law can be saved from constitutional invalidity only if it falls under any of the exceptions enumerated in Clauses (2) to (6) of Article 19. In order to be valid, the restrictions must satisfy with the conditions stipulated in the very provisions. They are: (a) It must be by law; (b) such law must be made by the State; (c) such law must be valid; (d) restrictions imposed by law must be reasonable; and (e) the restrictions must be proximately related to any of the grounds specified in the limitation in Clauses

(2) to (6), relevant to the fundamental right in question. Restrictive clauses in Clauses (2) to (6) are exhaustive and therefore are to be strictly construed. Not only should the restriction, in order to be valid, relate to any of the grounds mentioned in the relevant limitation clause, but the relationship between the impugned legislation and any of the relevant specific grounds, must be rational or proximate. If the restriction imposed would not fall within any of those grounds, then, those restrictions should yield to the rights conferred under Article 19.

168. A right under Article 19(a) can be curtailed by making a law imposing reasonable restriction on the exercise of right in the interest of the sovereignty, integrity and security of the State and friendly relationship with foreign states, public order, decency or morality or in relation to contempt of Court, defamation or incitement of offence. In so far as right conferred under Article 19(1)(g) is concerned, it can be restricted by making a law imposing reasonable restrictions on the exercise of such right in the interest of the general public. The right under Article 26 can be curtailed in the interest of public order, morality and health. If the impugned order is to be read as a restriction it would not fall within any of those categories enumerated in these Articles. As clearly set out in the statement of objections, the impugned order is a Regulation imposed by the State only for the purpose of maintaining excellence in education. If that is so, it is not a ground on which restriction can be imposed under Article 19 (2) and (6) or under Article 26 of the Constitution. Even otherwise, there is no nexus sought to be achieved by imposition of such restriction. Maintaining of excellence in education could be achieved by the State by prescribing the curriculum, syllabus, the educational qualification of the teachers to teach in those schools or prescribing requisite infrastructure, irrespective of the medium of instruction. Choice of a medium of instruction, that too at primary level is nothing to do with maintenance of excellence in education. In the medium of instruction chosen, excellence in education is to be ensured. For that purpose in the medium of instruction in which the education is imparted or which is chosen by the children the State can prescribe Regulations to maintain excellence in education. Therefore, the offending clauses in the Government Order which is impugned in this writ petition are violative of the fundamental right guaranteed under Article 19(1)(a)(g), 26, 29(1) and 30(1) of the Constitution and cannot be sustained.

169. Therefore, the aforesaid observation of the Division Bench of this Court in ILR 1989 KAR 1595 at Para 11 is not correct. Firstly it runs counter to the ratio of the Full Bench decision. Secondly it is contrary to the decisions of the Apex Court quoted above. Thirdly the said question did not arise for consideration in the case. It is only an observation and not the ratio of the said decision. Therefore, the entire argument of the State based on the said observation has to fail.

170. One of the reasons for the constitution of Dr. H. Narasimhaih Committee was to find a remedy for the problems created by the un-recognized English primary schools. The problem was, taking advantage of the scarcity of English

medium schools as compared to the demand, the management of these English primary schools were collecting huge donations and also fees and the said schools have become "Business Centers". In other words, they were holding the people to ransom. The remedy to the said problem does not lie in holding the parents to ransom. It lies elsewhere. The power of the State should be utilized in regulating this menace. The State has the power, as held by the aforesaid judgments of the Apex Court and in particular the decision in T.M.A Pai's case, to pass regulation prescribing a fee structure, on the basis of the principles enunciated therein. Non granting of permission to start an English medium school or asking the existing schools to convert into Kannada medium schools or on failure to do so, to close down the schools, is not a remedy to the problem. The remedy is worse than the disease. Therefore, there is no nexus between the mischief and object sought to be achieved by way of remedy by passing the impugned Government Order. It does not stand to reason.

171. The Government has not realised the consequences of prescribing the mother tongue as the only medium of instruction at primary level, in particular in cosmopolitan cities. In a cosmopolitan city like Bangalore, slowly the Kannada speaking people are relegated to minority, which trend the government is unable to check. That is the position in all the cosmopolitan cities in the country where the regional language is relegated to the backyard. If a child has to study primary education in the mother tongue only, then we will have primary schools catering to the needs of these language groups only. The students in those classes all belong to one linguistic group. There would be no mixing of those students with other linguistic groups for nearly 5 years during their child hood. Language apart, in schools, the children learn culture from the other cultural groups from constant inter action. That is deprived to them. It would result in linguistic Islands. It may lead to seeds of linguistic chauvinism being sowed in the young minds. Already the country has seen partition on the basis of religion, reorganization of states on the basis of language, and a caste ridden society and one more divisive tendency based on mother tongue, would be handed down to this country which would be an antithesis of national integration and building a modern India based on homogenous culture.

172. The Supreme Court warning against such fissiparous tendencies and centrifugal forces arising out of religious fanaticism and/or linguistic chauvinism which are detrimental to the feeling of fraternity among the people of the country as a whole and the unity and integrity of the Nation which are among the objectives of our Constitution specified in its preamble, has observed in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, as under:

It is an interesting facet of history that India was forged into a Nation neither on account of a common language nor on account of the continued existence of a single political regime over its territories but on account of a common culture evolved over the centuries. It is cultural unit-something more fundamental and enduring than any other bond which may unite the people of a country together -

which has welded this country into a nation.

XXX XXX XXX ...We find that today the integrity of the nation is threatened by the divisive forces of regionalism, linguism and communalism and regional, linguistic and communal loyalties are gaining ascendancy in national life and seeking to tear apart and destroy national integrity. We tend to forget that India is one nation and we are all Indians first and Indians last. It is time we remind ourselves what the great visionary and builder of modern India, Jawaharlal Nehru said. :Who dies if India lives: who lives if India dies? "We must realise, and this is unfortunately that many in public life tend to overlook, sometimes out of ignorance of the forces of history and sometimes deliberately with a view to promoting their self-interest, that national interest must inevitably and for ever prevail over any other considerations proceeding from regional, linguistic or communal attachments.

This is precisely the reason we find from the debates of the Constituent Assembly, medium of instruction in mother tongue at primary level of education was not introduced in the constitution in the fundamental rights chapter of the Constitution, even though there was a demand. After reorganization of States, Article 350-A was introduced to protect the interest of the linguistic minorities to have primary education, but it was not made a fundamental right. It was not made justiciable and the obligation to implement the same was entrusted to the President of India. Recently, when article 21A was introduced making primary education a fundamental right, conspicuously the parliament did not mention about the medium of instruction, leaving the said question to be determined by the law and to the States. There lies the wisdom of law makers. They know the seriousness and the complex nature of the problem. They were aware of the fundamental rights conferred on every citizen, the linguistic group under Articles 14, 19(1) (a) and (g), 25, 26, 29 (1) and (2) and 31 of the constitution. They could not have made law contrary to these fundamental rights and betrayed the faith reposed by the citizen of this country in them. The national interest must prevail inevitably and for ever prevail, over any other considerations, regional, linguistic or communal considerations.

Kannada & English

173. The linguistic diversify of India poses complex challenges but also a range of opportunities. India is unique not only because a large number of languages are spoken here but also in terms of the number and variety of languages families that are represented in those languages. There is no other country in the world in which languages from five different language families exist. Even though they are so distinct structurally as to merit classification as different language families, namely, Indo-Aryan, Dravidian, Austro-Asiatic, Tibeto-Burman and Andamanese, they constantly interact with each other. There are several linguistic and sociolinguistic features that are shared across languages that bear witness to the fact that different languages and cultures have coexisted in India for centuries, enriching each other. Classical languages such as Sanskrit, Latin,

Arabic, and Persian are rich in their inflectional grammatical structure and aesthetic value, and can illuminate our lives, as many languages keep borrowing words from them.

Status of English

174. The English language has been in force in this country from the day the Britishers landed on this soil. Prior to freedom, it was the language through which the modern education system was operated in this country for more than a century. After independence also, English continued its dominance in all walks of life including education. The Indian Constitution itself is drafted in English. It recognised English language as an Associate Language.

175. Article 343 of the Constitution dealt with the official language of the union. It declared that the official language of the Union shall be Hindi in Devanagiri script. Sub-clause (2) of Article 343 made it clear that notwithstanding anything in Clause (1) for a period of 15 years from the commencement of the Constitution, the English Language shall continue to be used for all official purposes of the union for which it was being used immediately before such commencement. Sub-clause (3) of Article 343 provided that Parliament was empowered to make law providing for the use of English language after the period of 15 years. Article 344 provided for Constitution of a Committee of Parliament on official language and one of the terms of the reference to the committee was to recommend regarding the restriction of the use of English language for all or any of the purposes of the union. Article 345 of the Constitution empowered the State by law to adopt any one or more of the language used in the State as the Language or languages to be used for all or any of the official purposes of the State. It was made clear till the states adopted such language by law, the English language shall continue to be used for the official purposes, within the state for which it was being used immediately before the commencement of the Constitution. Article 348 deals with the language to be used in the Supreme Court and the High Court and for acts, bills etc. It provided that the Parliament by law or otherwise provide that, "All proceedings in the Supreme Court and in every High Court, shall be in English language". The authoritative texts, bills to be introduced, amendments to be moved in both the houses of the parliament as well as in the State Legislatures and all orders, rules, regulations, byelaws shall be in English language. Thus English was indispensable. In pursuance of Article 344 of the Constitution, the Official Languages Act, 1963 was enacted by the Parliament providing for languages which, may be used for the official purposes of the union, for a transaction of business in Parliament, for Central and State Acts and for certain purposes in High Courts. Section 3 of the Act provided, that notwithstanding the expiry of the period of 15 years or the commencement of the Constitution, the English language may, as from the appointed day, continue to be used in addition to Hindi for all the official purposes of the union for which it was being used immediately before the date and for the transaction of business in the

Parliament. After the expiry of 15 years, the English is continued.

176. The Karnataka Legislature passed the Karnataka Official Language Act, 1963 providing for adoption of Kannada as the language to be used for the official purposes of the State and for continuous use of English for transaction of business of the State Legislature. Section 2 of the said Act declare that the official language of the State of Karnataka shall be Kannada. English was continued to be used for official purposes until the Government otherwise directs. By successive notifications the use of English language has been extended and as such English language is being used even to this day.

177. Here it is apt to quote the views of Mahatma Gandhi on English language:

It has become a fashion to blame the Englishmen for all our ills. I have not hesitated to blame them for many things they have done. I have never charged them with compelling us to adopt English as the medium of expression.

Let it be known that I am a lover of the English language and the English. But my love is wise and intelligent. Therefore, I give both the place they deserve. Thus, I do not allow the English language to displace the mother tongue or the natural all-India language-Hindustani. Nor do I let my love of the English displace my fellow-countrymen whose interest I can in no way allow to be injured. I recognize the great importance of the English language for international intercourse. I hold its knowledge as a second language to be indispensable for specified Indians, who have to represent the country's interest in the international domain. I regard the English language as an open window for peeping into western thought and sciences.

178. In the report of the language committee (Dr. Gokak Committee) in so far as English is concerned it has been stated as under:

No ancient language is so prominent as that of English which is a key to the treasure of modern knowledge. Perhaps Japanese language may alone come nearer to that status. Several works on modern knowledge have been translated into our languages. English must continue indefinitely as a Central official language. The excessive growth of English medium schools in post-independence Karnataka is a special feature. The citizens have welcomed this manifestation with the intention that their children may learn good English. What is the significance of the English language? Today it is an international language. A person well-versed in English can tour the whole world. He can easily communicate with the foreigners. The word literature, science, research is available only in English. By reading English newspapers a person may know things happening in the respective fields of trade, commerce, science or literature. At times we feel it would have been better had we had knowledge of Russian, French and German languages. However, persons proficient in English are confident that they can gain at least eighty percent though not cent per cent of modern language. In our country it is difficult to conduct business transaction without English. Without English inter state communication is difficult. In

Bangalore itself without English it is impossible to get employment in business undertakings. English is one of the two languages recognised by the Central Government. Particularly English is in vogue as link language in South India. Knowledge of English is essential to enter into any one of the Central Government Services. English reigns supreme even in industrial undertakings, factories and autonomous bodies established by Central Government. In South India English is the language of business as well as correspondence. When we refer to South India, it may mean to hold good in respect of certain parts of East India i.e., Bengal, Orissa and Assam States. However, English is an important language by virtue of some significant factors viz., it is an international language and a window unto modern knowledge. Hence the desire to learn English is natural among students. English should be studied in separate units like English for comprehension, spoken English and written English.

179. The background of Constitution of Dr. Narasimhaiah Committee makes it clear that according to the respondents there was a craze among the parents to admit their children to English Medium Primary Schools. In 1991, there was about 500 English Medium Primary Schools catering to the requirements of the public at large which were not recognised by the State, because of the policy of the State in granting recognition to English Medium Primary Schools. Taking advantage of the situation, the recognised English Medium Primary Schools which were demanding high admission fee and other fee were exploiting the gullible parents. It is in this background the said committee was constituted to make its recommendation. That was the position about 15 years ago. Today the said problem has reached gigantic proportions. The number of English medium schools have multiplied many times, so also the students opting for English medium school. The demand for English medium schools is ever increasing, the fact which, one cannot ignore.

Impact of English on Kannada

180. Karnataka's historical heritage is more than two thousand years old. During this period, the history of this land has been glorified by the profuse and rich growth of its language, literature, art and culture. Though interwoven with the Indian culture, Kannada has got its own inherent qualities as well as culture. Karnataka has had a long and chequered history; many civilizations have come together over centuries and their fusion has created a new blend of cultures. It can boast of a culture that dates back to the dawn of Indian history. Recent research on the Ashokan edicts reveals that the Kannada-speaking people had emerged as a territorial and linguistic entity before the 3rd century B C. It has welcomed and assimilated the ideas and customs that came from outside and has woven these into the fabric of its chromatic social life. There is pride here, but no chauvinism, only a pervading sense of hospitality to all those who wish to contribute to the grandeur of Karnataka. No other single aspect of creative activity reveals a nation's soul more than its literature - its dreams and ideals, its struggles and frustrations, and its vision of happiness and fulfillment. Thus

one has to go to Kannada literature in order to understand the deeper urges and character of the Kannadigas which has a history of more than 2000 years. The Kannada literature prior to the last century was confined to religious matters as well as great epics of Ramayana and Mahabharata and about its characters. About two centuries Kannada Literature had to be content with minor writings. The 18th and 19th centuries were a comparatively barren stretch. It is contended unless the primary education is given in Kannada, the mother tongue of Kannadigas, it would seriously affect not only the language but the culture of Kannadigas. In this context we have to look to the hard realities of life. When there was no threat from the English language, what was the nature of literature produced for centuries and what is the literature which has come into existence after the impart of English language on Kannada literature.

181. The conquest of Kannada speaking areas by the British, of course, meant slavery. But it also meant contact with people belonging to a virile and confident society. It meant contact with people who were evidently successful, who provoked envy by their success and mastery, and who had entirely different values and ways of life. Modern Kannada literature may be said to have begun from 1881 when the Wodeyars were restored to the throne of Mysore. By then the impact of western and in particular British culture had been felt by the educated classes of the area. The contact with English literature opened up new ideas and modes of expression, providing the necessary stimulus for innovation and experimentation in both Kannada language and literature. A modern style both in prose and poetry, came to be favoured in place of the heavier and traditional structure. Just as the form changed, so too did the content. The poets and novelists became concerned with the emerging social and political drama of their times rather than the puranas and epics which had engaged the attention of the poets in the past. The rich harvest of European literature of the 19th century had considerable influence on the evolution of Kannada literature. Karnataka, achieved its renaissance when it felt the impact of alien traditions that were in turn synthesized and adapted to her native mould. It is said the renaissance of Kannada literature started in the later part of 19th century. In the quarter of a century from 1920 Kannada reaped a rich harvest; the preparation for it had taken half a century. Kannada literature has evolved into being one of the foremost literatures of India today. We see in this evolution from classical to contemporary themes the same gift for graceful adjustment which has been the feature of Karnataka culture from antiquity. Karnataka has changed more radically in the last ninety years than in the last sixteen hundred years. Broadly speaking, therefore, Kannada Literature falls into two parts - literature upto the end of the 19th century, and Modern Kannada Literature. For all the experimentation and succession of movements, literary and others, the basic assumption underlying the literature upto the end of the last century is that "the good life", both for the individual and for society, is attainable through the tireless pursuit of abiding values already discovered and enshrined in religion and the epics. Modern man has taken on himself the responsibility of identifying his

own ethical values and defining his destiny. We seldom pause to think of the magnitude of the challenge. Literature is one of the means available to modern man to probe life, to experience in his very flesh and bone the complexity of life, to stand a distance from it and gain perspective, and to come to terms with it.

182. Students studied English, and the western system of education struck root here. This meant entering a new world. Democratic values dawned with irresistible splendour. The history of the fight of the people of England for their rights and doctrines practically bestowed new spectacles. Ideals of freedom, equality, brotherhood and service thrilled young minds. The Englishman's pride in his country and its culture turned the minds of scholars and youths towards their own intellectual and cultural inheritance. The Indian student inherited the entire wealth of English literature from Chaucer through Shakespeare and the Romantic poets to Charles Dickens and also gained the key to unlock the treasures of European Literatures. He became acquainted with new literary forms and with an entirely different approach to literature. Also, the spirit of freedom and equality which succeeded the writings of poets like Shakespeare, Milton, Burns and Shelley could not but challenge his own assumptions and values. It also provided an impulse for the conscious attempt to raise his own language and literature to the level of English and its literature. The period 1870-1920 witnessed conscious and concerted efforts to improve the stature of Kannada in different parts of Karnataka and to enrich Kannada Literature. The resurgent literary spirit of Kannada manifested itself in the second decade of the 20th century in different parts of Karnataka. Experimentation was in the very air, and, while the writers were proud of their mighty predecessors like Pampa, Ranna, Kumaravyasa, Raghavanka, Lakshmisha and Harihara, they borrowed new literary forms from the west and made them their own. This great literary heritage of Karnataka was continued by writers of the modern age like Gundappa, Masti, Bendre, Kuvempu, Karanth, and a host of others who have enriched Kannada literature and made great contributions to world literature. Sri B M Srikantiah's translation of English lyrics into Kannada (English Geethegalu) and a Christian hymn by John Henry Newman "Lead Kindly Light" which translated as "Karunalu Ba Belake", in 1921 is to this day one of the most popular songs in the language and is sung as if it were an original Kannada composition. This is generally regarded as announcing the birth of the New Age. It triggered the renaissance in Kannada literature. It was fortunate that, in this period of tremendous enthusiasm and confidence, Karnataka had the talent to match. During this period in all forms of literature, namely poetry, prose, fiction, novels, short stories, biographies, autobiographies, essays, journalism, literature and legal criticisms, substantial contributions were made. It is heartening to note women of Karnataka did not lag behind. They also contributed for the enrichment of the Kannada literature. The novel came to Kannada through English, but soon reaped a magnificent harvest. Tragedy, comedy and the one-act play drew some writers. Wordsworth's pronouncements on poetry and poetic diction, Matthew Arnold's solemn and reverential approach to poetry, Bradley's interpretation of

Shakespeare's tragedies, all made an impact both on the writer and on the reader. By about 1935 Renaissance Literature had blossomed in glory and acquired its distinctive characteristics. This literature was man-centered. The humanistic spirit of English Literature influenced it. It recognized the dignity of man as man, the essential quality of all men and the importance of every man and woman. Now, literature was concerned with the passions and dreams and fortunes of all men and women. Literature also became interested in human nature, its mystery and variety and oddities. Navodaya Literature was profoundly influenced by English Literature, it retained the spirit of Indian thought and culture. National pride was awakened. It is the English language and its influence which heralded renaissance in the Kannada literature. It will not be an exaggeration to say the last century could be considered as the golden age of Kannada literature. In fact the quality of Kannada literature and its growth could be gauged from the fact seven Kannadigas have been conferred with Gnanapeetha awards for their literary works. There is still a vast wealth of literature produced by eminent literary people, if not more in quality and content than these award winning literature, which is yet to be recognized. One of the reason for such a non-recognition may be want of translation of these literary works either to English language or to other languages. All this happened in spite of Kannadigas opting for education in English language.

Status of Kannada

183. In 1956 when the States were re-organized on the basis of language, the present day Karnataka came into existence. Kannada was declared as the official language of the State under the provisions of the Karnataka Official Language Act, 1963. The State administration should be in Kannada language. Kannada language should reign supreme in Karnataka. Kannada language should have pre-eminence over all other languages. In order to achieve this object the Government's writ should run, first in the Vidhana Soudha and thereafter in all Government offices throughout the length and breadth of Karnataka. All the laws of the land should be translated to Kannada language and made available to people at reasonable cost. The State should shoulder the responsibility of getting printed the literary works of great Kannada writers and make it available to the people at subsidized rates and thus encourage Kannadigas to read Kannada literature. Aid is to be extended liberally to Kannada organizations which are striving for the development of Kannada language and its literature. At the earliest translation of scientific, technological, legal and other works in English to Kannada language is to be undertaken. Create an atmosphere where Kannada language, literature and culture would flourish to its full potential, not by compulsion but by voluntary participation which is the hallmark of Kannadigas. What is required is the will to honestly implement the language policy of the State within the constitutional framework. Mere establishment of Kannada medium schools throughout Karnataka is not sufficient. It is only a first step. Step should be taken in those schools to give quality education. The said schools should have necessary infrastructure. In recruitment of teachers merit alone

should be the criteria, otherwise imparting of quality education would only become a mirage. If Kannada has suffered in the recent days, it is because of the apathy of Kannadigas and the Government which represents them. Mere lip sympathy would not help in the growth and development of Kannada language nor by mere passing of Government orders.

184. Insofar as opposition to English language as medium of instruction at primary stage is concerned, it requires careful consideration. It is an emotional and sensitive issue. It is not a fight against an alien as was the case during freedom struggle. The compulsion now is against the local population, the citizens of this country whose interests are adequately protected under a written Constitution, which confers certain fundamental rights and keeps it beyond the reach of the State action and the majority.

185. We are conscious that as Judges, we are neither Jew nor Gentile, neither Catholic nor agnostic and that we would not be justified in writing our private opinion no matter how deeply we might cherish them. And what is said in support of the decision should insulate us as far as rationally possible from the political or religious or cultural conflict beneath the issues. We owe allegiance to the Constitution and are bound by judicial obligation to uphold it.

186. The Englishman ruled this country for over a period of 200 years. They did not compel the local population to learn their language. But they created a situation in which the people were compelled to study English language. Gradually, it became the medium of instruction at all levels of education. The native languages were relegated to the background. In those circumstances, the fight against British Raj included the fight against the English Language also. The fiery speeches and writings of great freedom fighters in particular Mahatma Gandhi, Sri Aurobindo, Sri Tagore and host of other great men, where they expressed their total opposition to English language as medium of instruction at primary level is to be understood in the said context. It is also to be noticed that when they gave vent to their feelings, they were all young, surcharged with emotions, burning with a strong desire to free the country from the shackles of this foreign rule. The only aim and goal of all of them was to secure independence to this country. They had not given sufficient thought at that time about the nature of the Indian State, regarding a common language for the country, the problem of a multilingual state and the aspirations of the people belonging to these linguistic groups. After independence, the resolutions passed by the Provincial Education Ministers Conference of 1949 reiterated the demand for the introduction of mother tongue of the child as a medium of instruction at the primary level. The said demand was echoed in the constituent assembly during discussion preceding the drafting of the Indian Constitution. However, it did not find a place in the Constitution. There is no mention of primary education or mother tongue in any Article. However, there is a reference to education in Article 41, 45 and 46 of the constitution which falls within the ambit of directive principles of state policy. Again there is no mention of mother tongue. It is to be

remembered, the constitution makers knew the strong feelings of Mahatma Gandhi, Rabindranath Tagore and Aurobindo and the resolutions passed by the Working Committee of the Congress, with reference to mother tongue being the medium of instruction in primary school. All of them were held in high esteem by them. Even in the Constitution Assembly heated debate went on and amendments were moved for making right to primary education and mother tongue as a medium of instruction as a fundamental right. But still in the final draft constitution, though such rights were recognised, no special provisions were introduced conferring such rights on the citizens of this country and for good reasons. Though anti-English feeling was clearly expressed by Gandhi, Tagore, Aurobindo, the constitution makers did not find a solution to the said problem in the Constitution. They were drafting a constitution for a democratic set up, to secure liberty of thought, expression, belief, faith and worship to the citizens of this country. It provided for fundamental rights, protecting the individual citizen from state action. Therefore, they could not have introduced any such provision which would run counter to such fundamental rights. The father of the nation, Mahatma Gandhi, who himself being a lawyer, was aware of this legal position. Therefore he was guarded in his statement when he observed:

If I had the powers of a despot, I would today stop the tuition of our boys and girls through a foreign medium, and require all the teachers and professors on pain of dismissal to introduce the change forth with

He was not a despot, but a great democrat and, therefore, after independence he did not insist on what he believed to be good and, therefore, he is called Mahatma. Only a despotic Government can impose such conditions and not a democratic Government.

187. Here, it is apt to quote the words of Dr. B.R. Ambedkar, who was the Chairman of the Committee constituted to draft the Indian Constitution, pleading his inability to make a provision for medium of instruction in the constitution said as under:

I must frankly say, that I find some difficulty in putting matter into a specific Article of the Constitution.

188. He was a Lawyer of eminence, a Constitutional expert, the draftsman of the Indian Constitution. He had a complete picture of the various provisions of the Constitution and the rights and obligations flowing therefrom. He knew what a fundamental right is and why they were introduced. Any provision introduced conceding the aforesaid demand would have run counter to the fundamental rights and would have negated those rights. Hence, consciously no provision was made in the Constitution to that effect.

189. Therefore, only in totalitarian regimes like Russia, China, Korea and Vietnam and previously a monarchy like Japan, they were able to implement this mother tongue as medium of instruction by brute force of the State. The additional factors which enabled them to do so was firstly they are unilingual States.

Secondly, those countries were not under the control of Britishers for centuries and there was no influence of English language over their population. But in democracies, where personal liberties are guaranteed to its citizens, the state has only provided facilities for learning subjects in primary school in the medium of mother tongue and no where any compulsion was imposed to have primary education in mother tongue only. The choice is given to the child and its parents and in this regard the rights of the parent and the child is fully recognized, respected, protected and not trampled upon.

190. It is only in 1980's and 1990's, when the Supreme Court interpreting "right to life" as contained in Article 21 of the Constitution, held "right to education" as a part of right to life, this concept of right to education being a fundamental right gained momentum. In Unnikrishnan's case, when the constitution Bench of the Supreme Court declared that the children up to the age of 14 have a fundamental right to free education, the right to primary education as a fundamental right got crystallized. This declaration of the apex Court had its origin in Article 19(1)(a), 19(1)(g), 21, 30(1), 41 and 45 of the constitution. It did not run counter to any fundamental rights or to any other constitutional provisions. However, Supreme Court did not declare that the said primary education should be in the mother tongue. Therefore, the Parliament took note of the same and amended the Constitution by introducing Article 21-A, providing for free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. However, conspicuously there was no reference to the language in which the primary education is to be imparted. When the Parliament expressly stated in the year 1956, by introducing Article 350-A in the Constitution that the State shall provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups, and when it was amending the Constitution in 2002, making free and compulsory education to all children of the age of six to fourteen years, a fundamental right, they did not prescribe the medium of instruction as mother tongue. It is not without any reason. If mother tongue is prescribed as the medium of instruction at primary stage, the State has no choice or option but to provide such education in the mother tongue only. A fundamental right would have been created in the child or its parents to compel the state to give their child primary education in mother tongue. There was no intention to confer such right. That is why the right under Article 350-A was not made a fundamental right by grouping the said right in Part III of the Constitution. Now a fundamental right is conferred on the child to have primary education. Though the child has a choice of medium of instruction it cannot compel the State to provide primary education in any particular language chosen by the child. The right is only to have free and compulsory primary education, in a language the state may by law determine. The law to be made by the state can only be with reference to the language to be chosen for medium of instruction. The powers of the state under that law cannot be extended to curtail the freedom of the child to have primary education in a language of its

choice. By the law the State cannot compel the child to have primary education in the mother tongue only. When the child is not approaching the state to provide primary education, the State cannot dictate or compel the child to have primary education in mother tongue or regional language only. What cannot be done directly cannot be achieved by withholding or refusing recognition to establish and administer an educational institution of their choice, where the medium of instruction would be other than the mother tongue or the regional language of the state.

191. The Government has the power to formulate a language policy and implement the same. But such a Government policy should not offend the fundamental rights of a citizen. The policy to have primary education in the mother tongue or regional language could be implemented in all Government and Government aided schools. There is no compulsion for any child to get admitted to such schools. The child also has no fundamental right to insist that such schools must impart education in a language of his choice. At the same time the State cannot compel any child to have primary education only in mother tongue or regional language. It also cannot prevent a child from having education in a medium of instruction of his choice. Child has a fundamental right to choose the medium of instruction of its choice.

192. Similarly the State can formulate regulations and impose them on unaided educational institutions as a condition precedent for granting recognition to the school. Such an institution will of course be subject to regulatory measures aimed at securing excellence in education and maintenance of proper academic standards, atmosphere and infrastructure and prevention of mal administration. However, under the guise of regulation, the State cannot prescribe a particular language as the sole language of medium of instruction, even if that language happens to be the mother tongue or the regional language. Then it ceases to be a regulation and becomes an unreasonable restriction on the exercise of a fundamental right. Such prescription comes in the way of the establishment of an educational institution. Then it directly impinges the fundamental right guaranteed to linguistic minorities under Article 30(1) of the Constitution of India. It cannot be treated as a restriction under Article 19 (2) and (6) of the Constitution, firstly it is not a reasonable restriction. Secondly, it does not fall within any of the parameters expressly provided in those provisions. Any regulation which infringes a fundamental right is void ab initio.

193. The state could be compelled to provide free and compulsory primary education. However, the State cannot be compelled to give that primary education in a language of the choice of the child. Conversely the State can make primary education compulsory and choose the medium of instruction of its choice in the schools run or aided by the State. But it cannot compel the child to have primary education in the mother tongue or the official language of the State. The choice of medium of instruction is that of the child and it should be left to the parents of the child. It is the element of compulsion which is frowned upon. It is

arbitrary. It offends fundamental right guaranteed to the citizens of this country. The golden thread which runs through the constitution is the concept of FREEDOM, which cannot be compromised to the protean concept of ""State necessity"", as conceived by the rulers of the day. Even the majority has no right to take away the said right guaranteed under Article 30(1) of the constitution to the linguistic minorities as it would subvert the very purpose for which the right was given. The Indian constitution is a living document for the present and future generation. The rights conferred therein are eternal. Except in the manner provided in the constitution and the law declared by the apex Court, the said rights cannot be abridged or denied. That is the constitutional guarantee promised to the citizens of this country.

194. As this country over the centuries has assimilated Persian, Arabic and other languages, this country has assimilated English language also. It is no more an alien language. It is the link language of the country. The people in the south have not accepted any other language including Hindi as the link language. However, they do not oppose English language. It is also an international language. Without any compulsion, voluntarily, children like to study this language. People volunteer to study English language even at the primary stage so that the children could have mastery over the language.

195. The excessive growth of English medium schools in post-independence Karnataka is a special feature. The Kannadigas have welcomed this manifestation with the intention that their children may learn good English. English is the key to the treasures of modern knowledge. It is an open window for peeping into western thought and science. It is an international language. It is an associate language as recognized by our Constitution. Without English, in many parts of India, inter state communication is difficult. In a multilingual country, English has come in handy as a link language. The desire of the parents to impart education to their children in a well known international language like English, cannot be bypassed, forgetting the hard realities of life. This desire to learn English is not confined to Kannadigas. It is so with regard to all language groups throughout the country. Every one loves his mother tongue, and want his children to achieve proficiency in the mother tongue. But, at the same time he wants his children to learn the English language, and he believes if his children learn in English medium from the early stages, they would be able to get better proficiency in English. Today if parents want their children to study primary school in Kannada medium, they are free to do so and the impugned Government order enables them to do so. But, if the parents want their children to have primary education in English medium, they are not committing any crime. It is not illegal. It is not opposed to public policy, Choice of medium of instruction should be left to the parents and children. In fact responding to the popular demand by a section of the population the Government has taken a policy decision and has issued Government Order dated 29.10.2006 prescribing ENGLISH as a language for study from 1st Standard itself in all Kannada Medium as well as linguistic minority school. It is a good decision in the right direction.

196. Freedom of individual development is the basis of democracy. The primary purpose of education is to provide him with the widest opportunity to develop his potentials to the full. Right to freedom of speech and expression is a right one gets by birth. It is a basic human right and a natural right. It is basic and indivisible from a democratic polity. It is implicit in such a right the right to choose the medium of instruction.

197. It would be apt to conclude this discussion with the observations found in the report submitted by University Education Commission having Dr. S. Radhakrishnan, as its chairman and nine other renowned educationists as its members which reads as under:

All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness of light, to free us from very kind of domination except that of a reason, is the aim of education.

Intellectual progress demands the maintenance of the spirit of free inquiry.

Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies.

We must resist, in the interest of our own democracy, the trend towards the governmental domination of the educational process.

(Underlining by us)

198. In the light of the aforesaid discussion and in response to the reference, we record the following conclusions:

(1) Right to education is a fundamental right being a species of right to life flowing from Article 21 of the Constitution. By virtue of Article 21-A right to free and compulsory primary education is a fundamental right guaranteed to all children of the age of six to fourteen years. The right to choose a medium of instruction is implicit in the right to education. It is a fundamental right of the parent and the child to choose the medium of instruction even in primary schools.

(2) Right to freedom of speech and expression includes the right to choose a medium of instruction.

(3) Imparting education is an occupation and, therefore, the right to carry on any occupation under Article 19(1)(g) includes the right to establish and administer an educational institution of one's choice. "One's choice" includes the choice of medium of instruction.

(4) Under Article 26 of the Constitution of India every religious denomination has a right to establish and maintain an institution for charitable purposes which

includes an educational institution. This is a right available to majority and minority religious denominations.

(5) Every section of the society which has a distinct language script or culture of its own has the fundamental right to conserve the same. This is a right which is conferred on both majority and minority, under Article 29(1) of the Constitution.

(6) All minorities, religious or linguistic, have a right to establish and administer educational institutions of their choice under Article 30(1) of the Constitution.

(7) Thus, every citizen, every religious denomination, and every linguistic and religious minority, have a right to establish, administer and maintain an educational institution of his/its choice under Articles 19(1)(g), 26 and 30(1) of the Constitution of India, which includes the right to choose the medium of instruction.

(8) No citizen shall be denied admission to an educational institution only on the ground of language as stated in Article 29(2) of the Constitution of India.

(9) The Government policy in introducing Kannada as first language to the children whose mother tongue is Kannada is valid. The policy that all children, whose mother tongue is not Kannada, the official language of the State, shall study Kannada language as one of the subjects is also valid. The Government policy to have mother tongue or regional language as the medium of instruction at the primary level is valid and legal, in the case of schools run or aided by the State.

(10) But, the Government policy compelling children studying in other Government recognized schools to have primary education only in the mother tongue or the regional language is violative of Article 19(1)(g), 26 and 30(1) of the Constitution of India.

199. (a) Accordingly, the Writ Petitions except W.P. No. 21052/1994 and W.P. No. 5618/1993 and the Writ Appeal are partly allowed, quashing Clauses (2), (3), (6) and (8) of the impugned order in its application to schools other than schools run or aided by the Government

(b) The rest of the Government Order is upheld. All the orders, endorsements, circulars, issued giving effect to the aforesaid Clauses (2), (3), (6) and (8) in the impugned order are also quashed.

(c) Writ Petitions 21052/1994 and 5618/1993 are delinked and they are sent back to the single Bench for decision in the light of this judgment

No costs.