

(1989) 01 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 28566, 28567 and 32654 etc. etc. of 1982, 1006 and 13907 of 1983, 18848 of 1987 and 1097 of 1988

General Secretary, Linguistic Minorities Protection Committee
and Another etc.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 25-01-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 29, 30, 350A

Citation : AIR 1989 Kar 226 : (1989) ILR (Kar) 457

Hon'ble Judges : S. Rajendra Babu, J; H.G.M. Rama Jois Balakrishna, J

Bench : Division Bench

Advocate : A.K. Subbaiah, Mohammed Farooq, V.K. Varadhachari, P. Vishwanatha Shetty, C.H. Jadhav and Basheer Hussain, for the Appellant; N. Santosh Hegde, General, M.R. Achar, Government Advocate and N. Deva Das, for the Respondent

Judgement

Rama, J.—Seminal questions of National importance arise for consideration in these ten writ petitions presented by the Linguistic Minorities in the State, questioning the constitutional validity of the order of the State Government which makes the study of Kannada, the official language of the State, in addition to mother-tongue by children belonging to linguistic minority groups, from the first year of the Primary Schools, compulsory, and prescribing Kannada as the sole First Language in the Secondary Schools. They are:-

Whether the Order of the State Government which prescribes that Kannada which is the regional and the official language of the State - -

(i) a compulsory subject for study for children belonging to linguistic minority groups in Primary Schools, in addition to the mother-tongue of the children concerned from the first year of primary school, and

(ii) the sole first language in the secondary schools, is violative of Arts. 14, 29, 30 and 350A of the Constitution of India?

2. The facts of the case, in brief are: -The State Government made an order on 20th July 1982 prescribing that Kannada should be the sole first language of the Secondary School level from the academic year 1987-88 leaving choice to the students in respect of only two other languages out of the list of languages, in which Kannada is also one of them. The order also directs the teaching of Kannada shall be compulsory from the first year of the primary school in non-Kannada Schools and to children whose mother tongue is not Kannada with immediate effect. The relevant portion of the order reads:

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

1. 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, Malyalam and Kannada, (to carry 100 marks each).

Note: - 15 grace marks shall be given for a period of ten year(s) in the first language examination, to students, whose another tongue is not Kannada, and (b) in Hindi examination to students who study Hindi and whose mother tongue is not Hindi.

2. Students coming from outside the State and joining VIII or IX Std. in the State of Karnataka and who did not study Kannada earlier may be permitted to take English or Hindi as first language.

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

The constitutional validity of the aforesaid orders have been challenged in all the above 10 writ petitions. -

(I) W.P. Nos. 28566 and 28567/1982 are presented by the General Secretary, Linguistic Minorities Protection Committee, Davangere Chitradurga District and a student of the 1st Girls Schools, Standard of Urdu Primary

Amrutur, represented by her guardian representing Urdu Linguistic Minority, (II) W.P. No. 32654/1982 is presented by the Linguistic Minorities Language Rights Protection Committee, KGF, Kolar district and an Ex. M.L.A. of K.G.F. representing Tamil Linguistic Minorities. In this petition it is stated that at K.G.F itself Tamil population is above 1 lakh, and there are 30 Primary Schools at which primary education is in Tamil and 11 High Schools at which Tamil is the first language. (III) W.P. No. 33790/1982 is by Anjuman Tarraqui Urdu (Hind), Karnataka and 4

others of Bangalore, an an orgamsation established for conservation development and propagation of Urdit. The second petitioner is a student at Government Urdu Primary School. The fourth petitioner is a Tamilian whose grand children are studying in Tamil Primary School and the fifth petitioner is a person whose mother-tongue is Telugu. (IV) W.P. Nos. 36630 and 36630A of 1982 are the petitions presented by two members of the State Legislature from Uchagaon and Bagewadi Constituencies, representing Marathi Linguistic Minorities. (V) W.P. No. 13907/1983 is presented by a student of 1st year Primary School at Bangalore, whose mother-tongue is Urdu, represented by her guardian. (VI) W.P. No. 1006/1983 is a petition by English Medium Students Parents Association claiming to represent 700 to 800 Christian pupils whose mother-tongue is claimed to be English.

3. In all these eight petitions, the petitioners question the constitutional validity of the Government order dated 20th July 1982. These matters were referred to a Division Bench under S. 9 of the Karnataka High Court Act, 1961. Thereafter, the matters were heard by a Division Bench comprising of Jagannatha Shetty, J. (as he then was) and Rajasekhara Murthy, J. By an order made on 27th Jan. 1984, the Division Bench, having regard to the constitutional importance as also the impact the decision of the Government had on the courses of studies in the primary and high schools, referred three questions for the opinion of the Full Bench under S. 7 of the Karnataka High Court Act, 1961. In the order of reference, the Division Bench has alluded to all the relevant facts and the arguments advanced by both sides. The last four paragraphs of the order read:

"Karnataka is surrounded by the States of Maharashtra, Andhra Pradesh, Tamil Nadu and Kerala. There are quite a large number of Kannadigas residing in these States. As on 1971, their figures are as follows

1. Maharashtra 7,75,354
2. Tamil Nadu 10,56,512
3. Andhra Pradesh 4,26,146
4. Kerala 78,933
5. Goa, Daman & Diu 16,534

In all other States and Union Territories also there is a fair sprinkling of Kannadigas

1. Gujarat 7,124
2. Madhya Pradesh 6,702
3. Delhi 3,925 s 4. West Bengal 1,700
5. Bihar 1,298
6. Rajasthan 952

- 7.Orissa 805
- 8.Pondicherry 707
- 9.Arunachala Pradesh 384
- 10.Assam 239
- 11.Andaman and Nicobar Islands 201
- 12.Punjab 236
- 13.Haryana 194
- 14.Himachal Pradesh 192
- 15.Chandigrah 142

As per die information given by the Joint Director, Bureau of Economics & Statistics, Government of Karnataka, the minorities residing in the State of Karnataka area as follows

As per 1971 Census, there are 22,97,557 Telugu speaking people, 23,36,688 Urdu speaking people, 11,87,133 with Marathi as mother tongue, 9,90,409 Tamilians, 5,26,692 with Hindi as mother tongue, 4, 25, 196 with Malyalam as mother tongue besides, there are 28,571 Gujarathis, 9,651 Sindhis, 7,056 Bengalis, 7,027 Punjabis, 320 Assamese, 220 Kashmiris and 1,798 Oriyas. There is a similar mixture of population in almost all other States. Each State, therefore, is a miniature India.

The questions raised in these petitions have also to be examined against this background. They are vast vital, sensitive and intricate. They are of far-reaching importance to the State and no, less important to integration and integrity of the Nation. Apparently, there is no decision of any other High Court or the Supreme Court bearing on these questions.

We, therefore, refer the following questions of law under S. 7 of the Karnataka High Court Act, 1961 to a Full Bench for decision:

- (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(I) and 30(I) of the Constitution
- (2) Whether the, Government order dated July 20, 1982 or any put 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, 290) and 30(I) of the Constitution ?"
4. During the pendency of this reference, two other writ petitions were presented. W.P. No. 18848/87 was presented by Cbannagiri Taluk Urdu Schools

Betterment Committee and 2 others. W.P. No. 1097/88 has been presented by Crescent Association Bangalore, Society registered under the Societies Registration Act, representing Urdu Linguistic Minority Group. These petitions have been posted for hearing along with the writ petitions referred to Full Bench, by an order of Hon"ble the Chief Justice.

5. Sri P. Vishwanatha Shetty, Sri A. K. Subbaiah, Sri Basheer Hussain, Sri Mohamad Farooq and Sri C. H. Jadhav, learned counsel for the petitioners argued for the petitioners and Sri J. A. Sequira, the learned counsel, who intervened in the matter with our permission, supported the plea of the petitioners. Sri Santosh Hegde, learned Advocate General and Sri M. R. Achar, Government Advocate appeared for the State and argued in support of the validity of the impugned order.

6. Before, adverting to the arguments addressed by the learned counsel for the petitioners it is necessary to set out certain undisputed facts. The Formation of Linguistic States as an Administrative necessity had beer, recommended by the Indian National Congress long prior to Independence. After Independence and the adoption of the Constitution that policy was accepted by the Union of India. To make recommendation for implementing that policy, the States Reorganisation Commission was appointed by the Union of India. Pursuant to the recommendation of the Commission, the States Reorganisation Act, 1956 was enacted by the Parliament. Under that Act the State of Mysore (later renamed as State of Karnataka) comprising of part the areas of former States of Bombay, Hyderabad, Madras and the entire former State of Mysore and Coorg in which Kannada speaking people were in majority, was established on 1-11-1956. Thereafter, the pattern of study in he schools regarding languages was as follows: -

(1) I to IV Standards - (Lower Primary) The students could study only mother-tongue. It carried maximum 100 marks with minimum of 40.

(2) From V Standard onwards students were required to study one more language out of the following ten languages (i.e., Kannada, Urdu, English, Marathi, Hindi, Telugu, Tamil, Malayalam, Gujarati and Sindhi) It carried 100 marks with 40 minimum and this minimum was reduced to 35 for students in VII Standard onwards.

(3) Students from III Standard to VII Standard could also study Hindi or composite Kannada, but there was no compulsion.

VIII, IX & X Standards :

(1) In these Classes, students were required to take first language from any one of the following languages

(Kannada, Telugu, Tamil, Hindi, Urdu, Marathi, English and Sanskrit)

OR

a composite course of one of the following languages consisting of three periods,

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(Hindi, Urdu, Tamil, Telugu and Marathi)

And two periods of one of the following languages :

(Samskrutha, Arabic, Persian and Hindi)

(i) The First language consisted of Paper-I and Paper-II carrying 100 Marks and 50 Marks each. (Total : 150).

(2)(i) Students were also required to take Second language; the condition being that those who have taken English as First language will study Kannada, Hindi, Urdu, Tamil, Telugu or Marathi as Second language.

(ii) Those who have not taken English language as First language will study English as Second language.

(iii) It consisted of two papers with 50 marks each.

(3) Students were also required to study Third language :

(i) Those who take Kannada as First language will study Samskrutha or Hindi as Third language.

(ii) Those who take Kannada as Second language will study Hindi as Third language.

(iii) Those who study Kannada either as First language or a Second language, will study Kannada as Third language.

(iv) The Third language consisted of only one paper carrying 50 marks. This was compulsorily taught, but it would not count for a pass. It was left to the students either to appear or not to appear for the examination in that paper.

7. The above pattern of study was in conformity with the decision taken by the representatives of the States after Independence before the commencement of the Constitution to which reference will be made later in this order. This was going on smoothly without resistance from any quarters. There was, however, a grievance that text books prescribed for Sanskrit were comparatively of lower standard and as a result the students taking Sanskrit as First language, could easily secure more marks and pass with distinction. Further grievance was though the formation of the State comprising of Kannada speaking areas fulfilled the aspiration of the Kannada speaking people for which they had been longing for long, effective steps were not taken to secure Kannada a predominant position in the administration, education and other fields, notwithstanding the fact that Official Language Act, 1963 was enacted, making Kannada the official language of this State. There were persistent demands for making the study of Kannada imperative in the educational institutions. In the circumstances, on 5th July 1980, the State Government appointed a Committee of six persons with Dr.

V. K. Gokak as the Chairman. The questions referred for the consideration of the Committee were - -

- (1) Should Sanskrit remain as the subject for 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 a compulsory subject as per the Three Language Formula and should the option of selecting the remaining two languages be left to students themselves?

The Committee submitted its report on 27th Jan. 1981, which is now come to be popularly known as "Dr. Gokak Committee Report". The gist of the recommendation (vide pages Nos. 27 and 28 of the report) was -

- (1) Kannada should be introduced as a compulsory subject for all children from 3rd Standard;
- (2) Kannada should be the sole first language for 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 from 1986-87, after taking necessary steps to teach Kannada to them from the 3rd Standard from the academic year 1981-82 itself.

8. The State Government after due consideration of the report made an order on 30th April 1982. The relevant portion of that order reads

"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 Kannada, Hindi, English, Samskrit, 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-1) both of which will be examination subjects for the S.S.L.C.

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

(3) Students coining from outside the State and joining VIII, IX or X 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 languages.

(4) The Teaching of Kannada from III Standard in non-Kannada schools will Schools prescribed in para (1) above will come into effect from the academic year 1987-88.

According to the above order, the students joining Secondary Schools had an option to take Kannada or their mother-tongue as the First language, if the mother-tongue was one of the six languages, viz., Urdu, Tamil, Telugu, Marathi, English and Hindi and the subject had to carry 150 Marks. An important aspect of the order was, the students-which took any language other than Kannada as the First, language were required to study Kannada as one of the two other languages included in the syllabi and students who took Kannada as the First language, could take any of the, two languages specified in the order except Kannada. As regards primary education, the said order directed that teaching of Kannada in non-Kannada Schools would commence from third Standard and this part of the order had to be given effect to with effect from the academic year 1982-83 itself.

9. The learned counsel for the petitioners submitted that except for the introduction of Kannada as a compulsory second language, for study from the third year of the primary school itself, instead of the first year of the: higher primary school (fifth Standard) as it was earlier, which was also a generally accepted pattern, the linguistic minorities had no grievance against that order.

10. However, after the above order was made there were agitations from those who wanted total primacy to Kannada demanding that study of Kannada must be made compulsory from the primary first year itself for all children and that Kannada should be made the main and sole first language for study in the High Schools. In the circumstances, the Government considered it expedient to place the matter before the State Legislature. Accordingly, the State Government moved an Official Resolution in both the Houses of State Legislature. The text of the Resolution reads:

"In, High Schools Kannada shall be, the sole First regional language carrying 125 marks. In addition a student may study any two languages carrying 100 Marks each from the following:

Urdu, Tamil, Marathi, Hindi, English, Sanskrit, Arabic, Persian, Malayalam, Telugu, and Kannada.

15 Grace marks may be given for a period of ten years to students belonging to linguistic minority communities 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 3rd Standard from this academic year i.e., 1982-83. In addition to the above, Government should take steps to start teaching, Kannada from the, First Standard itself from this academic year i.e.; 1982,83. A High Power Committee should be constituted for effective implementation of the language policy."

It was pursuant to the aforesaid Resolution the impugned Government Order dated 20-7-1982 was made.

11. -:In the Government Order, the Director of Public -Instruction was -directed to take steps for implementing that order. Accordingly, the Director of Public Instruction issued a Circular, directing the non-Kannada schools to teach Kannada language from 1st standard from the academic year 1982-83.Periods and subjects prescribed by this Circular are:-

1.Periods : Five,periods a week i.e., two periods from 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 for fixed

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

this.

Note 1. The students other than Kannada Students should be effectively taught the subject within a short

time, for which, in the beginning about 1-1-2-months alphabetical letters etc. are to be taught.

2. As instructed in Para 6 of Govt. Order, until the action is taken by the Government by appointing a High Power Committee, the present; procedure as mentioned above should be adopted."

According to the Government order and the Circular the children whose mother-tongue is not Kannada are bound to study Kannada from the first year of the primary school. In order to enable them to do so, two periods of work experience, two periods of physical training and, one o singing have, been slashed and the non-kannada children were required to study, Kannada foregoing the aforesaid periods.

11A.Thereafter,, the petitions were presented questioning the constitutional, validity of the Government order as also the order of the Director of Public Instruction made thereunder. There has been interim orders of this Court staying the implementation of these orders and consequently the status quo ante is being maintained.

12. The common contentions urged by the learned Counsel for the petitioners, are these : -

(i) That part of the impugned order which makes the study of Kannada compulsory1rdrii the first year of the primary school in addition to mother-

tongue, to children belonging to linguistic minorities was violative of Arts. 14, 29 and 30 and a breach of the obligation cast on the State by Art. 350-A of the Constitution and

(ii) that part of the Government Order which prescribed Kannada as the sole first language at High Schools was violative of Arts., 14, 29 and 30 of the Constitution.,

Elaborating the contention, they submitted as follows :- (i) The unanimous opinion expressed by the various committees and commissions and decisions taken by the Governments, right from the date of Independence and after commencement of the Constitution has been that the children must have the benefit of undergoing primary education in their mother-tongue. In particular, the States re organization report Commission which made its recommending the formation of Linguistic States had considered this question in great detail and anxiety. The Commission recommended that in respect of, each of the States there should be a constitutional obligation to provide primary education in the mother-tongue. This recommendation was accepted by the Parliament while enacting States re organization Act, 1956, and accordingly Art. 350-A was introduced into the Constitution. It reads: -

"350-A 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."

The impugned Government, Order which makes the study of Kannada compulsory to children studying in primary schools established and run by linguistic minorities, as also in Government and the Government aided institutions, is a clear breach of the obligation cast upon the State under Art. 350A. The impugned order is also violative of Art. 14 of the Constitution on the ground that it subjects children whose mother-tongue, is not Kannada to discriminatory treatment and in any event the said part of the Government Order is patently unreasonable, arbitrary and, capricious and therefore violative of Art. 14 of the Constitution. It is also a clear infringement of the fundamental right guaranteed to linguistic minorities under Arts. 29 and 30 of the Constitution.

(ii) The people of India constitute one Nation. There is only one citizenship though there are innumerable languages spoken by them. Out of these languages 18 or even 22 as recognised by the Central Sahitya Academy are having rich literary heritage (See page 17 of the Dr. Gokak Committee Report). However, major languages of India are fifteen which are specified in the 8th Schedule to the Constitution. In the nature of things, in each of the Linguistic States there are bound to be large sections of citizens whose mother-tongue is other than the official or regional language of the State concerned residing either on permanent basis carrying on any business or avocation or, on temporary basis

being employees of Central Government or the instrumentalities of, the Central Government, or private business establishments, according to whose conditions of service they are transferable to any part of India. Therefore, it would be most unreasonable for any State to compel the students who are not conversant with and, who have no aptitude to study the official/regional language of the State in which, they happen to remain for the time being, to study the regional/official language leaving no choice to them to study the language of their choice so long the facility to study their language is made available having regard to the number of students, who get themselves admitted to any educational institution. There is no rational basis for the provision that Kannada alone should be the sole first language. The decision, apart from being unreasonable and arbitrary, is also discriminatory as the students who are not well-versed in Kannada not being their mother-tongue, are compelled to study Kannada and compete with the students whose mother-tongue is Kannada. Moreover, it is well recognised that it is the choice of the parents and the students that must prevail in the matter of study of languages or any other subjects and therefore the State cannot indulge in, regimentation in the matter of study of languages. The linguistic minorities in any given State have the fundamental right under Art. 29 of the Constitution to take steps for conserving their language and they have also the fundamental right under Art. 30 of the Constitution to establish educational institutions of their choice, which right includes a right to take a decision as to which of the languages should be studied as the First language. Therefore, the impugned order is violative of Arts. 29 and 30 of the Constitution.

13. The submissions made on behalf of the State by the learned Advocate-General and the Government Advocate are as follows :- When this is a Kannada State and Kannada has been declared as the official language of this State, the State has not only the right and the power but also under a duty to take steps for the development of Kannada language and this includes the making the study of Kannada to all the children whose mother-tongue is not Kannada, from the primary first year itself and also making Kannada the sole first language at the High School level. This is necessary to give the Kannada primacy in the affairs of this State. The State Government has, therefore, passed the impugned order after the policy was endorsed unanimously by the State Legislature. The impugned orders are neither discriminatory nor arbitrary and therefore not violative of Art. 14 of the Constitution. It is also not violative of Arts. 29 and 30 of the Constitution, as it is only regulatory in character. It is well established that the State has the power to make regulations in the interest of excellence in education and any regulations so made by the Government cannot be regarded as infringing the right guaranteed to the minorities in Arts. 29 and 10 of the Constitution. In the matter of education the State has the plenary power to prescribe syllabus which it considers best for all sections of the society and once such a syllabus is prescribed which is also in the interest of excellence in education and is also in the interest of minorities themselves the question of violation of Arts. 29 and 30 of the Constitution does not arise. So long the

citizens whose mother-tongue is not Kannada, come to reside in this State, whether permanently or for a brief period, they cannot have the choice of studying their own language and they are bound to fall in line with the majority in the State and join the main-stream of the life of the State. Therefore, the Government order, either in respect of primary education or in respect of secondary education, cannot be regarded as violative of Arts. 14, 29 and 30 of the Constitution. There is nothing in Art. 350-A which prevents the State from prescribing the study of the regional /official language from the first year of the primary school in addition to mother-tongue. In fact, according to the impugned order the children whose mother-tongue is not Kannada have the right to have their primary education in their mother-tongue and all that has been done by the impugned order is that in addition to that they are required to study Kannada. Therefore, the obligation cast upon the State under Art. 350-A is not breached by the impugned Government Order.

14. (i) Before proceeding to consider the validity of the rival contentions, we consider it appropriate to spell out the importance of the problem arising for consideration which can be understood only when we understand the importance of a language. Language besides being a vehicle of communication is also a cultural institution which is an integral part of the social, emotional and intellectual life of its speakers. Each language with hoary literary traditions cannot be easily relegated to a secondary status by other language in a society. The language is as good, or as bad as its users make it to be and each language, develops appropriate styles or terminology,, in new domains if its users make an effort in an appropriate manner. Development and use of language go hand in hand; one does not precede or follow the other. The vitality and development of a language is measured in terms of their use in administration, trade, industry, defence, managerial decision making and such other wide variety of a range of domains and in social and family affairs. Such domains can be covered by more than one language used complementarily. Language development is central to educational advancement on a mass scale. Educational development is central to economic, cultural and political developments. Language development is corollary to national development. India is a country with population of sizable numbers, speaking and using different languages and therefore the problem becomes difficult and complex. The Constitution of India recognises fifteen languages as languages of the country included in the VIII Schedule. English continues as an associate official language of the country.

(ii) Articles 29 and 30 of the Constitution confer upon every linguistic and religious minority in any State, three distinct rights, namely :

- (1) Right to conserve its own language, script or culture (Art. 29(1)).
- (2) Right to establish and administer educational institutions of its choice (Art. 30(1)); and
- (3) Right not to be discriminated against in the matter of State aid to the

institutions so established on the ground it is under the management of a minority (Art. 30(2)).

Article 29(2) however incorporates a right guaranteed to every citizen not to be denied admission into a State maintained or State aided educational institutions which includes a minority institution receiving financial aid from the State, on the ground only of religion, race, caste or language.

It is on the basis of the Arts. 29 and 30 as also the general fundamental right to equality guaranteed under Art. 14, the petitioners have challenged the constitutional validity of the, impugned order.

(iii) When considering a problem of this nature in a country like ours which is a multilingual one, what Antony Allot stated in his work "The Limits of Law" at page (80) relevant. It reads as follows :

"..The study of language laws is a fascinating branch of the study of national unification through law; and it is one of the most significant, because the tongue that we pick up from our mothers in infancy is ours in a very personal sence. Either a dual personality is created with one language spoken at home (in Tanzania usually one of the many local bantu dialects) and another at work, in school or in public life (in Tanzania Sawhili and to a less extent English) - or one, and the more entrenched, personality must be eradicated in favour of that which is officially required (as happened with Welsh during the period of English rule). The social engineer using law to achieve his goals cannot expect a higher obstacle than in the language field to the achievement of his goals - a State may make decrees as much as it likes, but it will find it difficult to change people's linguistic habits. The French, with their centralised tradition and imperious attitude in matters of language, have not only not succeeded in destroying Breton (though it is indeed on the wane), but have had to admit defeat in their attempt to legislate "franglais" out of existence."

It is a matter of common experience and knowledge that a child does not grow in an insulated or isolated atmosphere unaffected by the environment and social ethos. A child belonging to a minority section of the community in any State speaking a language other than the regional or the local language will thus develop its personality with two languages; one spoken at home, the other spoken beyond the threshold of his home, for, in the absence of knowledge of the local language an individual would be at a severe disadvantage in participating in the daily life of the State. When a child or person learns two languages, one as his mother-tongue and the other as the language spoken by the people around, both become its/his language. Therefore, it cannot be said that a child speaking a language other than the regional language at home is total alien to the regional language.

It is in this background, we should consider the problem arising for consideration in these cases:

14A. (i) Now we shall proceed to consider the validity of the rival contentions. At the outset, it is necessary to observe that the State of Karnataka was formed, bringing together areas in which Kannada speaking people resided predominantly which, for historic reasons had got distributed in different provinces and States. The formation of State of Karnataka, was the fulfillment of the aspirations and dreams of the, Kannada speaking people. It was regarded as an administrative necessity and a requirement of democracy, for it is an essential feature of democracy that the Government should speak to the people. in their. language, To fulfil this requirement, the Official Language Act was enacted in 1963 and Kannada was made the official language of this State. Therefore, there can be no two opinions on the question that Kannada must have primacy in the affairs of this State and it should occupy the pride of place in the affairs of this State and. the country as a whole also. That position must be accorded to regional/official language of each and every State of our country. That would be in fulfilment of an essential element of "Swaraj" for which we were aspiring for, during freedom struggle. Therefore, it is imperative that Kannada must be used to the fullest extent by all the Departments of the State Government at all levels and the instrumentalities of the State. It should also reign supreme in the day to day life of the people of this State, for, it is only through our own languages the potentialities of the children and youth can be brought out fully and our National identity gets established.,

(ii) The learned counsel for the petitioners expressed their total agreement on the question of ensuring. and providing predominant position to,, the Kannada language in this State, and. For each of the regional/official languages in the respective States. But their submission has, been that not withstand in the establishment of submission was that in order to achieve primacy to, Kannada, dt was not necessary to compel the children whose mother-tongue is not Kannada to study Kannada as an additional language, at the primary level itself and to study Kannada as the sole first language in high schools. They also submitted that providing of choice to linguistic minorities in each of the States, who are as much part and parcel of the Nation, as are the linguistic majority, is conducive to conserve the feeling of fraternity among the people and the unity and integrity of the Nation, for the achieving of which, India has been constituted into a Sovereign Socialist, Secular Democratic, Republic as spell out in the Preamble

15. From the submission made by the. Learned Counsel for the petitioners and the Learned Advocate General it is clear that there is total unanimity for developing Kannada, the Official language and assigning it a predominant position in the affairs of this State. Indeed it is an essential step which any independent and self respecting people have to take (see Union and State Relation edited by H. V. R. Athre P. 176). The only controversy is whether the impugned order was necessary to subserve the aforesaid purpose and whether such a step is not violative of Arts. 14, 19, 29, and 350A of the Constitution and is also not conducive to the larger interest of the Nation as a whole, which

requires the fostering and conserving, the feeling of fraternity among the citizens belonging to all the linguistic groups which is absolutely essential for maintaining the unity and integrity of the people.

There are as many as fifteen principal languages in this vast and ancient Country which are specified in the 8th Schedule to the Constitution. Each of these languages is our National language as the others are. Each of these languages is our National Wealth and its development enriches our Nation and helps us to realise the objectives set out in the Preamble to the Constitution. This aspect is stressed in the Press Note issued by the Home Ministry , Government of India dated July 14,1958 , containing a statement on language:-

" All the principal languages in India are the rich heritage of our country and each of them has drawn abundantly from the others. The growth of any one of them helps others to grow also, Therefore, therefore I should be considered from the point of view of developing all our national languages and bringing about as large a measure of understanding and co-operation between them as possible."

16. As stated earlier, the State of Karnataka came to be established on 1st Nov 1956 under the provisions of the States Re organisation Act, 1956. Though this is a unilingual State and the Kannada speaking people constitute the majority, there are quite a substantial section of people in the State whose mother-tongue is not Kannada. The linguistic-wise population figures and their percentage in this State as per 1971 census are as below --

I SI. Mother Population Percentage

No. Tongue population to total

(in lakhs) population

1. Kannada 193.29 65.97

2. Tamil 9.90 3.38

3. Telugu 23.98 8.18

4. Malayalam 4.25 1.45

5. Hindi 11.87 4.05

6. Marathi 11.87 0.10

7. Gujarathi 0.29 9.00

8. Urdu 26.37 0.02

9. Bengali 0.07 0.02

10. Punjabi 0.07 0.03

11. Sindhi 0.10 0.01

12. Oriya 0.02 0.01

13. Others 17.52 5.99

Total 293.00 100.00

While Kannadigas constitute the majority their percentage of population in the State is 65.97% and people whose mother tongue is not Kannada constitute the rest.

According to the figures furnished by the Joint Director of Public Instruction in the year 1984, which are incorporated in the order of reference there are 13,990 Government Primary Schools and 2,366 Primary, Schools established by linguistic minorities. As secondary Schools are concerned, 1,549 of them are established by religious or linguistic minorities and the Government schools are 743. The figures regarding primary and secondary schools imparting education in mother-tongues other than Kannada are as below (see table Qn, next page),

17. In the nature of things, parents whose mother-tongue. is not Kannada are desirous Of having primary education for their children in their own mother-tongue. It is for this reason at such, places where such linguistic minorities are in good numbers, they have established "educational institutions of their choice and they have been imparting primary education in their mother-tongue. There are also Government Schools catering to the needs of linguistic minorities at places where they are in sufficient numbers. As stated earlier this arrangement has been going on even before the commencement of the Constitution and even after the Karnataka State was established and the- Official Language Act "acted in the year 1963, It is only for the -first time, on 20th July 1982 the State Government passed the impugned order whereby the children whose mother-tongue is not Kannada are required to study Kannada right from the first year of the primary school. Similarly, as regards the first language in the State, whether the institution was run by the linguistic, minorities or by the State or State aided private managements, the students had the choice of taking any of the languages in respect of which a provision for study was available in the High School concerned, as the first language. Thus, it may be seen, the only condition regarding the" exercising of the choice has been the existence of sufficient number of students and the consequent arrangement for imparting instruction in a particular language, So long as sufficient number of students were available and arrangement was there for study of any

S1. No. of Students

No. Description of Schools Schools strength

1 (i) Urdu Medium Primary Schools 2,880 3,00,466

(ii) Urdu Medium Secondary Schools 88 7,905

2. (i) Marathi Medium Primary Schools 1,031 1,50,613

- (ii) Marathi Medium Secondary Schools 82 20,881
- 3. (i) English Medium Primary Schools 632 1,95,672,
- (ii) English Medium Secondary Schools 45 66,047
- 4. (i) Tamil Medium Primary Schools 241 55,967
- (ii) Tamil Medium Secondary Schools 16 402
- 5. (i) Telugu Medium Primary Schools 117 16585
- (ii) Telugu Medium Secondary Schools 5 2485
- 6. (i) Hindi Medium Primary Schools 27 10774
- (ii) Hindi Medium Secondary Schools 14 2852
- 7. Malayalam Primary Schools 7 645
- 8. Sindhi Primary Schools 5 1107

language, the students could take the language of their choice as the first language. This choice is also interfered with by the Government Order and the students are compelled to study Kannada as the first language. The effect of the impugned order is all the primary schools specified in the statement in which primary education was and is being imparted in mother-tongue which is not Kannada are required to teach Kannada as an additional subject and the students in all the secondary schools aforesaid as also in all the Government Secondary schools, are required to take Kannada as the first language, leaving no choice to the students.

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

19. We shall first consider the validity of the impugned Government Order with reference to the challenge on the ground that it is violative of Art. 14 of the Constitution. This Article incorporates an injunction both to the Legislature and the Executive not to deny equality before law and equal protection of laws. The ambit and scope of the article has been the subject matter of the Supreme Court. According to these decisions, Art. 14 is,

(i) An injunction to the State not to deny equal treatment and equal protection of the law to persons similarly situated.

(ii) An injunction not to subject a class of persons who are dissimilarly situated compared to another class of persons to similar treatment, in a manner which results in discrimination against the former.

20. It is well settled that while the article forbids discriminatory treatment, it

does not prevent the State from making reasonable classification - and subject persons belonging to different classes to different kinds of reference to the challenge on the ground that it is violative of Art. 14 of the Constitution. This Article incorporates an injunction both to the Legislature and the Executive not to deny equality before law and equal protection of the laws. The ambit and scope of the article has been the subject matter of interpretation in various decisions of the Supreme Court. According to these decisions, Art. 14 is, treatment through laws enacted or through executive actions. In order to find out as to whether the classification made is or is not violative of Art. 14, the following test is laid down. .

(1) Whether the classification is reasonable?

(2) Even if the classification is reasonable, whether it has nexus to the object sought to be achieved?

Only if answers to both the questions are in the affirmative, in respect of any legislative act or executive action the constitutionality of which is challenged before the Court, the Act or actions has to be upheld, otherwise it has to be declared as offending Art. 14. (See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , *Railway Board v. Pitchumani*, AIR 1972 SC 5W, *D. S. Nakara v. Union of India*, AIR 19M3 SC 130, *Karimbil Kunhikoman Vs. State of Kerala*, .

The test to be applied in respect of a challenge to a Legislative or Executive Act,, on the ground that it subjects persons dissimilarly situated, to similar treatment is also similar. If it is found that the dissimilarly situated persons are grouped together without any rational basis, or such grouping even if it has rational basis, has no nexus to the object sought to be achieved by the law or executive action, as the case may be, the law or the executive action has to be declared as void, as offending Art. 14, *The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc.*, .

21. The third and most dynamic and all pervasive aspect of Art. 14, which had remained latent, and which was unfolded by the Supreme Court in the case of *E.P. Royappa Vs. State of Tamil Nadu* and Another, and reiterated in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, is that Art. 14 is an injunction to the State not to act arbitrarily. The relevant portion of the judgment in *Maneka Gandhi*'s case reads

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment .The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non arbitrariness pervades Article 14 like a brooding omnipresence."

(Underlined by us)

In view of this any State Action whether legislative or executive must have a rational basis and be reasonable. Any arbitrary action would also be violative of

Art. 14. We have lot to test the constitutional validity of the impugned order with reference to all the three facets of Article 14 of the Constitution.

22. At this stage, it is necessary to state that the question as to whether the primary education must be in the mother-tongue and what should be the pattern of study of languages in the secondary schools, being an issue of great National importance, has been the subject matter of consideration at various Conferences of representatives of Governments and Commissions and by the Parliament. The copies of all these documents have been produced by the petitioners. We shall now refer to some of them.

1. Resolution 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 a 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 III 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 Stage.

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 mother-tongue of the pupils Such schools if organized and published 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 require aided schools to arrange for such instruction if desired by one-third of the public pupils provided that, there are no adequate facilities for instruction in that, particular, language in the area. The Regional language will however be a compulsory subject to the secondary stage The arrangements prescribe above will in particular be necessary in Metropolitan cities or places where a large number of people speaking different languages live or areas with a floating population speaking different languages."

II Recommendations of State-Reorganisation Commission

"758. The scheme of redistribution of state territories, which we have

recommended result in many cases in bringing together people seeking a 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 unilinguism at the State level the limiting,. factors being the following

- i) not all the language groups are so placed that they can be grouped into separate States;;
- ii) there are a large, number of bilingual belts between different linguistic-zones and,
- iii) there exist areas with mixed population even within unilingual areas

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

"768, We realise that overemphasis 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, gaurantees to the minorities which would 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.

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773. The more important aspects of the problem, however are the right of linguistic minorities to instruction in their mother-tongue the use of minority languages in the administration and the representation of the minorities in the state services . The languages of instruction in educational institutions are matters that touch in practice , many vital aspects of 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 gaurantees to the minorities -the fight to private schools but does not specifically, recognise the right to instruction in the mother-tongues in the public schools. It seems to-us that linguistic minorities do not have the resource 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 the 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 schoolgoing 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 endeavouring 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 sufficient number of students being available, should be placed on a more stable footing than is the 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 Art. 347 of the Constitution."

"777. 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."

111. The Central Advisory Board of Education (CABE) : The Board formulated Three language formula and made the following two proposals:

First Formula:

(a)(i) Mother-tongue or (ii) regional language (iii) a composite course of mother-tongue and a regional language, or (iv) a composite course of mother tongue and classical language, or (v) a composite course of regional language and classical language; (b) Hindi or English; and (c) a modern Indian or a modern European language provided it has not already been taken under (a) and (b) above.

Second Formula:

(a) As above;

(b) English or a modern European language; and (c) Hindi (for non-Hindi speaking areas) or another modern Indian language (for Hindi speaking areas).

The CABE secured the opinion of the State Governments and considered them in its Twenty-fourth meeting held in Jan. 1957 (Agenda No. 9). The CABE observed that the preponderant weight of opinion among State Governments was in favour of the second formula. The CABE sent its view for acceptance by Government of India.

IV. In the meeting of the Ministerial Committee of the Southern Zonal council to consider the safeguards for linguistic minorities held at Ootacamund on 16th and 17th May 1959, in which the Chief Ministers of Andhra Pradesh, Tamil Nadu, Kerala and the Education Minister of Mysore participated, the following decisions were arrived at

"2. Item 1 of the Agenda - Provision of facilities for instruction of linguistic minorities in the medium of the mother-tongue in the primary stage of education.

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(iii) Facilities will be provided in everyone of the four States for the study, by pupils belonging to the linguistic minority groups, of the regional language as an additional optional language from the IV Standard onwards so that pupils belonging to these groups may not be at a disadvantage, if at the secondary stage, they elect to study the regional language. These facilities will be financed by Government. That is to say, that facility will be provided freely in all schools under public management, i.e., Government or local body and the provision of such facilities in aided schools will be eligible for the usual grant from Government.

3. Item 2 - Study of languages in the Secondary stage of Education

The question of making provision for the study of the mother-tongue by the linguistic minorities at the secondary stage of education without deviation from the three language formula in the terms already accepted by all the States of the Southern-zone was discussed. It was noted that in every one of the four States provision was being made or would be made under the reorganised syllabus of secondary education for the study of linguistic minorities of the mother-tongue in the secondary stage. In Madras a pupil belonging to the linguistic minorities can offer the mother tongue as an alternative either to the regional language (Part I of the language course) or to Hindi or other Indian language not included in Part I (Part II of the language course). In Kerala, a pupil belonging to the linguistic minority can offer the mother tongue as an alternative only to the regional language. In Andhra Pradesh and Mysore, he can take it as the first language either as a complete alternative to the regional language or as part of composite course consisting of more than one language. To the extent that the mother tongue could be offered as an alternative to the regional language in all the States there was no compulsion to study the regional language. It was decided that this position was satisfactory and should continue. The recommendation of the Government of India that compulsory provision should be made for the study of linguistic minorities at the secondary stage of education of the regional language in addition to the mother tongue was considered and it was decided in view of the number of languages involved that no such compulsion was necessary, desirable or even possible."

V. Statement issued by the Meeting of the Chief Ministers of States and Central Ministers with Prime Minister in the Chair held on 10th , 11th and 12th Aug. 1961, reads

"(a) Primary Education - The right of linguistic minorities to have instruction in their mother tongue At the primary stage of education was re-affirmed This had indeed received constitutional -recognition from Art. 350-A and the President is empowered to issue directions where necessary.

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(b)Secondary Education Here also, the general provisions of the 1956 memorandum were re-affirmed and the meeting accepted in Principle the decisions of the States of the Southern Zone. These principles should be considered by State Education Departments with a view to adaptation to the present conditions prevailing in the States."

VI. Recommendation of the Education Commission appointed by the Government of India in 1964 - - Dr. D. S. Kothari Commission, reads:-

The three language formula (Para 8.34)

- (1) The mother-tongue or the regional ,language;
- (2) The official language of the Union or the associate official language of the Union so long as it exists; and

(3) A modern Indian or foreign language not covered under (1) and (2) and other than that used as the medium of instruction.

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Para-8.35

"Implications of the modified formula. At the lower primary stage only one language should be studied compulsorily the mother-tongue or the regional language, as the option of the pupil. In the case of the vast majority of pupils, the language of study at this stage will be the regional language which will also be their mother-tongue. Some children belonging to the linguistic minorities may also opt for instruction in the regional language, because of its great advantages, but this cannot be forced on them, and they have the right under the Constitution to have facilities provided for their primary education through their mother-tongues. The State Governments should, therefore, provide, primary schools teaching through the mother-tongue for the children of linguistic minorities if they desire to have such an education", subject to the usual condition approved by Education Ministers Conference (1949) that the minimum number of such children should be 10 in a class or 40 in a school. If it is desirable that such children should have working knowledge of the regional language also. Facilities for its study should, therefore, be provided, on an optional basis, from Class III onwards. We do not favour study of regional language compulsory at this stage for children of linguistic minorities, as has been done in some States at present

Para-8.36 :

"At the higher primary stage only two languages should be studied on a compulsory basis: (1) the mother-tongue or the regional language, and (2) the official or the associate official language of the Union

Para-8.37 :

"At the lower secondary stage (Classes VIIIX), a study of three languages should be obligatory; and a student should be under an obligation to study either the official language of the Union or the associate official languages which he had not elected at the higher primary stage

VIII. Resolution adopted by the Parliament incorporating the National Policy on Education and about the Three language Formula reads: -

"3. Whereas it is necessary for promoting the sense of unity and facilitating communication between people in different parts of the country that effective steps should be taken for implementing fully in all States the three-language formula evolved by the Government of India in consultation with the State Governments;

This House resolves that arrangements "Should be made in accordance with the formula for the study of a modern Indian language, preferably one of the

southern languages, apart from Hindi and English in the Hindi-speaking areas, and of Hindi along with the regional languages and English in the non.-Hindi speaking areas."

23. As we can see from the decisions and recommendations extracted above that at least on three aspects there has been agreement they are:

(1) Primary education must be in Mother-tongue, if that happens to be the choice of the parents.

(2) Regional/ Official language could be introduced as a second language at Senior Primary level.

(3) Regional/Official language could be one of the three languages for study in the High School.

We were also taken through the Dr. Gokak Committee report, for the implementation of which the impugned order was made. Relevant portions of the report reads

P. 11- 12.

"It is quite reasonable and just that the official language of the State be taught as a compulsory language for all the people domiciled in the State. Thus, it is high time that Kannada should be the medium of public administration. Public Service Commission examinations and for higher studies. It would be in the interest of the people residing here, to become Kannadigas, irrespective of the places from which they came. They have to use Kannada language in matters connected with property, accommodation employment etc. People who have settled here for more than ten years are Kannadigas for all purpose. Their prosperity and future is inseparable with that of the Kannadigas. The problems of these persons could be solved only if their children learn Kannada as a compulsory subject at the Primary and Secondary stages. The Central Government has provided Central schools in various places for the benefit of its employees. Such of those as do not get admission in those schools would make their own arrangements. The merchants and employees settled, in Karnataka will continue as kannadigas for all practical purposes. Others who come for a temporary stay, would make their own temporary arrangements."

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I P. 13.

"Language of Linguistic Minorities:--

The mother-tongues of linguistics minorities in the State are also developing languages. They are the official languages and also medium of instruction in one State or other. Almost all the modern languages possess the resplendent literature of the ancient and modern civilization. It is an accepted principle education of a child should be through the mother-tongue .A child right from the

birth grows amidst the atmosphere of that language. A Childs knowledge can develop only through its mother-tongue".

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P. 14

"A child speaking a minority language will also have to study its middle and higher education in the State where it resides. If the child in this level learns the regional language ` w5ieh it oft n frequents, it can continue its middle school education In -the regional language.¹ This special knowledge of the regional language is very essential in view of it being the State Language, administrative language and the language of day to day transactions. If it is learnt as the second language at the primary level it enables them in future to take it as their medium of instruction."

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P. 15

"The other State languages are also developing languages. If not at Karnataka they are official languages in their respective States. Though they are not as ancient as Tamil or Kannada, their history of literature start around about a thousand years back. Several reasons may lead to the incident of many Kannadigas going in the search of employment to different States. A language which is a language of minorities in Karnataka may be the official language there. Studying it in detail may help those minorities whose mother-tongue it is and also many Kannadigas. Thus if a certain number of students wish to learn a modern Indian language facilities should be provided in our high schools. In an high school if 30 students express their wish to study their mother-tongue as one of their subjects, it should be made possible. But before according such a facility we should ascertain that whether similar facility is being made available to Kannada students in the State of that language."

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P. 17-18.

"While implementing the language policy in our country the Central Government have approved the Three-Language Formula. The Central Sahitya Academy have recognised 22 Indian languages which are having rich literary heritage. According to experts in India (languages, dialects and colloquial languages) in all there are about 180 languages. In a country which has such a diversity in languages it is worthy to learn as many languages as possible according to the circumstances, attitudes etc."

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"Thus Hindi has got a bright future in literary and scientific fields. The number of people speaking that language has enormously increased. It is also honoured as

an authorised language. Thus students give much prominence for selecting the Hindi language."

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2. Recommendations of the Committee: -

The Committee, on consideration of the discussions with the invitees and general public regarding the principles of language instruction, the differential importance to various languages, the present conditions of the Karmadigas, problems of Linguistic Minorities, the method of developmental educational system, etc., and also after considering the invaluable opinions of the members of the Committee, has unanimously adopted the following recommendations:

(1) Kannada should be made the sole first language from the academic year 1981-82 itself and the study thereof shall be made compulsory. It should carry 150 marks. (Anad- hoc arrangement is necessary in this regard, which is explained in a separate note)."

24. A reading of the Dr. Gokak Committee Report would show, that the said Committee was also of the opinion that primary education of a child must be in mother-tongue and that the regional language should be introduced at middle school (Senior Primary School) level i.e., 5th year of the primary education, though the final recommendation was to introduce regional/ official language to children whose mother-tongue is not Kannada from the 3rd year of the primary school. But the impugned order has made it compulsory from the first year of the primary school itself. Further, the Committee was of the view that Kannada should be made a compulsory language for study at the High Schools., What is, of importance is that the Committee was of the view that making study of Kannada compulsory at higher primary and secondary school should be in respect of linguistic minorities, who are permanent residents of this State and for this purpose people who have settled here for more than ten years, should be treated as Kannadigas. But finally in the recommendation made in respect of secondary school, the Committee said that, Kannada should be the sole first language. As far as this recommendation is concerned it is implemented in the impugned order with the slight modification of reducing the maximum Marks for the subject from 150 to. 125.

25. We had also directed the Government, to secure information about the regulation made for study of languages in primary and secondary schools in other States. The questions and answers furnished are as follows : -

(For Table see next page)

The information indicates that the policy of imparting primary education in mothertongue and giving choice to the students regarding first language in the secondary school has been adopted in all the States, as was also the case in this

State prior to the impugned order.

26. Thus, we can see that there N 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, Art. 350-A (extracted

(1) Whether in each of the other States in the Country, the official and/or the regional language of the State concerned has been made a compulsory subject for study to children belonging to linguistic minority groups in addition to their mother-tongue from the first year of the primary school.

(a) In the school established by linguistic and/or religious minorities

(b) In other Government and Government recognised primary schools

(2) Whether in each of the other States in the Count the official and/or the regional language of the State concerned has been made the sole first language and/or a compulsory subject for study for all including the students belonging to linguistic - minority groups.

(a) In the High Schools established by linguistic and/or religious minorities.

(b) In other Government and Government recognised High Schools.

Earlier 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 In the neighbouring States like Kerala, Andhra Pradesh and Tamil Nadu the child had to study either the regional language or the mother tongue in the primary school.

The question does not arise because the regional language of the State has not been made a compulsory subject. ,

Same Rule applies to all schools as mentioned above.

Kerala State follows 3 language formula at secondary level of schools. In Kerala State there are 9 languages that can be offered at Secondary stage as a first language (They are .Malayalam, Tamil, Kannada, Sanskrit, Arabic, Hindi, Gujarathi Urdu, Addl. English under Part-A group. In Part B group Malayalam Tamil, Kannada and Special English languages included. In Tamil Nadu, it follows two language formula at primary and secondary levels. The first language is the mother tongue or regional language. In Andhra Pradesh three language formula existing at Secondary level, such as First language in mother tongue or Regional

language. In Maharashtra also three language formula is existing. The three languages that a candidate has to offer depends upon his medium of instruction. The first language, and the medium of instruction of the student. are same, The above rules apply to all types of schools.

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 practicable 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 cl.(2) of Art. 30 which provides that the State shall not in granting aid, discriminate against educational institutions established by a religious linguistic minority.

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. This aspect has been highlighted by Mathew, - J. in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . The relevant portion of the judgment at paras 141 and 142 reads:

"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. See *Pierce v. Society of Sisters of Holy Names* (1924) 268 US 510, 535."

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."

The State therefore should leave the option 1 to have the primary education in mother-tongue to the parents and their children. The State cannot curtail that right and liberty.

28. Obviously, the children whose mother-tongue is the regional/official language of the State concerned and the children whose mother-tongue is a language other than that language, are dissimilarly situated in the matter of primary education. This is their unanimous opinion expressed by all, the experts, commissions and the Governments. The Constitution itself through Art. 350-A has recognised this classification. Therefore, "any act of the Government to

compel all the children studying in primary schools of this" State including those established by linguistic minorities to study Kannada, apart"from being"" irrational and arbitrary, it is also , discriminatory and therefore violative of the Article 14 of the Constitution of India.^{28A}. In view of our conclusion as above, it is unnecessary for us to examine the question as to whether Art 350-A is mandatory and the impugned order is also violative of that Article.

29. The learned Advocate General maintained that as Kannada happens to be the official language of the State that constitutes the rational basis for making Kannada compulsory in primary schools. We fail to appreciate how the fact that the i Kannada happens to be the official language of this State has any relevance for making Kannada compulsory from the first year of primary schools in respect of children whose mother-tongue is not Kannada. In fact, as stated earlier it is this aspect of the matter which has been considered by various Committees and Commissions including Dr. Gokak Committee and all of them are unanimous in their opinion that primary; education of the children must be in mother-tongue irrespective of the fact that the mother-tongue of children is not the official or regional language of any State in which they reside.:, Therefore, to throw an additional burden of, studying regional or official language, as an, additional language of the primary level is irrational and arbitrary. The argument,¹, advanced by the Advocate General really amounts to an attack of Art. 350-A itself as incorporating an irrational basis and therefore liable to be rejected as untenable.

30. The impugned orders also subject children whose mother-tongue is riot Kannada --to discriminatory treatment in another way. According to the Government order the children whose mother-tongue is Kannada will have their primary education in Kannada only. They are not required to study any other language. It is only the children whose mother-tongue is not Kannada who are compelled to study Kannada as an additional language, which certainly imposes an additional burden to the, tiny tots whose mother-tongue is not Kannada, even from the commencement of the primary education. The learned Counsel for the State submitted that in order to ensure that additional burden is not thrown upon the children whose mother-tongue was not Kannada, respondents have taken care to ensure of teaching Kannada only for 5 periods in a week in lieu of 2 periods of work experience, 2 periods of physical education and one period of singing. The argument of the learned Advocate General, in our opinion, instead of supporting his contention, goes against it. For the development of the personality of children, apart from study of languages and other subjects the work experience physical education and singing have been considered by educationists as of utmost importance. The work experience, consists in making the children to do various kinds of work, themselves and such a training from the inception of education is essential for the development of personality of the children on basic education, Mahatma Gandhiji laid a great stress on programme of work experience as part of basic education.⁽²⁾ Similarly, physical education and singing are also necessary for physical and emotional development of the

children. Thus, it may be seen, the impugned order, apart from throwing the burden of studying another language to children whose mother-tongue is not Kannada at the primary level, it also deprives them of the very useful periods required for development of their personality and therefore subjects them to hostile discrimination.

(1) Socially Useful productive Work principles and Practice by N. R. Hiremath.

(2) Challenge of Education a policy perspective Appendices, Ministry of Education, Govt. of India, August 1985, P. 35.

Learned Counsel for the petitioners also submitted that any additional burden of another language on children at primary school level, particularly on those belonging to lower strata of the society, would result in greater number of dropouts, which was detrimental to National interest. In this behalf, they relied on the publication "Challenge of Education" (10). Relevant portion of it reads: -

"3.9 With such schools and with such teaching and with about 40 per cent of the population living below the poverty line, it is, not surprising that the growth rate of enrolment in elementary education is tending to taper off. What, however, is even more disturbing, a large number of those who enrol, drop out very soon. Of 100 enrolled, in class I only 23 children reach class VIII"

xxx xxx xxx

"If there is no change in the rate of growth of population and the rate of the speed of literacy, there would be 500 million illiterates in India in the year 2000 A.D. According to the World Bank, in that year, 54 per cent of the World's illiterate population in the age group 15-19, would be in India."

There is considerable force in the submission that compulsory introduction of another language from the first year of the primary school to children in addition to mother-tongue might contribute for the increase in the number of dropouts.

31. On giving our anxious and deep considerations to the points raised in these cases, we are of the view that from any approach the Government order in so far it makes the study of Kannada language compulsory from the 1st year of primary school in the primary schools established by linguistic minorities even in the institutions established by the Government in which there is a provision for imparting primary education in mother-tongue, is violative of Art. 14 of the Constitution.

32. Now coming to the prescription of Kannada as the sole first language, it is common ground that having regard to the syllabus and the hours allotted for tuition and the standard of text book under the prescribed scheme of secondary education, study of a language as the first language provides opportunity to acquire better and greater proficiency in that language, than studying it as one of the two other languages. Therefore, the contention of the petitioners has been that so long as there is a provision for study of any of the languages, specified in

the eighth schedule to the Constitution, as also English so long it continues as an associate official language of India, in a school, the option to choose a particular language as the first language must be of the students and not of the State. The contention of the petitioners is, such a compulsion imposed by the Government Order is not only discriminatory but also arbitrary and therefore violative of Art. 14 of the Constitution. It is also the contention of the petitioners that if a student either on account of the language being his mother tongue or on account of his aptitude to attain proficiency in a particular language of his choice is desirous of taking a particular language as the first language in the High School, it is unreasonable for the Government to prevent him from doing so and to compel him to take Kannada alone as the first language. It is also the contention of the petitioners that by and large a person would be desirous of studying his own mother-tongue as the first language so that he not only would be in a better position to become proficient in the said language and would also be in a better position to take more marks in the examination and therefore students whose mother tongue is Kannada and who take it as the first language and students whose mother tongue is not Kannada but who are, under the impugned order, compelled to take Kannada as the first language, are unequally situated and therefore "the compulsion amounts to treating unequals as equals and therefore violative of Art. 14. In support of their contention that such a compulsion is also unreasonable and arbitrary, they relied on the various recommendations and resolutions, extracted earlier.

33. It appears to us that the learned counsel for the petitioners are right in saying that these two classes of students are unequally situated in the matter of taking Kannada as the first language. The students whose mother-tongue is not Kannada would be at a disadvantage. But the learned counsel for the State pointed out that any disadvantage caused to the students, whose mother tongue was not Kannada, by the impugned order, has been removed by the provision made in the impugned order for awarding of 15 grace marks, in the first language to the students whose mother tongue is not Kannada for a period of ten years.

34. The learned counsel for the petitioners also pointed out that even with the provision for grace marks, the non-Kannada students would be at a disadvantage, for, grace marks are awarded only to the students who fail to secure the minimum marks prescribed for a pass and not to those who secure passing marks. This is the position regarding awarding of grace marks is not disputed. Therefore, notwithstanding the provision for grace marks, in the matter of securing more than the passing marks or distinctions in the first language and on that basis distinction in the examination as a whole, the non-Kannada students would be at a great disadvantage.

35. Further, it may be seen from the impugned order, a student who is bound to take Kannada as the first language has also the option to take Kannada as the second language. This is contrary to the earlier order dated 30th April 1982

which was also based upon the Dr. Gokak Committee report. According to that order, a student who took Kannada as the first language had to opt for two other languages other than Kannada. It was only students who did not opt for Kannada as the first language were required to take Kannada as one of the two other languages. The impugned order while on the one hand gives an opportunity to students who are proficient in Kannada to study Kannada both as first and another language and thereby gives an advantage to them over others who are required to study three languages at high schools, on the other hand gives an excuse to the former to avoid studying a third language, which is in national interest under the three language formula.

36. The learned counsel also invited our attention to para 3 of the impugned order, according to which when students from other neighboring States come to this State to join VIII or IX standard in any of the High Schools in this State, they are prohibited from taking their own language as the first language and the option given to them is to take Hindi or English as the first language. This they pointed out discloses a clear discrimination against other regional/ national languages on the part of the Government. Elaborating this point, the learned counsel stated thus: To illustrate, if number of students whose mother tongue is Telugu or Tamil or Malayalam or Marathi who have taken their respective mother tongue as the first language in their respective States, are on account of transfer of their parents in service of the Central Government or other bodies required to come to this State and join the High Schools, they are not permitted to continue their mother tongue as the first language in this State. The option given to them is if they cannot take Kannada as the first language, they have the option to change over to Hindi or English as the first language. They pointed out that even when the Government appreciates and recognises that such students cannot be required to take Kannada as the first language during their stay in this State when they are undergoing secondary education the Government is not prepared to give them the choice of studying their own mother tongue, and this was patently discriminatory and wholly arbitrary.

37. The submission of the learned counsel for the petitioners that the provision for grace marks itself proves that the students whose mother tongue is not Kannada are unequally situated, is unexceptionable. It is an implied admission that two classes of persons are dissimilarly situated. Therefore, the impugned order which makes the Kannada the sole first language at secondary school level is discriminatory against those whose mother tongue is not Kannada. We are not impressed by the submission that the fact this is a Kannada State and Kannada is the official language, constitute a rational basis to do so. We fail to appreciate how the fact that one of our fifteen National languages specified in the eighth Schedule to the Constitution happens to be the official language of a State, has any rational nexus for the study of that language as the first or principal language in the secondary schools. In fact, just as there has been unanimity of opinion, that primary education must be made available in the mother tongue of the children, as can be seen from various recommendations and resolutions

extracted earlier, there is also unanimity on the question of allowing students to study three of any of the specified languages, in respect of which facility for imparting instruction is available in a secondary school, -under the three language formula. It may be that study of regional/official language could be insisted as one of the languages for study in High Schools, but not necessarily as the first language. This should be so, because it is natural that choice of studying a language as the first or principal language must depend upon the aptitude, desire and aspiration of an individual. A person, whose mother tongue is Kannada or any other national language has the unquestionable liberty and is entitled to strive to become a scholar in any language other than, his mother tongue, if he so desires. In the educational institutions of each of the States, teacher's to impart instruction in the "languages" other than the regional/official languages would be required. It is so in this State also. There is no rational basis to deny the opportunity to a student whose mother tongue is not the regional/official language, or even to a student whose mother tongue is the regional/official language who is desirous of becoming a teacher or professor in this State or elsewhere in any other language of his choice or a poet an author, a writer in any other language of his choice and for that purpose wants to take that language as the first language which would enable him to study that language as a major subject in Degree and post-graduate courses. It is a matter of common knowledge that in every State including Karnataka there have been and there are great authors and poets in languages other than their own mother-tongue. It is thus a disadvantage to citizens residing in this State including Kannadigas as it deprives them the opportunity of studying other languages as first language which would give a better foundation for taking that language as major subjects in degree classes and becoming teachers, lecturers and professors in those languages either in this State or in other States or authors or writers or poets in other languages. As far as Kannadigas are concerned, such of them who study any other language as the first language would be an additional advantage to them, for, they would not only become proficient in that language but they would also be proficient in Kannada even by studying it as a second language on account of its being their mother tongue and they would be able to carry on correspondence with the Government in Kannada or to transact the Government business in Kannada if they were, to become Government servants or servants of a local authority in this State. The impugned order denies them the additional advantage. Similarly, a person whose mother tongue is not Kannada, also, if he studies Kannada as one of the languages in the secondary school, though not as the first language, could acquire adequate knowledge to carry on correspondence with the Government in the official language. This is evident from the provisions of the Karnataka Civil Services (Service and Kannada Language Examination) Rules, 1974 framed by the Governor. Rule 3 of the Rules prescribes passing of Kannada language examination compulsory during the period of probation by every Government servant of this State within a period of two years from the date of appointment. Rule 5(I) of the Rules, which is relevant to the point, under consideration reads : -

"5. Savings: - (1) A Government servant who has passed -

(a) the secondary school leaving Certificate Examination or any examination declared as equivalent thereto by the State Government or any examination higher than the Secondary School Leaving Certificate Examination, -

(i) in which the question papers on different subjects are answered in Kannada Language; or

(ii) in which Kannada is the main language, Second Language or an optional subject, or

(b) any examination specified in Schedule III as equivalent to the Kannada language examination, shall on obtaining a certificate of exemption under sub-r. (5) be deemed to have passed the Kannada language examination under these rules."

This rule shows that adequate knowledge of Kannada for using it as official language could be secured by any one of the following methods:

(i) Having Kannada as medium of instruction (though first language is different from Kannada);

(ii) Studying Kannada as a main or first language (though medium of instruction might be other than Kannada);

(iii) Studying Kannada as an optional i subject; or as second language;

(iv) Or by passing any equivalent examination.

Thus any person who has acquired knowledge of Kannada in any one of the modes is not required to pass Kannada language examination. However, any citizen of India coming from any part of the country gets selected for recruitment to any post in the service of the State, who before selection and appointment has not acquired the knowledge of Kannada has to pass the language examination conducted under the rules. Therefore, it is clear, the requirement to study Kannada alone as the first language has no rational nexus at all to the Kannada being the official language, This position holds good for every State in India. From this, it follows, a Kannadiga staying in a non Kannada State, would be equally entitled to choose any language of his choice including Kannada as the first language. In fact, no other State in India has made a provision similar to the one made in the impugned order. This should be so because doing so would be inconsistent with our having one citizenship, our being one people belonging to one country and all the fifteen languages being our national languages. It would also be inconsistent with personal liberty and equality, which are the basic fundamental rights guaranteed under the Constitution. It would be inconsistent with the feeling of fraternity, as also unity and integrity of the nation, which are among the fundamental objectives enshrined in the Preamble to the Constitution, for the implementation of which only the power is conferred on the Union and the State Government. Any step by any State which detracts from it, is certainly

tabooed by the constitutional provisions.

38. In this behalf it is also necessary to note that as observed by Jagannatha Shetty, J. (as he then was) in the order of reference every State of our republic as well as an Union territory is a miniature India. Citizens speaking different national languages live there. The Official Languages Act, 1963 (Karnataka Act No. 26 of 1963) making Kannada as the official language of the State, as also the Karnataka Local Authorities' (Official Language) Act, 1981 (Karnataka Act 30 of 1981) take note of this aspect. S. 2 of this Act provides that the official language of all the local authorities in the State of Karnataka shall be Kannada. English may be used in communications addressed to the Central Government offices, offices of other State Governments, Courts etc. Section 2(b) of the said Act provides:

"(b) If the population of a linguistic minority within the area of operation of such local authority is not less than fifteen per cent,

(i) petition shall be accepted in the language of such minority and as far as possible replies thereto shall be given in that language;

(ii) hand-outs and publicity materials shall also be given in the language of such minority;

(iii) notices of the local authorities shall also be published in the language of such minority."

The State by these provisions has provided for the use of a language other than official "language in petitions, where substantial number of persons belonging to such language reside in the State. This is also in tune with Art. 350 of the Constitution which includes the right of every person to submit a representation in any of the languages used in the Union or in any State, as the case may be. This should be so, for, we cannot be people speaking only one particular language to reside in each of the States. This aspect has been forcefully put forth by Dr. K. M. Munshi who was one of the members of the Committee which drafted our Constitution. He has said thus:

"The formation of homogeneous provinces on the basis of language was an administrative necessity, and was recommended by the Congress long before any one dreamt of independence in 1947. After independence some necessary adjustments were made, but it is impossible to draw the boundaries of a State in such a manner as to totally exclude linguistic groups from the adjacent States. Nor is such a boundary necessary or desirable, for we are citizens of India, not of any State though the present dangerous trend is to identify oneself with his State rather than with India.

This tendency was not apparent before independence it may be a passing phase. But, while it lasts, it has to be dealt with firmly though sympathetically, without weakening the Centre or the federal bonds in any way"(7).

Moreover, having regard to the fundamental right guaranteed to the citizens under Art. 19(t)(d) of the Constitution, the citizens are entitled to freely move in the territory of India and they are at liberty to reside in any part of India, temporarily or permanently. Having regard to Art. 16(1) of the Constitution, every citizen has the fundamental right to equality of opportunity in matters relating to employment in the service of the Union and instrumentalities of the Union and once he joins such service he is liable to serve in any part of India. Similarly, a citizen in any State has the same "(3) Foreword to The History and Culture of The Indian People, Vol. 11, Struggle for Freedom, P. VIII. " fundamental right under Art. 16 in matters relating to employment in the service of every one of the States in India. Therefore, in each of the States though the particular language of the region is adopted as the official language, every one of the fifteen languages being a national language, it is not permissible for a State to impose a condition that a citizen residing in that State permanently or temporarily, must study the official language Of that State alone as the first language in high school. Having regard to the right flowing from Art. 14 of the Constitution, a student/citizen has every right to claim equality in the matter of selection of and equal protection in respect of his mother tongue or the language of his choice as the first language in the high schools if facility for studying that language has been made available in the school concerned, having regard to the sufficiency of the number of students. There is no rational basis for restricting the choice of the first language. Any restriction on the choice would be arbitrary and discriminatory as it denies an opportunity to an individual to fulfil his aspiration or desire to study the language of his choice as the first language and through it to develop his personality. Therefore, any provision made by a State which compels students to study official language alone as the first language would be a violation of the injunction incorporated in Art. 14 of the Constitution.

39. If the official language of a given State is made a compulsory first language to all the citizens residing in that State even on temporary basis, it would certainly give rise to a feeling among the children that they are outsiders; though they are in their own country and is injurious to the feeling, of fraternity and inconsistent with one citizenship and one people, as we are, under the Constitution.

40. It is a matter of common knowledge that persons whose mother tongue is different from the official or regional language of a State reside in substantial number in each of the States. Some of them have and might become permanent residents of the State on account of their having their business or avocation in that particular State. Some of them would be those who are in employment of the Union Government or any public sector or private sector industries and business houses, who get transferred to any particular State and therefore are required to stay there for a few years only. It is natural that children of such persons would desire to have continuity in the matter of study of languages and therefore irrespective of the State in which they are compelled to stay for a short period they would prefer to study their mother tongue or any other language of

their choice as the first language. In fact this aspect is highlighted in Dr. Gokak Committee Report. The relevant part of the report extracted earlier shows study of Kannada should be made compulsory only to those who have by choice become permanent residents of this State we, are entirely in agreement with that view as also the submission of the learned Advocate General made on those lines. It is true that the aspiration of the Kannada speaking people as also those speaking other languages to have a State, consisting of areas where the people speaking such language reside in majority does not stand fulfilled by merely establishing an uni-lingual State. It is one of the steps for ushering "Swaraj" and democracy in reality. There can be no two opinions on the question that the language concerned should be made official language? It must be so and further every step should be taken for the development of the language. This aspect has been laid down by the Supreme Court in the case of D.A.V. College, Vs. State of Punjab and Others, . The relevant portion of the Judgment reads (at Pp. 1745-1746) : -

"23. Assuming for the moment that the Punjab Legislature had the competence to enact the Act, about which considerable argument was addressed before us, particularly in respect of the scope and ambit of S. 72 of the Reorganisation Act - Subsections (2) and (3) of Section 4 do not in our view offend by themselves any of the rights of the petitioners either under Art. 29(1) or Art. 30(1) of the Constitution. Sub-sections (2) and (3) of Section 4 are as follows:

Section 4: The University shall exercise the following powers and perform the following duties:

(1) xx xx xx

(2) To make provision for study and research on the life and teachings of Guru Nanak and their cultural and religious impact in the context of Indian and World, Civilizations;

(3) - To promote studies to provide for research in Punjabi language and literature, and to undertake measures for the development of Punjabi language, literature and culture."

xx xx xx

"28. It is again contended that while provision is made in Ss. 4(2) and 4(3) for the study and research of the life and teachings of Guru Nanak and for the study of Punjabi language, script and literature, no similar provision is made for the study of religious Heads of Hindus or for the study of Hindi and Devnagri script though Hindus form a substantial portion of the population of the State. These provisions therefore are discriminatory and violative of Article 14 of the Constitution. This argument in our view is devoid of merit. The State of Punjab is created as a unilingual State with Punjabi as ,its language and if provision is made for study, of Punjabi language, that does furnish a ground for discrimination nor can the, provision for study of the life and teachings of Guru

Nanak afford any cause for complaint as in neither case as we have noticed, is there any compulsion of any person to undertake such studies nor is any of the communities prohibited from pursuing studies in respect of either Hindi or of the life and teachings of any Hindu Saint. The facts of the case in our view do not attract Article 14."

(Underlining by us)

Thus the Supreme Court held that S. 4(3) of the Punjab University Act which made the taking of steps to promote Punjabi language as one of the obligatory function of the Punjab University was neither violative of Arts. 29 and 30 nor violative of Art 14 on the ground that Punjab was an unilingual State. Therefore the fact that Kannada is one of the national languages and it also happens to be the official language of this State constitutes a rational basis for taking every step for promoting the said language. But as can be seen from the above paragraphs, while rejecting the challenge to the constitutional validity of the said provision, the Supreme Court pointed out that the study of Punjabi was not made compulsory to any person. This observation fully supports the contention of the petitioners that if the study of Kannada as first language is made compulsory for even those who are desirous of studying any other language as the first language and prevents them from taking the language of their choice as the first language, it would be violative of Art. 14. We do however agree for reasons indicated later in detail, that if a State prescribes that study of official language of that State by such of the linguistic minorities permanently residing in the State, as one of the three languages in the High School as part of the Three language formula, it would not be violative of Art. 14, for such grouping of all the citizens who are permanent residents of a State with the object of making all of them to learn such language, has a rational nexus to the said language being an official language of the State. But it would not be so in the case of citizens whose mother tongue is not the official language of the State concerned but whose stay in the State is of temporary or transitory character.

41. Now coming to the impugned order, it compels all the students in the high schools to study Kannada only as the first language irrespective of their mother tongue or desire, irrespective of they being linguistic minorities and irrespective of they being permanent residents of this State or not. Paragraph III of the impugned order discloses a greater irrationality. According to that paragraph, students who come from other States for temporary stay and/or at a point of time, when they have to join the high school classes, are not permitted to study their own mother tongue or any other language of their choice as the first language, but their choice is restricted to Hindi or English. It is difficult to appreciate as to why such students should not be allowed to continue the first language taken in other States, if it was not Hindi or English or to take their own mother tongue or any other language of their choice, as the first language, while joining high schools in this State.

42. For these reasons we hold that the impugned order which prescribes

Kannada as the sole first language for all in Secondary Schools is violative of Art. 14 of the Constitution.

43. The next question for consideration is whether the impugned order is violative of Arts. 29 and 30 of the Constitution. These Articles read

"29(1) Any section of the citizens residing in the territory of India or any part thereof having a 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."

"30(1) All minorities, 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."

Both the sides relied upon number of decisions of the Supreme Court interpreting the provisions of Arts. 29 and 30 of the Constitution of India. The decisions are:

The State of Bombay Vs. Bombay Education Society and Others, ; Re Kerala Education Bill, AIR 1958 SC 956; Rev. Sidhrajabhai Sabbai v. State of Gujarat, AIR 1963 SC 540; State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., ; D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others, ; The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, ; Lily Kurian Vs. Sr. Lewina and Others, ; All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, ; Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, .

The scope and ambit of the two Articles have been considered and fully expounded in the aforesaid decisions. The gist of all those decisions in so far it relates to the right of linguistic minorities in the matter of conserving their languages through the educational institution of their choice may be summarised thus,

I. The fundamental right guaranteed under Art 29 to every section of the citizens residing in any part of the territory of India having a distinct language/script who constitute a linguistic minority in the State concerned is the right to conserve it. The language/script can best be conserved through educational institutions. It is for the purpose of effective exercise of the right guaranteed under Art. 29 , Art. 30(1) confers the right on the minorities, the right to establish educational institutions of their "choice" - The choice is as wide as the choice of the particular minority. Unlike the Fundamental rights guaranteed under Art. 19 which are subject to reasonable restriction, the right guaranteed under Arts. 29

and 30 is not subject to any reasonable restrictions. It is absolute. Therefore, the State cannot, either directly or indirectly take away or abridge, infringe or impair the right guaranteed under the two articles.

II. The right guaranteed, however, does I not include the right to mal-administer. "Therefore, it is competent f or the State either, by Legislature or Executive action,

(1) to prescribe reasonable regulations to ensure the standard of and excellence in education; as also the true interest of efficiency of instruction, securing of competent teaching staff, discipline health sanitation, morality, public order, securing better condition of service and security of tenure to teachers and other employees, all of which are intended to secure the proper functioning of the institutions in matters of education.

III. (A) In order that the regulative measures are not violative of the right, they must be conceived in the interest of the minority educational institutions. The regulations so made must be such as are conducive to make the minority educational institutions an effective vehicle of education for the minority community or other persons who resort to it.

(B) If the regulations are not in the interests of minority they would not be valid even if they are in public interest, or in the interest of the Nation as a whole.

(C) Nebulous and elastic test of State necessity is not a criterion for deciding whether a regulation is violative of Art. 30 or not.

(D) If regulations or restrictions considered good in public or national interest, but not in the interest of the minority are to be held as good and valid, the right guaranteed under Art. 30 would be a teasing illusion and a promise of unreality., It would amount to subversion of the very purpose for which the right is conferred.

(E) Protection of minorities is an article of faith in our Constitution.

44. The contention of the petitioners is that the impugned order is inconsistent with .the fundamental right guaranteed to the" linguistic minorities under Arts. 29 and 30. They contend that in what manner their language should be conserved, protected developed and preserved is for them i.e. the minority groups which have established" educational institutions to decide and not for the Government. They contend that Articles 29 and 30 do not admit of any reasonable restrictions in public interest and therefore the Government cannot under the guise of public interest impose the conditions such as those contained in the impugned Government Order on the linguistic minorities and those orders are not in the interest of the minorities.

45. The learned Advocate-General and the learned Government Advocate for the State, however, maintained that from the various decisions of the Supreme Court, it is clear that the State had the power to make regulations in the interest

of excellence in education, prescribing syllabus including general pattern of education and such provisions are regulatory in character and the minority institutions cannot take exceptions to those regulations.

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 *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, 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. Therefore, if any linguistic minority group establishes a primary school of their own, the State cannot interfere with it and say that they must add to the general pattern of syllabus, the regional/official language as an additional subject, and for that purpose ask them to delete subjects like work experience, physical education and singing which according to general pattern of syllabus evolved by the Government is essential for primary education. Doing so is neither in the interest of proper primary education nor in the interest of the minorities.

47. On giving our anxious considerations to the rival submissions and considering them in the light of the principles laid down by the aforesaid decisions of the Supreme Court, we are convinced that the Government Order in so far as it compels the children of linguistic minorities to study Kannada from they very first year of the primary education as against the unanimous opinions of various Commissions and Committees which have stated that children should not be burdened with an additional language in the lower primary school, is inconsistent with and an infringement of the fundamental right guaranteed under Arts. 29 and 30 of the Constitution for three reasons :

First, they are not regulatory in character, but constitute an infringement. Secondly, they are not in the interests of the minority, for it is an accepted principle that it is in the interests of children to have primary education in mother tongue. Third, that choice under Art. 30 in the matter is of the minority groups themselves, which as held by the Supreme Court, is absolute.

48. Now coming to the provisions of the Government order in relation to the first language also, the learned Counsel for the petitioners submitted that study of their own language by the children belonging to linguistic minorities as the principal language was necessary in the interest of protecting and preserving their language and therefore the Government order which prescribes the

Kannada as the sole first language in the secondary schools is also violative of Arts. 29 and 30 of the Constitution. The learned Counsel for the petitioners conceded that the Government has- the right to prescribe the syllabus. But the learned Counsel pointed out that there was a clear distinction between the language subjects and other subjects. As regards the other subjects such as Science and Arts subjects, the learned Counsel submitted that the only power of the State Government was to prescribe the level of standards or the quantum of information or instruction to be imparted in those subjects at every stage of education and that whether such instruction or knowledge is imparted in a particular language or other language is immaterial. For instance, they pointed out that the State can prescribe the level of knowledge in Physics or Mathematics, or Chemistry or History, Biology or Sociology to be acquired at the secondary school level. But whether that knowledge is secured in Kannada language or through other language was immaterial. Therefore, the only right of the Government was to prescribe the general standards to secure excellence in education in each of the subjects. In this behalf, the learned Counsel also submitted that while it was open for the Government to prescribe the medium of instruction in the regional/official language or in any other language which Government considers practicable, the Government cannot compel the institutions established by linguistic minorities, to have the same medium of instruction in those institutions as prescribed by the Government. On this aspect, the learned Counsel for the petitioners relied on the judgment of the Supreme Court in *The State of Bombay Vs. Bombay Education Society and Others*, . The relevant portions are :

"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 Art. 29(1) and has the right to establish and administer educational institutions of their choice under Art. 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 Art. 29(1) and Art. 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."

They also relied on the Judgment of the Supreme Court in *D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others*, in which the resolution of the Senate Sub-Committee of the Punjab University adopting Punjabi as the sole or exclusive medium for the colleges affiliated to the University, was quashed. The relevant observation made therein by Jaganmohan Reddy, J., at page 1735 are : -

"..... 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.."

The learned counsel also relied on the observations of the Supreme Court in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . The relevant observations in the said case at page 1421 read

"A liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the right of minorities so far as their educational institutions are concerned.

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The principle which can be discerned in the various decisions of this Court is that the catholic approach which led to the drafting of the provisions relating to minority rights should not be set at naught by narrow judicial interpretation. The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. The same generous liberal and sympathetic approach should weigh with the Courts in construing Arts. 29 and 10 as marked the deliberations of the Constitution makers in drafting those articles and making them part of the fundamental rights."

Explaining the prerogative of the State: regarding secular education, at page 1435 of the same judgment, Mathew, J., observed thus

"The State's interest in secular education may be defined broadly as an interest in ensuring that children within its boundaries acquiring a minimum amount of information and knowledge in certain subjects. 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.,"

Finally, the learned Judge 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 abridges the right under Art. 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 Art. 30(1) will cease to be a fundamental right."

From the above Judgments, it is clear that in respect of linguistic minority institutions, the medium of instruction is to be entirely the choice of the Management concerned.

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 its the first language and has not interfered with the medium of instruction.

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 Art. 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 *The State of Bombay Vs. Bombay Education Society and Others*, , and in *D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others*, 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 recognised 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.

51. Therefore, we make it clear that this state being a uni-lingual State of Kannada speaking people, Kannada can be made a Compulsory language for study from the senior primary class and as one of the three languages in the high schools and such a provision would not be violative of Art, 29, for, it does not in any way interfere with the right of the minorities to develop their script and language. It would also be not violative of Art. 30 as it would be reasonable regulation and in the interest of minorities who are permanent residents of this State. If such an order is made, while it would be open for the students belonging to linguistic minorities to take Kannada as the first language at their option if not they would be under an obligation to study Kannada as one of the three languages in the high schools. Further, if a minority institution is receiving State aid the institution cannot deny admission to such students who, desire to study Kannada as the first language in view of Art. 29(2). We would deal with this aspect in greater detail later.

52. At this stage, it is also pertinent to point out that it is none of the languages of the minority linguistic groups in this State , which are coming in the way of the use of" Kannada fully at all levels of administration of the State Government. The State of Karnataka as an uni-lingual State was established on 1-11-1956 It is only seven years thereafter the Official Language Act, 1963, was enacted by the State Legislature making the Kannada as the official language. Twenty five years have elapsed thereafter. What Kannada finds difficult to replace is the English language, which had been adopted as the official language during the British regime. There is a craze for English language which is continuing unabated and even increasing, as evidenced by the establishment of English medium schools with State recognition, as pointed out in the Dr. Gokak Committee report itself. The relevant part of it reads :

"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. We cannot but say that ignorance is at the root of this."

This situation is also evident from W.P. No. 1006/1983 presented by an association called English Medium Parents Association, Belgaum. In this petition it is averred that amongst the parents, the petitioner represents 700 to 800 Christians whose mother-tongue is English. It is well known and was not disputed that English is the mother-tongue of only Anglo Indians who constitute a microscopic minority in the country and that the mother-tongue of all Indian Christians is their own original language and not English. Nevertheless the aforesaid averment is made in the petition. The learned counsel was unable to substantiate that the mother-tongue of the 700 to 800 Christian parents who are members of this petitioner Association, was English. Therefore, they cannot claim any right under Art. 29 or 30 of the Constitution for having primary education in

English. It is true that study of English language has a great advantage but its use is only for very limited number of persons. It cannot be a language of the masses in this country.⁴ However, the fact remains that it is this fancy for English which has retarded the progress of Kannada and its acquiring primacy by totally substituting English in the affairs of the administration of the State as also in the day-to-day life of people of this State. It is for the State to take effective steps in this behalf.

53. It is appropriate at this stage to consider, whether or not Kannada can be made a compulsory subject from that class of primary school from which as a general pattern of education, children are required to study another language, that is, other than the language in which they had the primary education and as one of the three languages in the high schools of this State if not as the first language. As stated earlier, we have as many as fifteen major national languages specified in the eighth schedule to the Constitution. The Nation has opted for formation of Uni-lingual States as an administrative necessity and democratic requirement i.e., the Government should speak to and correspond with the people in their own language. It was also to fulfil the desires and aspirations of the majority of the people speaking a particular language. Accordingly, the State of Karnataka has come into existence. Kannada has been rightly adopted as the official language of this State.

(4) Gandhiji on English Education vide "Towards New Education" by M. K. Gandhi, edited by Bharatan

Kumarappa - Navjivan Publishing House, pp. 6-11.

We have held that there is no rational nexus between the making of Kannada as the official language of this State and compelling the children having their primary education in their mother-tongue which is other than Kannada to study Kannada as an additional language from the first year of the primary school and also in making Kannada the sole first language in the secondary schools and such a step would be violative of Arts. 14, 29 and 10 of the Constitution. But our conclusion does not mean that Kannada, the official language, cannot be made compulsory subject for study for the students in this State. We make it clear that the State which has, subject to the provisions of the Constitution, the power to prescribe the syllabus to regulate education, can prescribe Kannada as one of the compulsory subjects. It is also the duty of every citizen who is a permanent resident of this State to study Kannada. But the regulations made in this behalf must be of general pattern and should apply uniformly to all. Therefore, the State can make regulations :

(i) prescribing the study of another language in addition to the language in which the child has the primary education, from the prescribed class of primary school, to wit, a child who had its junior primary education in a language other than Kannada should study Kannada as a second language from that class from which a child who had junior primary education in Kannada is required to study any

other language of its choice, and

(ii) prescribing Kannada as one of the three languages for study in the secondary school, but not necessarily as the first language.

But as stated earlier making study of Kannada compulsory as one other language from senior primary school level and as one of the three languages in the secondary school, should be in respect of permanent residents of this State and not to those who come to this State for temporary stay for one or the other reason. This classification is clearly discernible from the Dr. Gokak Committee Report extracted earlier. The Committee has stated that those who have stayed in this State for ten years or more must learn Kannada and others may not but they have to make their own arrangements. Such a step would not be violative of Art. 14. It would also be in conformity with the spirit of Art. 350-A.

Further such a regulation would not only be reasonable, but also be in the interest of the minorities who are permanent residents of this State as it enables their effective participation in the administration and other social and cultural activities in the State and promotes the feeling of fraternity and therefore would not be violative of Arts. 29 and 30.

54. As far as linguistic minorities who come for stay in this State temporarily, it is open for the corresponding linguistic minorities already in the State to provide such facility that is, to have primary or secondary education without the requirement to study Kannada, if such facility is not available in any Government or Government aided general schools.

55. We are happy to place on record that everyone of the learned counsel appearing for the petitioners stated unequivocally before us that the minorities who are permanent residents of this State have no opposition at all for such regulation and on the other hand they welcome it and they are desirous of learning Kannada both as personal requirement and national necessity.

56. Having dwelt upon all the legal aspects of the case, we would like to say a few words on the emotional aspect, as the matter is highly sensitive, as observed by Division Bench in the order of reference. Language has everywhere and always been a cementing force among the people speaking a particular language. It has a great emotional and sentimental appeal. But it is also human nature that such an emotion and sentiment gets contained, subordinated and circumscribed by higher and larger emotions and sentiments and stronger bonds among the people speaking different languages. It is this aspect which we consider it necessary to spell out.

57. Ours is a vast country; a subcontinent, with people speaking innumerable languages. The major languages are fifteen, which are specified in the eighth schedule. Nevertheless, we the entire population of this country constitute one people as indicated in the Preamble to our Constitution. It is true and natural that every section of the people of this country speaking a language, have a

great emotional attachment to their language. But at the same time, we are one Nation. "There is only one National mainstream. All of us are children of the same soil. We have a common country and people to love, a common National Flag to hoist, respect and protect, a common National Anthem to sing and a common Constitution to obey. Each of our languages is the medium through which we serve the country as a whole. Thus, though the emotion and love of each linguistic group of citizens to their language and State is great, the love of the country and its people is greater. All the national languages are our national asset. Each of the national languages as much belongs to different linguistic groups of this country as it belongs to the group who speak that language. Unity in diversity is the hallmark of our Nationhood. This fundamental unity is as ancient as the country itself. Irrespective of innumerable political divisions of India with different rulers in the long meandering course of Indian history, from ancient time, the people and the territory of India i.e., Bharat has been regarded as one unit and has been described in Vishnu Purana Ch. 3-1 thus :

"The Country which lies to the north of the Seas and to the South of the Himalayas is Bharat and the people of this Country are Bharateeyas.-

Great historian Dr. Radha Kumud Mookerji has authored a book under the title "Fundamental Unity of India". In that book a vivid picture of the fundamental unity of the people of this Country is given. After referring to the existence of people, speaking various languages, following different modes of worship in this Country, the learned author observes at pages 22-23, thus :

"Superficial observers are therefore liable to be bewildered by this astonishing variety in Indian life and geography.

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A keen, penetrating insight can hardly fail to recognise that beneath all this manifold variety there is a fundamental unity; that this diversity itself, far from being a source of weakness, is a fertile source of strength and wealth."

"This feeling of fundamental unity, was roused during the Freedom Struggle against slavery which this country had to suffer on account of internecine quarrels coupled with foreign invasions. The feeling that Bharat is our motherland and all of us are her children was roused by the inspiring song "Varidematram" composed by Bankimchandra Chatterjee in Sanskrit Bengali combine. An account of the inspiration received from the song is given as below :

"The great song with its opening slogan inspired the movement for political, economic and cultural independence, and all the world saw "a puissant nation rousing herself like a strong man after sleep and shaking her invincible locks."()

The great poet Subramania Bharati of Tamilnadu composed many a patriotic songs. Excerpts from two of them read. Singing in praise of Bharatmata, he says :

"She has thirty crores of faces, but her heart is one; She speaks eighteen languages, yet her mind is one."

"Do you not know that in eighteen languages sweet we sing your praises in manifold ways " Come, come, and give us the blessings our reign ! Rise, O rise, Mother mine!"-()

The patriotic songs in all the languages gave the expression to the same feeling. The famous Urdu poet Iqbal praised our motherland in his most popular Urdu song thus:

" Sare jaha se achchaa Hindustan humara"- Iqbal- Poet Patriot of India by M.H. Burney(1987).(Our Bharat , the best among the countries in the World)

Kannada's contribution is no less. The song " Victory to the land of Bharat", "Victory to the Holy mother Bharat" (Matter in vernacular omitted- Ed.) which was the song composed and sung at Ahmedabad Session

Of the The Indian National Congress in 1921 in the presence of Mahatma Gandhi , inspired the Kannada speaking people during the freedom struggle - Rashtra Shakti (Kannada book of Patriotic

(5)Bankimchandra Chatterjee by S.C. Sengupta Sahitya Akademi publication,p.60 (6) Bharati by Prema Nandakumar Sahitya Akademi publication p.27 (7)Poems of Subramania Bharati by Nandakumar Sahitya Academy publication p.51

Songs), p. 53 (1973). The same feeling of unity prevailed throughout the freedom struggle and ultimately in when we secured independence and the greater part of India became one political entity and the. people enacted and gave themselves the Constitution the name of the Country Bharat, given in the Vishnu Purana was also incorporated in Art. 1 of the Constitution of India. Conformably to these historic factors the Preamble of the Constitution declares that we are ONE PEOPLE. The Preamble stresses about the fraternity of the people and the integrity of the Nation. Dr. B. R. Ambedkar the Principal Architect of the Constitution, has laid great stress on the word "fraternity" used in the Preamble. He stated thus :

"What does fraternity mean ? Fraternity means a sense of common brotherhood of all Indians - of Indians being one people. It is this principle which gives unity and solidarity to social life" - B. R. Ambedkar and the Human Rights, p. 15.

(Matter in Vernacular omitted - Ed.)

Padmacharan, a Kannada poet has given forceful to the feeling of fraternity among the people of this country in the famous Kannada song composed by him thus :

(Matter in Vernacular omitted - Ed.)

"Despite our having hundred languages or religions, we the people of Bharat are one forever; united emotionally, we march forward."

58. When we are one people with one citizenship, any order or regulation which compels a child having its primary education in its mother tongue which is other than the official language of the State in which it resides, to Study the official language as an extra subject in addition to the prescribed general pattern of curriculum for primary schools or which compels a student joining any high school to take the official language of the State as the principal or first language giving no choice, would be inconsistent with the feeling of unity and fraternity among the people of the country and therefore can be said to be not in tune with the provisions of the Constitution which Lir meant to give effect to the objectives enshrined in the Preamble. Such Regulations, if made, by one State are counter- productive. In fact, we were told at the time of hearing that it was only after the impugned order was made the Kerala Government made a similar order making compulsory study of Malayalam by the Kannada linguistic minorities there and they have approached the Kerala High Court against that order and the operation of that order has been stayed. Such provision made by any State, in our opinion, leads to tension between the linguistic groups which is destructive of feeling of fraternity among the people speaking different languages and injurious to the integrity of the Nation. It is needless to stress that the fraternity of the people and the unity and integrity of the Nation is of paramount importance. We conclude this emotional aspect with an excerpt from the judgment of the Highest Court of the Country In the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . It reads :

"it is an interesting fact 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 unity - 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.

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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 sell" interest, that national interest must inevitably and for ever prevail over any other

considerations proceeding from regional, linguistic, or communal attachments."

(Underlining by us)

This exhortation coming as it does from the highest Court of the Nation constitutes the beacon light when we are faced with the problems as the one presented in this case. It is a warning against 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 this country as a whole, and the unity and integrity of the Nation which are among the objectives of our Constitution specified in its Preamble. The observations also point out that the concept and demand of majority or minority, religious Or linguistic, in respect of any matter must not be allowed to cross the reasonable limits and if done it would endanger the interest of the Nation as a whole which includes both majority and minority. We (to agree that the demand for primacy to Kannada in this State is most reasonable and laudable too, but that it had resulted in the passing of the impugned order which apart from being violative of the provisions of the Constitution, is also inconsistent with the nationalistic and liberal tradition of Karnataka, is paradoxical.

59. We shall now set out the summary of our conclusions :

1. 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 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 Art. 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 Art. 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 Art. 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 Art. 29 and the right to establish and administer the educational institution of their choice guaranteed under Art. 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 Art. 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 Arts. 29 and 30 of the Constitution respectively.

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

In W. P. Nos. 28566, 28567, 33790, 366,30 and 36630A of 1982 and 1006 and 13907 of 1983.

OPINION

Our answers to the three questions referred for the opinion of the Full Bench, are 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 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 Arts. 29(I) and 30(1) of the Constitution.

(2) The Government Order dated 2-7-1982 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 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 the pledge of equality guaranteed under Art. 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 Arts. 14, 29(I) and 30(1) of the Constitution of India.

These petitions have to be posted before a Division Bench for final disposal of the petitions.

11. In W.P. Nos. 18848/1987 and 1097/ 1988 :

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 Arts. 14, 29(I) and 30(1) of the Constitution of India.

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.

Balakris[Ina, J.

61. After a careful consideration of the report submitted by it Committee constituted on 5-7-1980 by the Government of Karnataka, an official resolution was tabled by the Government before both the Houses of the State Legislature in order to elicit the opinion of the Legislature on what has come to be known as "the Gokak Committee report."

After due deliberations and discussions, the following resolution emerged with the approval of both the Houses :

"in High Schools Kannada shall be the sole First regional language carrying 125 Marks. In addition a student may study any two languages carrying 100 Marks each from the following :

Urdu, Tamil, Marathi, Hindi, English, Sanskrit, Arabic, Persian, Malayalam, Telugu and Kannada.

15 Grace marks may be given for a period of ten years to students belonging to linguistic minority communities 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 3rd Standard from this academic year i.e., 1982-83. In addition to the above, Government should take steps to start teaching Kannada from the First Standard itself from this academic year i.e., 1982-83. A High Power Committee should be constituted for effective implementation of the language policy."

In accordance with the said resolution, the State Government issued an order dated 207-1982. It is this Government Order that is challenged in these writ petitions. The impugned order was followed up by a Circular dated 11-8-1982 issued by the Director of Public Instruction (Research, Education and Text Books) containing instructions in detail for the implementation of the impugned order. This circular is also in question in these writ petitions.

The State action of compulsory propagation of the Official Language of the State as the sole First language, is on test in these Writ Petitions. The element of compulsion in enforcing the recognised language of the masses on the linguistic and religious minorities and the unwilling, which is challenged, poses a question that has no analogy in the cases decided by the Courts hitherto. The bold experiment of the State under a new domestic policy based on a reassessment of social and educational values is strongly and vehemently resisted by the petitioners. Similarity of occasion seems to have resulted in unanimity of challenge from the linguistic and religious minorities and other sections actuated by the felt apprehension of a blatant assault on the constitutional prerogatives of these minorities conferred by Art. 29(1) and Art. 30 of the Constitution in particular Umbrage is taken under Art. 14 too. Reflected in this batch of Writ

Petitions is a revulsion against State action which according to the petitioners virtually borders on the tyranny of the official language of the State which impedes the minorities in the exercise of the preferred liberty of choice in electing the First Language under the syllabus prescribed for students commencing from Ist Standard. The issue is unprecedented since what is in controversy is not the medium of instruction but the introduction of Kannada as the sole First Regional Language without leaving any alternative to the minorities. The absence of alternative so far as the First Language is concerned is not only to the minorities but also to everyone in the State. The grievance is that it confers Undue advantage on the students whose mother-tongue is Kannada and almost a handicap or material disadvantage to those students whose mother-tongue is not Kannada. This, according to the petitioners is an unfair advantage and is discriminatory.

62. What is involved in principle, in letter spirit and substance is the swing towards integration and assimilation leading to cohesion in contrast to the break-away tendency towards segregation and isolation in the search for identity based on new Values in the changed context of a developing nation. The paradox is the suspicion that what actually is the product of Art. 345 of the Constitution is invading the fundamental rights guaranteed to the minorities under Art. 29(1) and Art. 30(1) of the Constitution and is clashing with Art. 14.

63. A reference to the Minority Complex - the syndrome, against the backdrop of historical, linguistic and sociological factors would be within the context and considerably relevant. In tracing the origin and growth, the factors which surface for evaluation may provide the basis for a vivid analysis of the vexed problem and offer a clue to the psyche behind the resistance to the changing values in a developing society and throw light on their relevance to the unity and Integrity of the nation, (specially in the context of secularism. The key to a comprehension of the complex of the apprehensive minorities lies therein).

"The law embodies the story of a nation's development through many centuries and cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics." - Justice Holmes

64. Minorities are the products of social stratification. Stratification implies unequal distribution of material values which are prized but scarce. The material values could be enumerated as follows:

- (a) Income (Control of economic goods and services);
- (b) Prestige (Control over social honour);
- (c) Power (Control over the activities of other persons).

65. A combination of all the three in a person produces what is known as the "crystallised status", according to reputed Social Scientist J. Milton Yinger.

66. It is said that minority complex is one of the major causes of the growth of

regional nationalism and in a way an obstacle to nationalism and to durable assimilation. It is a problem which has hardly spared any nation or society in the world whether past or present.

67. The self assumed belief of superiority (Superiority complex) of the majorities in the society termed as "ethno Centrism" lies at the root of the problem even though it is not the only contributing factor. Because of greater concentration of economic or political power not omitting military power, one group is able to dominate the other, thus lending a sort of reality to the group's assumed superiority. "These may be characterised as economic advantages gained through the questionable social ill-treatment or through what is familiarly known as social exploitation. Rationalised and ingenious explanation is offered to justify an unjustifiable conduct.

68. There is scarcely a society today whether in the democratic states or Totalitarian states or Theocratic states in this wide world that does not have within it one or more groups which are different in language, race or culture which are in some measure under-privileged. In legitimate pluralism it is rightly said that individuals are joined in a viable system based on tradition and wish for its preservation and development. Preventive action to stem the perpetuation by pluralism of out-group behaviours such as isolation, segregation and discrimination is best left to further experimentation and experience employing strategies of vision and imagination. It is common knowledge that Nation-states were often built and are still being built through efforts of people belonging to diverse religions, languages, races and ethnic groups and origin To create unity out of such diversity has been one of the primary tasks of most large nations like India. The simple truth is that in a mobile world where many nations have been formed out of the consolidation of what formerly were distinctive groups, minority - majority situations occurring with regular frequency is indeed an inevitable phenomenon, human nature being what it is.

69. The minority complex presents a syndrome of significance, outwardly enigmatic, revealing the least known aspects. The criteria by which the minorities are distinguished are linked to language, religion, national origin, Culture, race or some combination of these and other characteristics which weave a Global pattern.

70. According to Louis Wirth, a sociologist of eminence, the important system of classification is based on long-term goals and the classification bears out distinct facets of the minority complex. They are assimilation, Pluralism, domination and secession.

Assimilation : Let us disappear as a group, judge us as only individuals.

Pluralism : Let us maintain our group identity based perhaps on language, religion, or culture so long as we give full allegiance to society.

Domination : We are weary of being dominated and we shall do everything we

can do to reverse the present status arrangements by militant means if necessary.

Secession : Give us our freedom. Let LIS establish Out- own society where we can practise our way of" life without hindrance.

71. In order to Understand society it is very important to know the goals of its minorities, the cause of these goals and the changes that are taking place in them. There is increasing evidence that divisive forces, fissiparous and subversive elements readily capitalise on minority complex by creating distrust, suspicion, fear and isolation among the minorities by fanning the flame of linguistic or religious fundamentalism.

72. Even after 40 years of constitutional experiment, there is little evidence of the realisation of the danger posed by self-imposed segregation or aloofness based on language, religion, culture in preference to integration and assimilation though the State has never been blamed for oppression of the minorities. There is mounting pressure of the force of seclusion set on collision course with secularism.

73. The cases before us must be considered in the light of our whole experience and not merely in that or what was said in the distant past. In dealing with the constitutional rights of the minorities, my mind goes back to the observations of Justice Holmes:

"The provisions of the constitution are not mathematical formulae having their essence in their forms, they are living institutions. . .

..... Their significance is vital and not formal, it is to be gathered not simply by taking the words and a dictionary but by considering their origin and the line of their growth."

In dealing with the concept of equality, I am reminded of what Benjamin Cardozo said :

"No absolutist is so intransigent as to assert that there can be literal adherence to a standard of equality or liberty. Some compromise is inevitable between liberty and license, between uniformity and diversity, The necessity for exceptions being conceded, the important thing is to determining the principle that shall govern their allowance.

Shall we look for it within ourselves in some mental pattern of an ideal community?

Shall we look for it in the past admitting no encroachment not Sanctioned by time ?

Or shall we look for it in the needs of the present in the exigencies of social life ?

Shall Our standard be a meta-physical conception or a historic dictum or a living need ?

As you give one answer or the other, you reach different results."

The above observations are apposite in the application of Art. 14 to the facts of the cases in hand.

74. Neither historically nor analytically nor in the present social and economic conditions is there any reason to take a view that constitutionalism implies exclusively constitutional limitations and never constitutional affirmations. If constitutionalism is defined or understood as it ought to be as the institutionalisation of the principle that the state-goal is the increase in opportunities for the development of the individual as the seat of ultimate creative, political and spiritual authority and if the four essential means used by constitutionalism are first, a division of power upon pluralistic principles, second, an expanding rule of law, third, political devices admitting peaceful revolutions in the State's machinery responsive to alterations in the structure and power of interests and ideas in society and fourth, continued emphasis upon practical measures for achieving the liberties of movement, belief, association and communication, then there is as much room for affirmation as for negative aspects of constitutionalism. Unbiased history would reveal that the object and means of constitutionalism have always required the active intervention and procedural assistance of the State. This would take us to the question : Is it freedom from State intervention or Is it freedom through State action ?

75. The concept of single citizenship, single integrated judiciary, single All India Services under a Constitution which is unitary in structure though federal in facade. to be conserved and nurtured in order to preserve the unity and integrity of the nation calls for catholicity and a libertarian outlook from the heterogenous segments of our society in response to the dictates or philosophy of the Constitution. If eternal vigilance is the price of liberty, it is necessary to guard against the sentiments which are deceptive and which alienate language against language, culture against culture, script against script in a State which is neither theocratic nor autocratic. The national objective is an integrated nation unified by a spirit of mutual tolerance and harmony, the larger interests of the nation being the paramount and supreme consideration. Independent India with its 41 year old constitution calls for a liberal and secular outlook and an objective approach with emphasis on national and global outlook.

A century ago Swamy Vivekananda said :

"I am proud to belong to a religion which has taught the world both tolerance and universal acceptance. We believe not only in universal toleration but we accept all religions as true. I am proud to belong to a nation which has sheltered the persecuted and the refugees of all religions and all nations of the earth. I am proud to tell you that we have gathered in our bosom the purest remnants of the Israelites who came to southern India and took refuge with us in the very year in which their holy temple was shattered and is still fostering the remnant of the grand Zorashtrian nation. I will quote to you brethren, a few lines from a hymn

which I remember to have repeated from my earliest -boyhood which is repeated everyday by millions of human beings:

"As the different streams having their sources in different places all mingle their water in the Sea, so, O Lord, the different paths which men take through different tendencies, various though they appear, crooked or straight, all lead to thee".

76. Kannada is not only the official language of the State of Karnataka but also the authentic intra-State vehicle of thought since it is the undisputed spoken language of the masses and an effective medium of social inter-action. What the impugned order seeks to achieve is the bond of understanding through a common language. Karnataka State emerged through the process of States reorganisation on the basis mainly of language. Kannada as the official language of the State is a moving force which could catalyse social consciousness and contain separatist tendencies. People of the State are brought together by a common medium of communication, without coming in the way of the conservation of the language, script and culture of the linguistic and religious minorities.

To quote Swamy Vivekananda again :

Was anybody persecuted in India for choosing his "ishta Devata" or becoming an atheist or agnostic even so long as he obeyed the social regulations

A similar question could be asked about language too. The need of the hour is hospitality to knowledge in every field of learning. Knowledge of language and especially of the State is imperative.

Language is a part of the syllabus which the State is entitled to formulate under its domestic policy.

77. The element of compulsion for acquisition of knowledge through study of the official language of the State cannot be reprehensible by any means. Inherent in the rule of law is the binding factor called compulsion and what we are dealing with is the force of law and not the law of force. To call it regimentation is a misnomer. Law will be a fossil if it does not bind. The will of the Legislature is the will of the people meant to be enforced unless in the opinion of the competent Court it is repugnant to any constitutional provision. Hobbes, Rousseau and White Head emphasised that civilizations are held together partly by persuasion and in no small part by compulsion.

78. The changing perceptions of an attitudinal and growing society consisting of heterogeneous vivisections over a period of time commencing from the date on which the Constitution came into existence are the index of the enlightened common sense of the nation with which law has to keep harmonious company. The living social realities, the felt necessity of the time and the enduring, values of stability and societal equilibrium in the pull and counter-pull of the centripetal and centrifugal forces, cannot be viewed in isolation. The light is changing and

the sands of time are shifting. Let me quote Henry R. Luce:

" Flow painful it is to see things in a new light when only a few centuries ago the suspicion dawned with Copernicus that our earth was not the centre and greater part of the Universe, it was frightfully upsetting. Human life has never been the same since. And when in our great grand-fathers time, the Darwinian rumour ran all too plausibly that Adam and Eve were not created in B. C. 4532 and that we came from a long line of monkeys - that half-truth brought spiritual derangement to millions .

The actual day to day conditions human life on this planet are changing faster in our lifetime than in all times past and the lights change, the people see things. Not only the atom is probed but also the psychic; both are disintegrated."

79. The official language of the State is intended to be disseminated among all the people of the State as a matter of policy. It would not be odious if analogy is drawn to the provision of directive principle of State policy enshrined in Art. 45 of the Constitution making education compulsory to all below the age of 14 years. There is no right to remain uneducated in opposition to Art. 45. Compulsion viewed in the proper perspective unfolds enlightenment and enrichment through the knowledge of the State language so essential in social- intercourse and official work apart from the immense benefits realisable by reaching into the inexhaustible treasure of glorious culture, literary excellence and values, knowledge and learning besides myriad benefits, economic, social and educational. After all, language is the vehicle of thought. Since access to mother-tongue is not denied though as a second language, no detriment is caused to the minorities in the matter of conservation of language, script and culture. Primacy to the official language of the State is the mark, of distinction and not of discrimination, in the light of Art. 345 of the Constitution. Opinion is not unanimous on the question whether learning of so many languages by children of tender age imposes an undue burden on them and that it is undesirable. Extra effort is for extra knowledge and it cannot be regarded as an undue burden compared with the benefits that flow from it to the children in their impressionable age. There is no conclusive evidence to hold that the learning capacity of the children at a tender age is limited and vulnerable.

80. Justice Holmes said in *Meyer v. Nebraska* (1922) 262 US 390 :

"Youth is the time when familiarity with a language is established and if there are sections in the State where a child would hear only Polish or French or German spoken at home, I am not prepared to say that, it is unreasonable to provide that in his early years he shall hear and speak only English at school. But it is reasonable it is not an undue restriction of the liberty either of teacher or scholar. No one would doubt that a teacher might be forbidden to teach many things and the only criterion of his liberty under the Constitution that I can think is "whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat"."

In the same case Justice Me Reynolds observed :

" It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age and experience shows that this is not injurious to the health, morals or understanding of the ordinary child."

81. I am unable to see how the impugned Government Order affects the rights of any section of the Indian citizens to conserve their distinct language, script or culture of their own when there is no prohibition at all on the use of the mother-tongue not only as a medium of instruction but also as a second language instead of as first language so far as the linguistic minorities are concerned. It is only in the matter of prescription of the First Language, as approved by the Legislature, primacy is accorded to the official language of the State which is Kannada. I do not regard it as unreasonable by any means since it does not in my opinion in any way impede the right to conserve the language, script or culture of the minorities. Equally without foundation is the contention that language Compulsion affects the right to establish and administer educational institutions of the choice of the minorities. Freedom of choice at best could be a preferred liberty and it is the prerogative of the State to prescribe the first language and to make it compulsory since such a compulsive prescription is an integral part of the power to stipulate the syllabus in the exercise of the State's power in laying down an educational policy for which I do not find any constitutional barrier. It is an educational policy within the domestic jurisdiction of the State in the matter of social control. The official language represents a compromise of the competing interests and values of the State, the linguistic minorities and the rest for common good. It may be justifiable to observe that an attack on the impugned orders in an indirect attack on Art. 345 of the Constitution.

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 has 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 institution alike is an integral part of such a right. Then: is no violation of Art. 14 of the Constitution

83. It is impossible to accept the contention that the prescription of the first language and making it compulsory is intervened with the medium of instruction. They are two separate and distinctly different

issues. Compulsory first language which is impugned does not stand in the way of the medium of instruction or the choice of the linguistic minorities and it does not either directly or indirectly impinge on Art. 30(1) of the Constitution. There is no conflict between primacy of Kannada and supremacy of the Constitution.

84. Much was sought to be made out of the decision of the ruling in *D.A.V. College, Vs. State of Punjab and Others*, . In that case, the points considered bear no similarity to any of the points under reference in these cases. While dealing with the challenge made to sub-sec. (3) of S. 4 of the *Guru Nanak University Amritsar Act (21 of 1969)*, the Court made certain observations while upholding the said provision. According to S. 4(3) of the Act:

" The University shall exercise the following powers and perform the following duties

1

2

(3) To promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi language, literature and culture."

Referring to the above provision, the Court held p. 1746 of A I R) :

"Sub-section (3) of S. 4 also does not in our view transgress the guarantee under Art. 29(1). Whether one may like it or not linguistic States in this country have come to stay. The purpose and object of these linguistic States is to provide, with greater facility the development of the people of that area educationally, socially and culturally, in the language of that region but while the State or the University has every right to provide for the education of the majority in the regional medium, it is subject to the restrictions contained in Arts. 25 to 30. Neither the University nor the State can provide for imparting - education in a medium of instruction in a language and-script which stifles the language and script of any section of the citizens which have a distinct language or script and which they have a right to conserve through educational institutions of their own. In our view S. 4(3) does not lend itself to the interpretation that the medium of instruction of all affiliated colleges has to be Punjabi. The provision, as we construe it is for the promotion of Punjabi studies and research in and the development of the Punjabi language, literature and Culture which is far, from saying that the University can under that provision compel the affiliated colleges particularly those of the minority to give instruction in the Punjabi language or in any way impede the right to conserve their language, script and culture."

85. I am unable to see how the decision is applicable to the instant cases either on facts or on principle when by making the study of Kannada which is the official language of the State compulsory as the first language, it can hardly be said that it stifles the language, script and culture of any sections of the people, particularly for the reason that there is no prohibition on study of the mother-

tongue by any sections of the citizens, as a second language. It is not for the Court to suggest or decide how many languages ought to be in the first list.

86. In the note appended to the impugned order, it is provided :

" 15 grace marks shall be given for a period of ten 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."

Para 2 of the same order reads thus

"Students coining from outside the State and joining VIII, IX or X Standard who did not study Kannada earlier may be permitted to take English or Hindi as First language."

Thus it is evident that the possible disadvantages are sought to be overcome by provisions which are both reasonable and adequate. They are indicative of a fair compromise of competing interests to the extent reasonably possible. To say that it implies an admission of discrimination cannot be accepted. Balancing of competing interests cannot be gauged by mathematical precision but have to be tested by applying the rule of reasonableness.

87. Though the scope and effect of Arts. 29(I) and k)(1) have been exhaustively considered by the Supreme Court in the following cases, the points which have arisen for consideration in the present writ petitions remain untested hitherto. The said decisions have no bearing on the points in issue.

In *The State of Bombay Vs. Bombay Education Society and Others*, , the right to impart instruction in the minority institution of the Anglo Indian community to the children of their own community and in their own language was upheld negating the police power of the State to determine the medium, of instruction.

In *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, , the right of the linguistic and religious minorities to establish and administer educational institutions of their own choice was considered.

That the parents have a right to decide to which school or college their children should be sent for education is different from asserting that the parents have a right to determine which language should be the first language for study and whether or not it ought to be compulsory.

In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, , Hidayatullah, C. J., observed

"The fundamental freedom is to establish and to administer educational institutions; it is a right to establish and administer what a re in truth educational institutions - institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests 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 matters educational."

(vide page 545, Para 10) (Sic)

In Para 10, it was observed by the learned Judge:

"Yet the right of the State to regulate education, educational standards and allied matters cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others

In the *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, Ray, C. J., observed

"The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. Das, C. J., in the *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, summed up in one sentence the true meaning of the right to administer by saying that the right to administer is not the right to maladminister."

(vide Para 20)

In *Lily Kurian Vs. Sr. Lewina and Others*, Sen, J. observed (at p. 61) :

"Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Art. 30(1) means "management of the affairs" of the institution. This right is, however, subject to the regulatory power of the State Article 30(1) is not a charter

for maladministration, regulation, so that the right to administer may be better exercised for the benefit of the institution is permissible;

In *All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others*, Chandrachud, C. J., said:

..... that while the right of the religious and linguistic minorities to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of

ensuring educational standards and maintaining the excellence thereof can be validly prescribed. For maintaining educational standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which

prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character. As observed by Das, C. J., In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , "Right to administer cannot obviously include the right to trial administrator" and in the words of Shah, J., in Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, . "The right is subject to reasonable restrictions in the interest of efficiency or instruction, discipline, health, sanitation, morality, public order and the like". Hidayatullah, C. J., said in Very Rev. Mother Provincial that "Standards of education are not a part of management as such", that the "minority institutions cannot be permitted to fall below the standard of excellence expected of educational institutions" and that "the right of the State to regulate education, educational standards and the allied matters cannot be denied". Justice Jaganmohan Reddy, in D.A.V. College, Vs. State of Punjab and Others, , reiterated while upholding Cl. 18 of the Guru Nanak University, Amritsar Act, 1961 that regulations governing recruitment and service conditions of teachers of minority institutions. Which are made in order to ensure their efficiency, and excellence do not offend against their right to administer educational institutional of their choice."

(Page 1048, Para 3)

88. Now coming to Art. 350-A of the Constitution, what is contemplated is the endeavour of 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; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

89. The inconsistency between the final report and the earlier ones submitted by the Gokak Committee is not of material relevance. It may be recalled that when the Constituent Assembly discussed the introduction of fundamental rights into the Constitution, though the consensual trend of the proposals was to make Socio-economic rights justiciable and as fundamental as the. political and civil liberties, the final outcome was totally different. The Socio-economic rights were relegated to the chapter of nonjusticiable rights and became directive principles of State policy, The change did not affect the sanctity and validity of the provisions.

90. It is not the case of the petitioners that there is a denial of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic or religious minority groups and, therefore, the contention that Art. 350-A of the Constitution is attracted does not stand legal scrutiny. I am of the opinion that the said provision of the Constitution has no bearing on the facts and circumstances of these cases and that the impugned orders do not do violence to any provision of the Constitution.

91. In my opinion, for the reasons stated above:

- (1) The Government Order dated 20-7-1982 or any part of it is not void and does not violate the fundamental rights guaranteed to the petitioners under Arts. 29(I) and 3 (11) of the Constitution;
- (2) The Government Order dated 20-7-1982 or any part of it does not infringe the pledge of equality guaranteed under Art. 14 of the Constitution;
- (3) The Circular dated 11-8-1982 issued by the Director of Public Instruction of the State Government does not infract Articles 14, 29(1) and 30(1) of the Constitution.

THE OPINION AND ORDER OF THE COURT

92. In accordance with the opinion of the majority, the court answers the reference and makes the order in the writ petitions as follows:

1. InW.P. Nos. 28566,28567,33790,36630 and 36630A of 1982 and 1006 and 13907 of 1983.

OPINION

93. Our answers to the three questions referred for the opinion of the Full Bench, are 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 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 Arts. 29(I) 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 Kannadaas 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 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 the pledge of equality guaranteed under Art. 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 Instruction of the State Government is

violative of Arts. 14, 29(1) and 30(1) of the Constitution of India.

These petitions have to be posted before a Division Bench for final disposal of the petitions.

11. In W.P. Nos. 18848/1987 and 1097/ 1988.

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 Instruction pursuant to the aforesaid Government Order, are declared void as offending Arts. 14, 29(1) and 30(1) of the Constitution of India.

III. The Government shall, however, bear 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.

94. Order accordingly,